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Federal Register

3–16–04 Tuesday
Vol. 69 No. 51 Mar. 16, 2004

Pages 12265–12538

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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.

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 330

[Docket No. 00–063–3]

Plant Protection Act; Revisions to Authority Citations; Technical Amendment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: In a final rule published in the **Federal Register** and effective on April 27, 2001, we amended the regulations in title 7, chapter III, and title 9, chapter 1, to reflect enactment of the Plant Protection Act (Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772). In the rule, we revised authority citations and removed references to plant protection and quarantine statutes that were repealed by the Plant Protection Act. One of the changes to 7 CFR part 330 was in error. We are amending the regulations in part 330 to correct this error.

EFFECTIVE DATE: April 27, 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Howard, Chief, Regulatory Analysis and Development, PPD, APHIS, 4700 River Road Unit 118, Riverdale MD 20737; (301) 734–5957.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2001, APHIS published a final rule amending the regulations in title 7, chapter III, and title 9, chapter I, to reflect enactment of the Plant Protection Act (Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772). The final rule (66 FR 21049–21064, Docket No. 00–063–2) revised the authority citations to the regulations and removed references to plant protection and quarantine statutes that were repealed by the Plant Protection Act. In a number of instances, the rule added references to the Plant Protection Act in the place of references to the repealed statutes, which included the Plant Quarantine Act (7 U.S.C. 151–164a, 167), the Federal Plant Pest Act (7 U.S.C. 147a note, 150aa *et seq.*), and others.

One of our changes, to 7 CFR part 330, was in error. In 7 CFR part 330, ''Federal Plant Pest Regulations; General; Plant Pests; Soil, Stone, and Quarry Products; Garbage,'' we amended § 330.106, ''Emergency measures,'' by removing a reference to the Plant Quarantine Act and adding in its place a reference to the Plant Protection Act in the following sentence: ''This section does not authorize action with respect to any means of conveyance, product, article, or plant pest which, at the time of the proposed action, is subject to disposal under the Plant Quarantine Act.'' We should have removed the sentence.

Prior to enactment of the Plant Protection Act, the Plant Quarantine Act authorized the Secretary to take actions to prevent the dissemination of plant pests by nursery stock and other plants and plant products, and the Federal Plant Pest Act, which came later, extended the Secretary's authority to any means of conveyance and other nonplant articles that presented a risk of disseminating plant pests. The regulations in part 330 were promulgated under the authority of the Federal Plant Pest Act. The Federal Plant Pest Act, in its section on emergency measures by the Secretary (7 U.S.C. 150dd), stated that ''this subsection shall not authorize such action [meaning emergency measures, including disposal] with respect to any product, article, means of conveyance, or plant pest subject, at the time of the proposed action, to disposal under the Plant Quarantine Act.'' The sentence we amended in § 330.106 paralleled this provision.

The Plant Protection Act consolidated our authorities for preventing the dissemination of plant pests into one statute. Thus, the sentence we amended was no longer necessary and should have been removed. This document amends the regulations to remove that sentence.

List of Subjects in 7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 330 as follows:

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

■ 1. The authority citation for part 330 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.3.

§ 330.106 [Amended]

■ 2. In § 330.106, paragraph (a) is amended by removing the sixth sentence.

Done in Washington, DC, this 10th day of March, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–5870 Filed 3–15–04; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 795

OMB Control Numbers

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is updating its listing of regulations and their corresponding Office of Management and Budget (OMB) control numbers to comply with Paperwork Reduction Act requirements.

DATES: Effective March 16, 2004.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Regina M. Metz, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA is amending its regulation on OMB control numbers to reflect changes in NCUA's information collection requirements and related OMB's control numbers occurring since NCUA last revised the display table. 12 CFR 795.1; 64 FR 49080, Sept. 10, 1999. NCUA displays the control numbers to comply with the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and OMB's implementing regulation, 5 CFR part 1320.

The regulation conforms with OMB's recommendation that agencies issuing regulations that contain information collections display the related control numbers in a table in the CFR. 5 CFR 1320.3(f)(3) and 1320.5(b)(2)(ii)(C). The table identifies those NCUA regulations with their corresponding OMB control numbers but excludes, as recommended by OMB, OMB control numbers already displayed in NCUA's forms, questionnaires, instructions, and other written collections of information. 12 CFR 795.1(b); 5 CFR 1320.3(f).

B. Final Rule

The NCUA Board is issuing the amendments to § 795.1 as a final rule because the publication of the OMB numbers in a display table provides information to the public in a recommended format. Therefore, public comment and a delayed effective date are both unnecessary. If the rule is effective upon publication, then NCUA can immediately display the updated table. Accordingly, for good cause, the Board finds that, under 5 U.S.C. 553(b)(3)(B), notice and public procedures are impracticable, unnecessary, and contrary to the public interest; and, under 5 U.S.C. 553(d)(3), the rule will be effective immediately and without 30 days advanced notice of publication.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities, primarily those under one million dollars in assets. The final rule will not have a significant economic impact on a substantial number of small credit unions, and therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule would 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. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. OMB is reviewing this rule to determine whether it is major for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 795

Credit unions, Collection requirements.

By the National Credit Union Administration Board on March 5, 2004.

Becky Baker,

Secretary of the Board.

■ For the reasons set forth above, National Credit Union Administration amends 12 CFR part 795 as follows:

PART 795—OMB CONTROL NUMBERS

■ 1. The authority citation for part 795 continues to read as follows:

Authority: 12 U.S.C. 1766(a) and 5 U.S.C. 3507(f).

■ 2. In § 795.1, paragraphs (a) and (b) are revised to read as follows:

§ 795.1 OMB control numbers.

(a) *Purpose.* This subpart collects and displays the control numbers assigned to NCUA's information collection requirements by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35. NCUA intends to comply with the requirement that agencies display a current OMB control number upon the collection of information. 44 U.S.C. 3507(a)(3). The table does not include the currently valid OMB control numbers already on display in NCUA's forms, questionnaires, instructions, and other written collections of information. 5 CFR 1320.3(f).

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
701.1	3133–0015
701.14	3133–0121
701.21	3133–0139
	3133–0058
701.22	3133–0141
701.23	3133–0127
701.26	3133–0149
701.31	3133–0068
701.32	3133–0114
	3133–0117
701.33	3133–0130
701.34	3133–0140
701.36	3133–0040

12 CFR part or section where identified and described	Current OMB control No.
702	3133–0154
703	3133–0133
704	3133–0129
706	3133–0165
707	3133–0134
708a	3133–0153
708b	3133–0024
	3133–0099
711	3133–0152
712	3133–0149
714	3133–0151
716	3133–0163
722	3133–0125
723	3133–0101
740.2	3133–0098
740.3	3133–0149
741	3133–0099
	3133–0142
	3133–0163
748	3133–0033
	3133–0108
749	3133–0032
	3133–0057
	3133–0058
	3133–0059
	3133–0080
760	3133–0143
792	3133–0146

[FR Doc. 04–5902 Filed 3–15–04; 8:45 am]
BILLING CODE 7535–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 04–08]

RIN 1505–AB50

Import Restrictions Imposed on Archaeological Material Originating in Honduras

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs and Border Protection (CBP) Regulations to reflect the imposition of import restrictions on certain archaeological material originating in the Republic of Honduras (Honduras). These restrictions are being imposed pursuant to an agreement between the United States and Honduras that has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The document amends the CBP Regulations by adding Honduras to the list of countries for which an agreement has been entered into for imposing import restrictions. The document also contains the Designated List of Pre-Colombian Archaeological Material from Honduras that describes the types of articles to which the restrictions apply.

EFFECTIVE DATE: March 16, 2004.

FOR FURTHER INFORMATION CONTACT: (Legal Aspects) Joseph Howard, Intellectual Property Rights Branch (202) 572–8701; (Operational Aspects) Michael Craig, Trade Compliance and Facilitation (202) 927–0370.

SUPPLEMENTARY INFORMATION:

Background

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably make them targets of theft, encourage clandestine looting of archaeological sites, and result in their illegal export and import.

The United States shares in the international concern for the need to protect endangered cultural property. The appearance in the United States of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the United States to join with other countries to control illegal trafficking of such articles in international commerce.

The United States joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the ''Convention on Cultural Property Implementation Act'' (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*) (''the Act''). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance to the nations from where they originate and contribute to greater international understanding of mankind's common heritage.

During the past several years, import restrictions have been imposed on archaeological and ethnological

artifacts/materials of a number of signatory nations. These restrictions have been imposed as a result of requests for protection received from those nations, as well as pursuant to bilateral agreements between the United States and other countries. More information on import restrictions can be found on the International Cultural Property Protection Web site (*http://exchanges.state.gov/education/culprop*).

Import restrictions are now being imposed on certain archaeological materials from the Republic of Honduras (Honduras).

Determinations

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On July 28, 2003, the Assistant Secretary of State for Educational and Cultural Affairs made the determinations required under the statute with respect to certain archaeological materials originating in Honduras that are described in the designated list set forth further below in this document, including the following: (1) That the unique cultural patrimony of Honduras is in jeopardy from the pillage of these archaeological materials; (2) that Honduras has taken measures consistent with the Convention to protect its cultural patrimony; (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available; and (4) that the application of import restrictions is consistent with the general interests of the international community in the interchange of the designated archaeological materials among nations for scientific, cultural, and educational purposes.

The Agreement

On March 12, 2004, the United States and Honduras entered into a bilateral agreement (the Agreement) pursuant to the provisions of 19 U.S.C. 2602(a)(2) covering certain archaeological materials representing its pre-Colombian cultural heritage. Dating from approximately 1200 B.C. to approximately 1500 A.D., these materials include, but are not limited to, objects of ceramic, metal, stone, shell, and animal bone representing, among others, the Maya, Chorti Maya, Lenca, Jicaque, and Pipil cultures.

Restrictions and Amendment to the Regulations

In accordance with the Agreement, import restrictions are now being imposed on these archaeological materials from Honduras. Importation of these materials, described in the designated list below, are subject to the restrictions of 19 U.S.C. 2606 and § 12.104g(a) of the Customs and Border Protection (CBP) Regulations (19 CFR 12.104g(a)) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and § 12.104c of the regulations (19 CFR 12.104c) are met. CBP is amending § 12.104g(a) of the CBP Regulations (19 CFR 12.104g(a)) to indicate that these import restrictions have been imposed.

Material Encompassed in Import Restrictions

The bilateral agreement between Honduras and the United States covers the categories of artifacts described in a Designated List of Pre-Colombian Archaeological Material from Honduras that is set forth below. (Regarding parenthetical references to authors in the list below, see bibliography immediately after the list.)

Designated List of Pre-Colombian Archaeological Material From Honduras

I. Ceramic

Materials made from ceramic (*e.g.,* terracotta/fired clay) include a full range of surface treatments and appendages on various shapes of vessels, lids, figurines, and other ceramic objects (*e.g.,* tools). Decorative techniques used on these materials include, but are not limited to, fluting, dentate-stamping, incised designs, modeled sculpting, polishing/burning, differentially fired areas, and polychrome, bichrome and/or monochrome designs of human and animal figures, mythological scenes and/or geometric motifs. Vessels and figurines may include sculpted and/or applique appendages, such as handles, knobs, faces, fillets, and tripod, quadruped, or ring supports.

Examples include, but are not limited to, polychromes (*e.g.,* Copador, lxcanrio, Gualpopa, Ejar, Cancique and other Copan styles, Ulu-Yojoa (*e.g.,* Red, Maroon, Black, and Tenampua groups), Chichicaste, Fiopo, Las Flores, Sulaco, Chameleon, Naco, and Bay Island), incised and punctuated designs (*e.g.,* Selin, Gualijoquito, and Escondido groups), Usulutan styles, Mammiform vessels, monochromes (*e.g.,* Cuymal, Limon, Higuerito, Talgua), incense burners (Coner ceramics), Yaba-ding-ding, Playa de los Muertos, Olmec style, and Formative period pottery. Ceramics may also have post-fire pigment and/or stucco.

For reference, please consult the following: Chapters in Henderson and Beaudry-Corbett 1993; Baudez 1983; Baudez and Bequelin 1973; Beaudry 1984; Canby 1949, 1951; Fash 1991; Glass 1966; Gordon 1898; Healy 1984; Henderson 1997; Henderson et al 1979; Hirth, Kennedy, and Cliff 1989; Joyce 1985, 1987, 1991, 1993a, 1993b; Joyce and Henderson 2001; Longyear 1952; Robinson 1978; papers in Robinson 1987; Stone 1957, 1941; Strong 1935; Strong, Kidder, and Paul 1938; Urban and Schortman 1988; Veil 1978, 1983, 1993; Willey 1988; Willey et al. 1994; Wonderley 1987; Yde 1938.

A. Ceremonial Vessels
  1. Cylinders
  2. Bowls
  3. Dishes and plates
  4. Jars
B. Common Vessels
  1. Cylindrical vessels
  2. Bowls
  3. Dishes and plates
  4. Jars
C. Special Forms
  1. Drums—polychrome painted and plain
  2. Figurines—human and animal forms
  3. Whistles—human and animal forms
  4. Rattles—human and animal forms
  5. Miniature vessels
  6. Stamps and seals—engraved geometric designs, various sizes and shapes
  7. Effigy vessels—in human or animal form
  8. Incense burners—elaborate painted, applied and modeled decoration in form of human figures
  9. Architectural elements

II. Stone/Stucco (marble, jade, obsidian, flint, alabaster/calcite, limestone, slate, and other, including stucco materials)

The range of stone materials includes, but is not limited to, sculpture, vessels, figurines, masks, jewelry, stelae, tools, and weapons.

For reference, please consult the following: Baudez 1983, 1994; Digby 1972; Doonan 1996; Garber et al. 1993; Gordon 1898, 1920, 1921; Hirth 1988; Hirth and Hirth 1993; Joyce and Henderson 2001; Henderson 1992, 1997; Luke 2002; Luke et al. 2003; Stone 1938, 1941, 1957, 1972, 1977; Strong, Kidder and Paul 1938.

A. Figurines—human and animal
B. Masks—incised decoration and inlaid with shell, human and animal faces
C. Jewelry—various shapes and sizes
  1. Pendants
  2. Ear spools
  3. Necklaces
  4. Pectoral
D. Stelae, Ritual Objects, Architectural Elements, Petroglyphs—Carved in low relief with scenes of war, ritual,

or political events, portraits of rulers or nobles, often inscribed with glyphic texts. Sometimes covered with stucco and painted. The size of stelae and architectural elements, such as lintels, posts, steps, and decorative building blocks, range from .5 meters to 2.5 meters in height; hachas, yokes, and other carved ritual objects are under 1 meter in length or height but vary in size.

E. Tools and Weapons
1. Arrowheads
2. Axes, adzes, celts
3. Blades
4. Chisels
5. Spearpoints
6. Eccentric shapes
7. Grinding stones (manos and metates)
8. Maceheads

F. Vessels and Containers
1. Bowls
2. Plates/Dishes
3. Vases

III. Metal (gold, silver, or other)

These objects are cast or beaten into the desired form, decorated with engraving, inlay, punctured design, or attachments. Often in human or stylized animal forms (for examples, consult: Healy 1984; Stone 1941, 1957, 1972, 1977).

A. Jewelry.—various shapes and sizes
1. Necklaces
2. Bracelets
3. Disks
4. Ear spools
5. Pendants
6. Pectorals

B. Figurines
C. Masks
D. Disks
E. Axes
F. Bells

IV. Shell

These objects are worked and unworked and include, but are not limited to, conch, snail, spiny oyster, sting-ray, and sea urchin spines. Shell may be decorated with cinnabar and incised lines, sometimes with inlaid jade (for examples, consult: Baudez 1983; Fash 1991).

A. Figurines—human and animal

B. Jewelry—various shapes and sizes
1. Necklaces
2. Bracelets
3. Disks
4. Ear spools
5. Pendants

C. Natural Forms—often with incised designs, various shapes and sizes

V. Bone

These objects are carved or incised with geometric and animal designs and glyphs (for examples, consult: Baudez 1983; Coggins 1988; Fash 1991).

A. Tools—various sizes
1. Needles
2. Scrapers

B. Jewelry—various shapes and sizes
1. Pendants
2. Beads
3. Ear spools

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CBP Decision 03–24: Delegations of Authority

This amendment to the regulations is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) as a regulation the subject of which the Secretary of the Treasury has retained the sole authority to approve. Accordingly, the document is signed by the Commissioner of Customs and Border Protection as the delegate of the Department of Homeland Security and the Deputy Assistant Secretary of the Treasury as the delegate of the Secretary of the Treasury to indicate approval. (*see* CBP Dec. 03–24; 68 FR 51868).

Inapplicability of Notice and Delayed Effective Date

Because the amendment to the CBP Regulations contained in this document imposing import restrictions on the above-listed cultural property of Honduras is being made in response to a bilateral agreement entered into in furtherance of the foreign affairs interests of the United States, pursuant to 5 U.S.C. 553(a)(1), no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria of a ''significant regulatory action'' as described in E.O. 12866.

Drafting Information

The principal author of this document was Bill Conrad, Regulations Branch, Office of Regulations and Rulings, U.S. Customs and Border Protection. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

■ Accordingly, part 12 of the Customs Regulations (19 CFR part 12) is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority and specific authority citations for part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, paragraph (a), containing the list of agreements imposing import restrictions on described articles of cultural property of State Parties, is amended by adding Honduras to the list in appropriate alphabetical order as follows:

§ 12.104(g) Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
*	* * * * * *	*
Honduras	Archaeological Material of Pre-Colombian cultures ranging approximately from 1200 B.C. to 1500 A.D.	CBP Dec. 04–08.
*	* * * * * *	*

* * * * *

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Approved: March 12, 2004.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 04–6017 Filed 3–12–04; 2:31 pm]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Trenbolone and Estradiol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Ivy Laboratories, Division of Ivy Animal Health, Inc. The supplemental ANADA provides for the addition of tylosin tartrate to an approved subcutaneous implant containing trenbolone and estradiol used for increased rate of weight gain and improved feed efficiency in feedlot steers.

DATES: This rule is effective March 16, 2004.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *edubbin@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed a supplement to ANADA 200–221 for COMPONENT TE–IS (trenbolone acetate and estradiol) with TYLAN, a subcutaneous implant used for increased rate of weight gain and improved feed efficiency in steers fed in confinement for slaughter.

The supplemental ANADA provides for the addition of a pellet containing 29 milligrams tylosin tartrate to the approved implant.

The supplemental application is approved as of February 13, 2004, and the regulations are amended in 21 CFR 522.2477 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning February 13, 2004.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. Section 522.2477 is amended by adding paragraph (d)(1)(i)(F) to read as follows:

§ 522.2477 Trenbolone acetate and estradiol.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(F) 80 mg trenbolone acetate and 16 mg estradiol (one implant consisting of 5 pellets, each of 4 pellets containing 20 mg trenbolone acetate and 4 mg estradiol, and 1 pellet containing 29 mg tylosin tartrate) per implant dose.

* * * * *

Dated: March 2, 2004.

Steven D. Vaughn,

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

[FR Doc. 04–5863 Filed 3–15–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 2004P–0044]

Medical Devices; Hematology and Pathology Devices; Classification of the Factor V Leiden DNA Mutation Detection Systems Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the Factor V Leiden deoxyribonucleic acid (DNA) mutation detections systems device into class II (special controls). The special control that will apply to the device is the guidance document entitled ''Class II Special Controls Guidance Document: Factor V Leiden DNA Mutation Detection Systems.'' The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (SMDA), the Food and Drug Administration Modernization Act of 1997 (FDAMA), and the Medical Device User Fee and Modernization Act of 2002. The agency is classifying this device into class II (special controls) in

order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document that is the special control for this device.

DATES: This rule is effective April 15, 2004. The classification was effective December 17, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth Mansfield, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the 1976 amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving written notice classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification (513(f)(2) of the act).

In accordance with section 513(f)(1) of the act, FDA issued a notice on December 5, 2003, classifying the Factor V Leiden Kit into class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On December 8, 2003, Roche Diagnostics Corp. submitted a petition requesting classification of the Factor V Leiden Kit under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II.

In accordance with 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the Factor V Leiden system intended for use for the detection of the G1691A mutation in patients with suspected thrombophilia can be classified in class II with the establishment of special controls. FDA believes these special controls, in addition to the general controls, will provide reasonable assurance of safety and effectiveness of the device.

The device is assigned the generic name Factor V Leiden DNA mutation detection system and is identified as a device that consists of different reagents and instruments, which include polymerase chain reaction (PCR) primers, hybridization matrices, thermal cyclers, imagers, and software packages. The detection system is intended as an aid in the diagnosis of patients with suspected thrombophilia.

FDA has identified no direct risks to patient health when tests are used as an aid to diagnosis. However, failure of the test to perform as indicated or error in interpretation of results may lead to improper medical management of patients with clotting disorders. A false negative interpretation could lead to undermanagement of the patient, with increased risk of future thrombotic events. A false positive result could lead to inappropriate treatment and alteration of present and future drug selection and treatment. Consequently, FDA has identified the following risks to health associated specifically with this type of device: (1) Improper medical management; and (2) misdiagnosis and improper treatment, and drug selection and dosing. Therefore, in addition to the general controls of the act, the device is subject to special controls, identified as the guidance document entitled ''Class II Special Controls Guidance Document: Factor V Leiden DNA Mutation Detection Systems.''

The class II special controls guidance document provides information on how to meet premarket (510(k)) submission requirements for the device, including recommendations on instrumentation validation, reproducibility, use of control materials, and clinical studies or literature summaries. The premarket notification should describe the risk analysis method. FDA believes that following the class II special controls guidance document addresses the risks to health identified in the previous paragraph. Therefore, on December 17, 2003, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this classification by adding § 864.7280.

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for a Factor V Leiden DNA mutation detection systems device will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness; therefore, the device is not exempt from premarket notification requirements. The device is used to test for the Factor V Leiden DNA mutation in the Factor V gene as an aid in the diagnosis of patients with suspected thrombophilia. FDA review of key performance characteristics, test methodology, and other relevant performance data, with regard to the test's sensitivity, specificity, and reproducibility, will ensure that acceptable levels of performance for both safety and effectiveness will be addressed before market clearance. Thus, persons who intend to market this type of device must submit to FDA a premarket notification containing information on the Factor V Leiden DNA mutation detection systems device before marketing the device.

FDA is also adding paragraph (d) to 21 CFR 864.1 to advise interested persons where to find guidance documents referenced in 21 CFR part 864, including the special controls

guidance document identified in this rule.

II. Environmental Impact

The agency has determined under 21 CFR 25.22 and 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so it is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Classification of these devices into class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that the final rule will not have a significant impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Roche Diagnostics Corp., dated December 8, 2003.

List of Subjects in 21 CFR Part 864

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 864 is amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 864.1 is amended by adding paragraph (d) to read as follows:

§ 864.1 Scope.

* * * * *

(d) Guidance documents referenced in this part are available on the Internet at *http://www.fda.gov/cdrh/guidance.html*.

■ 3. Section 864.7280 is added to subpart H to read as follows:

§ 864.7280 Factor V Leiden DNA mutation detection systems.

(a) *Identification*. Factor V Leiden deoxyribonucleic acid (DNA) mutation detection systems are devices that consist of different reagents and instruments which include polymerase chain reaction (PCR) primers, hybridization matrices, thermal cyclers, imagers, and software packages. The detection of the Factor V Leiden mutation aids in the diagnosis of patients with suspected thrombophilia.

(b) *Classification*. Class II (special controls). The special control is FDA's guidance entitled ''Class II Special Controls Guidance Document: Factor V Leiden DNA Mutation Detection Systems.'' (See § 864.1(d) for the availability of this guidance document.)

Dated: March 5, 2004.

Beverly Chernaik Rothstein,

Acting Deputy Director for Policy and Regulations, Center for Devices and Radiological Health.

[FR Doc. 04–5864 Filed 3–15–04; 8:45 am]

BILLING CODE 4160–01–S

PEACE CORPS

22 CFR Part 302

Organization

AGENCY: Peace Corps.

ACTION: Final rule.

SUMMARY: The Peace Corps is removing from the Code of Federal Regulations its regulation on Peace Corps' organization. The regulation is outdated and unnecessary. Information on the Peace Corps' organization is already published and updated annually in the *United States Government Manual,* a special **Federal Register** publication.

DATES: The rule will be effective on April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Tyler S. Posey, General Counsel, (202) 692–2150.

SUPPLEMENTARY INFORMATION: This final rule removes 22 CFR part 302 from the Code of Federal Regulations because it is outdated and unnecessary. Information on Peace Corps' organization is annually updated and published in the **Federal Register's** ''United States Government Manual.'' *See* FOIA Update, Summer 1992 (Office of Information and Privacy, Department of Justice).

Matters of Regulatory Procedure. Executive Order 12866. The Peace Corps has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

Regulatory Flexibility Act. Pursuant to section 605(b) of the Regulatory Flexibility Act, the Peace Corps certifies that this 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.*). Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 22 CFR Part 302

Organization and functions; government agencies.

PART 302—[REMOVED]

■ For the reasons set forth in the preamble, the Peace Corps amends title 22 of the CFR by removing part 302.

Dated: March 10, 2004.

Tyler S. Posey,

General Counsel.

[FR Doc. 04–5831 Filed 3–15–04; 8:45 am]

BILLING CODE 6015–01–M

DEPARTMENT OF EDUCATION

34 CFR Parts 600, 649, 668, 674, 675, 676, 682, 685, 690 and 693

RIN 1840–AC47

Institutional Eligibility Under the Higher Education Act of 1965, as Amended (HEA); Patricia Roberts Harris Fellowship Program; Student Assistance General Provisions; Federal Perkins Loan Program; Federal Work-Study Programs; Federal Supplemental Educational Opportunity Grant Program; Federal Family Education Loan Program; William D. Ford Federal Direct Loan Program; Federal Pell Grant Program; and National Early Intervention Scholarship and Partnership Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends §§ 600.55 and 600.56 of the Institutional Eligibility regulations to effectuate Pub. L. 108–98, a recent enactment with a retroactive effective date of October 1, 1998.

The Secretary also is amending the Institutional Eligibility, Patricia Roberts Harris Fellowship Program, Student Assistance General Provisions, Federal Perkins Loan Program, Federal Work-Study Programs, Federal Supplemental Educational Opportunity Grant Program, Federal Family Education Loan (FFEL) Program, William D. Ford Federal Direct Loan Program, Federal Pell Grant Program, and National Early Intervention Scholarship and Partnership (NEISP) Program regulations. These technical revisions are necessary to correct cross-references, delete references to programs that are no longer funded, and make a number of nomenclature changes that provide the correct names of various Title IV, HEA programs.

EFFECTIVE DATE: The amendments to §§ 600.55 and 600.56 of the Institutional Eligibility regulations are effective retroactively to October 1, 1998. All of the other amendments take effect April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy, U.S. Department of Education, 1990 K Street, NW., room 8018, Washington, DC 20006. Telephone: (202) 502–7762. Jackie Butler, U.S. Department of Education, 1990 K Street, NW., room 8062, Washington, DC 20006. Telephone: (202) 502–7890. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The regulations governing Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600; Patricia Roberts Harris Fellowship Program, 34 CFR part 649; the Student Assistance General Provisions regulations, 34 CFR part 668; Federal Perkins Loan Program, 34 CFR part 674; Federal Work-Study Programs, 34 CFR part 675; Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676; Federal Family Education Loan Program, 34 CFR part 682; William D. Ford Federal Direct Loan Program, 34 CFR part 685; Federal Pell Grant Program, 34 CFR part 690; and National Early Intervention Scholarship and Partnership Program, 34 CFR part 693 are amended to provide certain clarifications, to correct errors and omissions, and to remove references to Title IV, HEA programs that are no longer authorized or funded.

Sections 600.55 and 600.56 of the Institutional Eligibility regulations are revised to conform with newly-enacted Public Law 108–98. That legislation corrected technical errors in the Higher Education Amendments of 1998 by removing inadvertent barriers to institutional eligibility that applied to public and non-profit foreign veterinary schools, as well as to Canadian medical schools. Consistent with the legislation, the conforming changes to the regulations are effective retroactively to October 1, 1998.

Section 600.57(a) of the Institutional Eligibility regulations has been amended to establish the maximum duration of a program participation agreement for foreign institutions as six years from the date of the Secretary's certification determination. This change conforms the regulations to the Higher Education Amendments of 1998, Pub. L. 105–244, which extended the maximum period of time that an institution may be certified to participate in the Title IV, HEA programs from four to six years.

These regulations remove part 649 from 34 CFR because the Patricia Roberts Harris Fellowship Program is no longer authorized by the HEA.

The expected family contribution (EFC) definition has been removed from the individual program regulations for the Federal Perkins Loan Program, Federal Work-Study Programs, Federal Supplemental Educational Opportunity Grant Program, Federal Family Education Loan Program, William D. Ford Federal Direct Loan Program, and Federal Pell Grant Program and is now listed instead in the Student Assistance General Provisions under the General Definitions in § 668.2. This change was made to centralize the definitions used in the Title IV, HEA program regulations.

We have removed the reference to the ALAS Program in the definition of Federal Supplemental Loans for Students in § 668.2 because the ALAS program is no longer authorized by the HEA.

The definition of parent in § 668.2 has been changed by deleting the discussion of ''legal guardian'', to conform with the definition of parent in Part F of the Higher Education Act of 1965, as amended.

The reference to the National Early Intervention Scholarship and Partnership Program (NEISP) in § 668.26(b)(5) has been removed because the program is no longer authorized by the HEA.

Section 668.26 has been amended by removing paragraphs (d)(2)(iv) and (e)(3) and redesignating paragraph (d)(2)(v) as (d)(2)(iv). Section 668.26(d)(2) lists the circumstances under which an institution whose participation in the Title IV programs has ended may disburse an FFEL Program loan. The removed paragraph required that the loan commitment be made prior to the loss of participation. However, this is redundant in light of the requirement that the first disbursement of the loan be made prior to the end of participation. The first disbursement of a loan cannot be made unless a commitment for the loan has been made. This change makes the FFEL requirement similar to the corresponding requirement for Direct Loan Program loans in § 668.26(d)(3)(iii).

These regulations make changes to the Federal Pell Grant Program regulations to move the definition of EFC to the

Student Assistance General Provisions regulations, to reflect the changes in transmitting student records because the Secretary no longer accepts magnetic records, to clarify the institutional participation requirements to state that a valid ISIR or valid SAR is needed to determine student eligibility for Title IV assistance, to correct references, and to remove references that are no longer applicable.

These regulations remove part 693 from 34 CFR because the National Early Intervention Scholarship and Partnership (NEISP) Program is no longer authorized by the HEA.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The small entities that are affected by these regulations are small institutions of higher education. These regulations contain technical amendments designed to clarify and correct current regulations. The changes will not have a significant economic impact on the institutions affected.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Assessment of Educational Impact

Based on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Waiver of Proposed Rulemaking and Negotiated Rulemaking

Under the Administrative Procedure Act (5 U.S.C. section 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these regulations merely reflect statutory changes, make certain technical changes and remove obsolete regulatory provisions. These changes do not establish any new substantive rules. Furthermore, the changes to §§ 600.55 and 600.56 effectuate a recent technical amendment to the HEA. That amendment, in Pub. L. 108–98, has a retroactive effective date and has no adverse effect on substantive rights or obligations of individuals or institutions.

For these reasons, the Secretary has determined that proposed regulations are unnecessary and contrary to the public interest. For the same reasons, the Secretary has determined, under section 492(b)(2) of the Higher Education Act of 1965, as amended, that the changes should not be subject to negotiated rulemaking.

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List of Subjects in 34 CFR Parts 600, 649, 668, 674, 675, 676, 682, 685, 690, and 693

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs-education, Loan programs-education, Reporting, Vocational education and recordkeeping requirements, Student aid.

Dated: March 10, 2004.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

■ The Secretary amends parts 600, 649, 668, 674, 675, 676, 682, 685, 690 and 693 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099(c), unless otherwise noted.

■ 2. The authority citations for §§ 600.55 and 600.56 are revised to read as follows:

(Authority: 20 U.S.C. 1002, 1082)

§ 600.55 [Amended]

■ 3. Section 600.55(a)(5)(i)(B) is amended by removing the word ''At'' and adding, in its place, ''For a foreign graduate medical school outside of Canada, at''.

§ 600.56 [Amended]

■ 4. Section 600.56 is amended by:

■ A. In paragraph (a)(4), removing ''Either—''

■ B. Removing paragraph (a)(4)(i).

■ C. Redesignating paragraph (a)(4)(ii) as (a)(4).

■ D. In redesignated paragraph (a)(4), removing the words ''The veterinary'' and adding, in their place, ''For a veterinary school that is neither public nor private non-profit, the''.

§ 600.57 [Amended]

■ 5. Section 600.57(a) is amended by removing ''four'' and adding, in its place, ''six''.

PART 649—PATRICIA ROBERTS HARRIS FELLOWSHIP PROGRAM

■ 6. Part 649 is removed and reserved.

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 7. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1085, 1091, 1091b, 1092, 1094, 1099c, and 1099c–1, unless otherwise noted.

§ 668.2 [Amended]

■ 8. Section 668.2(b) is amended by adding ''(Authority: 20 U.S.C. 1088)'' immediately following the definition of ''Enrolled'', revising the definitions of ''Federal Supplemental Loans for Students (Federal SLS) Program'' and ''Parent'', and by adding, in alphabetical order, a new definition of ''Expected Family Contribution''.

■ The revisions and addition read as follows:

§ 668.2 Definitions.

* * * * *

(b) * * *

Expected family contribution (EFC): The amount, as determined under title IV, part F of the HEA, an applicant and his or her spouse and family are expected to contribute toward the applicant's cost of attendance.

* * * * *

Federal Supplemental Loans for Students (Federal SLS) Program: The loan program authorized by Title IV–B, section 428A of the HEA, as in effect for periods of enrollment that began before July 1, 1994. The Federal SLS Program encourages the making of loans to graduate, professional, independent undergraduate, and certain dependent undergraduate students.

(Authority: 20 U.S.C. 1078–1)

* * * * *

Parent: A student's biological or adoptive mother or father or the student's stepparent, if the biological

parent or adoptive mother or father has remarried at the time of application.

* * * * *

§ 668.26 [Amended]

■ 9. Section 668.26 is amended by:
■ A. In paragraph (b)(5), removing ''NEISP or''.
■ B. Revising paragraph (d)(2)(iii);
■ C. Removing paragraph (d)(2)(iv); and
■ D. Redesignating paragraph (d)(2)(v) as paragraph (d)(2)(iv).
■ E. In paragraph (e)(1), adding the word ''and'' after the semicolon.
■ F. In paragraph (e)(2), removing ''; and'' and adding, in its place, ''.''.
■ G. Removing paragraph (e)(3).
■ The revision reads as follows:

668.26 End of an institution's participation in the Title IV, HEA programs.

* * * * *

(d) * * *

(2) * * *

(iii) The loan was made for attendance during that period of enrollment.

* * * * *

§ 668.40 [Amended]

■ 10. Section 668.40 is transferred from subpart D to subpart C.

§ 668.44 [Amended]

■ 11. Section 668.44(a)(1) is amended by removing ''§§ 668.43 and 668.44'' and adding, in its place, ''§§ 668.42, 668.43, 668.45 and 668.46''.

§ 668.48 [Amended]

■ 12. Section 668.48(d) is amended by removing ''§ 668.46(e)'' and adding, in its place, ''§ 668.45(e)''.

§ 668.52 [Amended]

■ 13. Section 668.52 is amended by removing the definition of ''Expected family contribution''.

§ 668.55 [Amended]

■ 14. Section 668.55(d)(1) is amended by removing ''ther'' and adding, in its place, ''the''.

§ 668.90 [Amended]

■ 15. The heading for § 668.90 is amended by removing ''—Appeals''.

§ 668.167 [Amended]

■ 16. Section 668.167(d)(3)(ii) is amended by removing ''§ 668.164'' and adding, in its place, ''§ 668.163''.

§ 668.198 [Amended]

■ 17. Section 668.198 is amended by:
■ A. In the introductory text to paragraph (b), removing '', 2000, or 2001,'' and adding, in its place, ''through 2003''.
■ B. In paragraph (c)(1), by removing ''2002'' and adding, in its place, ''2004''.
■ C. In paragraph (f)(1), by removing '', 2000, or 2001'' and adding, in its place, ''through 2003''.

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 18. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa–1087hh and 20 U.S.C. 421–429, unless otherwise noted.

§ 674.2 [Amended]

■ 19. Section 674.2 is amended by:
■ A. In paragraph (a), adding, in alphabetical order, ''Expected family contribution (EFC)''.
■ B. In paragraph (b), removing the definition of ''Expected family contribution''.

PART 675—FEDERAL WORK-STUDY PROGRAMS

■ 20. The authority citation for part 675 continues to read as follows:

Authority: 42 U.S.C. 2751–2756b, unless otherwise noted.

§ 675.2 [Amended]

■ 21. Section 675.2 is amended by:
■ A. In paragraph (a), adding, in alphabetical order, ''Expected family contribution (EFC)''.
■ B. In paragraph (b), removing the definition of ''Expected family contribution''.

PART 676—FEDERAL SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT PROGRAM

■ 22. The authority citation for part 676 continues to read as follows:

Authority: 20 U.S.C. 1070b–1070b–3, unless otherwise noted.

§ 676.2 [Amended]

■ 23. Section 676.2 is amended by:
■ A. In paragraph (a), adding, in alphabetical order, ''Expected family contribution (EFC)''.
■ B. In paragraph (b), removing the definition of ''Expected family contribution''.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 24. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.200 [Amended]

■ 25. Section 682.200 is amended by:
■ A. In paragraph (a)(1), adding, in alphabetical order, ''Expected family contribution''.
■ B. In paragraph (b), removing the definition of ''Expected family contribution''.

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 26. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.*, unless otherwise noted.

§ 685.102 [Amended]

■ 27. Section 685.102 is amended by:
■ A. In paragraph (a)(1), adding, in alphabetical order, ''Expected family contribution''.
■ B. In paragraph (a)(3), removing the words ''Expected family contribution''.

PART 690—FEDERAL PELL GRANT PROGRAM

■ 28. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

§ 690.2 [Amended]

■ 29. Section 690.2 is amended by:
■ A. In paragraph (a), removing ''definitions of the following terms used in this part are set forth in subpart A of the Student Assistance General Provisions, 34 CFR part 668'' and adding, in its place, ''following definitions are contained in the regulations for Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600'' and removing the term ''payment period'' from the alphabetical list of terms.
■ B. In paragraph (b), removing ''Definitions of the following terms used in this part are described'' and adding, in its place, ''The following definitions are contained'', removing the term ''eligible student'' and adding, in alphabetical order, the terms ''Expected family contribution'', ''Payment period'', and ''Student eligibility''.
■ C. In paragraph (c), removing the ''Expected family contribution'' definition.
■ D. In paragraph (c), in the ''Institutional Student Information Record (ISIR)'' definition, removing ''A paper document or a computer-generated'' and adding, in its place ''An'', removing ''central processor'' and adding, in its place, ''Secretary'', and removing ''calculated by the central processor'' in paragraph (3).
■ E. In paragraph (c), in the ''Payment Data'' definition, removing ''or magnetic'' and ''a student's expected family contribution, cost of attendance, enrollment status, and''.
■ F. In paragraph (c), in the ''Payment Schedule'' definition, paragraph (1), removing ''expected family contribution, as determined in accordance with part F of title IV of the HEA'' and adding, in its place, ''EFC''.

■ G. In paragraph (c), in the ''Student Aid Report (SAR)'' definition, by adding ''by the Secretary'' immediately after ''applicant''.

■ H. In paragraph (c), in the ''Three-quarter-time student'' definition, adding ''as defined in 34 CFR part 668'' at the end of the paragraph.

§ 690.7 [Amended]

■ 30. Section 690.7(b) is amended by adding '', or for whom the institution obtained a valid ISIR,'' immediately after ''to the institution''.

§ 690.61 [Amended]

■ 31. Section 690.61 is amended by:

■ A. In paragraph (a)(1), adding ''and electronically transmit Federal Pell Grant disbursement data to the Secretary for that student'' immediately after ''disbursement''.

■ B. Removing paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B).

§ 690.63 [Amended]

32. Section 690.63(g)(2) is amended by removing ''668.2 and''.

§ 690.78 [Amended]

■ 33. Section 690.78(c)(5) is amended by removing ''(d)(4)'' and adding, in its place, ''(c)(4)''.

PART 693—NATIONAL EARLY INTERVENTION SCHOLARSHIP AND PARTNERSHIP PROGRAM

■ 34. Part 693 is removed and reserved.

[FR Doc. 04–5821 Filed 3–15–04; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–363, Docket No. 01–65, RM–10078, RM–10188, RM–10189]

Radio Broadcasting Services; Brandon, SD, Emmetsburg, Sanborn and Sibley, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration filed by Saga Communications of Iowa, LLC directed to the *Report and Order* in this proceeding which substituted Channel 261C3 for Channel 261A at Emmetsburg, Iowa, and modified the license of Station KDWD to specify operation on Channel 261C3. In doing so, the *Report and Order* also denied a competing proposal by Saga Communications of Iowa, LLC to upgrade a vacant Channel 261A allotment at Brandon, South Dakota. *See* 67 FR 64048, October 17, 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. 01–65, adopted February 25, 2004, and released February 27, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, 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.* This document is not subject to the Congressional Review Act.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–5907 Filed 3–15–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–364; MM Docket No. 00–69, RM–9850, RM–9945, RM–9946]

Radio Broadcasting Services; Bear Lake, Bellaire, Cheboygan, Ludington, Manistique, Onaway, Rapid River, Rogers City, and Walhalla, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a Petition for Partial Reconsideration filed by Fort Bend Broadcasting Company directed to an earlier *Memorandum Opinion and Order* in this proceeding. *See* 68 FR 28805, May 27, 2003. Specifically, this document denies a request to modify the Station WCUZ license to specify operation on Channel 291A at Bear Lake, Michigan. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 00–69, adopted February 25, 2004, and released February 27, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals II, 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.* This document is not subject to the Congressional Review Act.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–5908 Filed 3–15–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–361; MB Docket No. 03–7; RM–10596]

Radio Broadcasting Services; Caledonia and Upper Sandusky, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rulemaking,* 68 FR 5861 (February 5, 2003), this document grants a petition for rulemaking filed by Clear Channel Broadcasting Licenses, Inc., licensee of Station WYNT(FM), proposing to reallot Channel 240A from Upper Sandusky, to Caledonia, Ohio, as the community's first local aural transmission service, and modify Station WYNT(FM)'s license to reflect the change of community. Channel 240A is reallotted to Caledonia at Station WYNT(FM)'s requested transmitter site 8.2 kilometers (5.1 miles) southwest of the community at coordinates 40–35–43 NL and 83–02–59 WL. Since this proposal is within 320 kilometers (200 miles) of the U.S.-Canada border, concurrence of the government of Canada to the proposed allotment has been requested but not received. Operation with the facilities specified for Caledonia is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Canada-United States FM Broadcast

Agreement or if specifically objected to by Industry Canada.

DATES: Effective April 12, 2004.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–7, adopted February 25, 2004, and released February 27, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW., Washington, DC. 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.*

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 Ohio, is amended by adding Caledonia, Channel 240A and by removing Upper Sandusky, Channel 240A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–5912 Filed 3–15–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI69

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Yermo xanthocephalus* (Desert Yellowhead)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; notice of availability.

SUMMARY: We, the Fish and Wildlife Service (Service), designate critical habitat for *Yermo xanthocephalus* (desert yellowhead) pursuant to the Endangered Species Act (Act) of 1973. Approximately 146 hectares (360 acres) in Fremont County, Wyoming, are designated as critical habitat for *Y. xanthocephalus,* which was federally listed as threatened throughout its range in central Wyoming in 2002.

Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat. Section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency.

This publication also provides notice of the availability of the Final Economic Analysis of Critical Habitat Designation for the Desert Yellowhead (Final Economic Analysis) and the Final Environmental Assessment for Designation of Critical Habitat for the Desert Yellowhead (Final EA) for this final rule.

DATES: This final rule is effective April 15, 2004.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Wyoming Field Office, U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, Wyoming, 82001. You may obtain copies of this final rule and the Final EA and Final Economic Analysis from the field office address above or by calling 307–772–2374.

FOR FURTHER INFORMATION CONTACT: Brian T. Kelly, Field Supervisor, Wyoming Field Office, U.S. Fish and Wildlife Service, at the above address (telephone: 307–772–2374; facsimile: 307–772–2358; e-mail: *Brian_T_Kelly@fws.gov).*

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 306 species, or 25 percent of the 1,211 listed species in the United States under jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent to sue relative to critical habitat, and to comply with the growing number of

adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for additional public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the critical habitat designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

Wyoming botanist Robert Dorn discovered *Yermo xanthocephalus* (desert yellowhead) while conducting field work in the Beaver Rim area of central Wyoming in 1990. Dorn discovered a small population of an unusual species of Composite (Asteraceae). Dorn's closer examination revealed that the species was unknown to science and represented a new genus. Dorn (1991) named his discovery *Y. xanthocephalus,* or literally ''desert yellowhead.''

Yermo xanthocephalus is a tap-rooted, glabrous (hairless) perennial herb with leafy stems to 30 centimeters (cm) (12 inches (in)) high. The leathery leaves are alternate, lance-shaped to oval, 4 to 25 cm (1.5 to 10 in) long and often folded along the midvein. Leaf edges are smooth or toothed. Flower heads are many (25 to 180) and crowded at the top of the stem. Each head contains four to six yellow disk flowers (ray flowers are absent) surrounded by five yellow, keeled involucre (whorled) bracts (small leaves beneath the flower). The pappus (attached to the top of each seed) consists of many white bristles.

Yermo xanthocephalus flowers from mid-June to August and may flower a second time in September. The start and end of flowering, as well as the duration of flowering, vary between years and seem dependent upon temperature and other climatic variables. Fruits have been observed from mid-July to early September, but do not persist after the flower has dried and bracts ruptured (Heidel 2002).

Yermo xanthocephalus appears to be an obligate outcrosser (cannot self-pollinate) (Heidel 2002), and is likely pollinated by visually-oriented insects attracted to the yellow flowers (Dorn 1991). Several Hymenopterans (order including sawflies, ants, bees, and wasps) have been collected from *Y. xanthocephalus* heads, and small skipper butterflies noted on them, although the identity of these potential pollinators is not currently known (Heidel 2002). No work has been done to document the status of these potential pollinators in this vicinity. However, of the skippers known from Fremont County that most likely use *Y. xanthocephalus* habitat, all have Nature Conservancy Global Ranks of G–4 (apparently secure globally) and G–5 (demonstrably secure globally) with no special conservation or management needs identified by Opler *et al.* (1995).

The fruits of *Yermo xanthocephalus* are single-seeded achenes (dry fruit) with a parachute-like pappus of slender bristles. At maturity, the fruits are exposed to the wind, which may disperse the seed over long distances. However, the clustered distribution pattern of *Y. xanthocephalus,* often along colluvial (rock debris) washes, suggests that dispersal distances are short and perhaps fostered by water erosion (Heidel 2002).

Yermo xanthocephalus is restricted to shallow deflation hollows in outcrops of Miocene sandstones of the Split Rock Formation (Love 1961, Van Houten 1964). These hollows have been shaped by the microscale dynamics of local winds, as well as erosional processes, in an unstable portion of the landscape on sites lacking desert pavement and with low vegetation exposed to strong wind (Bynum 1993). Within the hollows, *Y. xanthocephalus* occurs on low slopes, rim margins, colluvial fans, and bottoms at elevations generally ranging from 2,050 to 2,060 meters (m) (6,720 to 6,760 feet (ft)) (Heidel 2002).

Yermo xanthocephalus grows in recent soils derived from sandstones and limestones of the Split Rock Formation at its junction with the White River Formation (Heidel 2002). Bynum (1993) found these soils are shallow, loamy soils of the Entisol order that can be classified as a coarse-loamy over sandy-skeletal mixed Lithic Torriorthent. In contrast, the surrounding sagebrush community occupies deep sandy loam of the Aridisol order. The surface stratum is mildly alkaline with little organic matter, while subsurface layers have no accumulation of humus, clay, gypsum, salts, or carbonates (Bynum 1993).

The shape and orientation of the wind-excavated hollows may allow for accumulation of moisture from sheet wash coming off adjacent areas, so the hollows may be more mesic (moist) than surrounding areas (R. Scott, Central Wyoming College, pers. comm. 2002). The vegetation of these sites is typically sparse, with vegetative cover often as low as 10 percent, and consists primarily of low-cushion plants and scattered clumps of *Stipa hymenoides* (Indian ricegrass). Species common to these communities include *Arenaria hookeri* (Hooker's sandwort), *Astragalus kentrophyta* (thistle milkvetch), *Hymenoxys acaulis* (stemless hymenoxy), and *Phlox muscoides* (squarestem phlox) (Fertig 1995). A more complete list of frequently associated species can be found in Heidel (2002).

Yermo xanthocephalus is currently known from a single population with plants widely scattered over an area of 20 hectares (ha) (50 acres (ac)). This population consists of one large subpopulation at the base of Cedar Rim and two smaller subpopulations within 0.4 kilometer (km) (0.25 mile (mi)). Originally, Dorn observed approximately 500 plants within 1 ha (2.5 ac) in 1990 on Federal land managed by the Bureau of Land Management (BLM) (Dorn 1991). However, this was a visual estimate, likely weighted toward flowering plants, and is not considered an actual estimate of the population size and should not be considered when assessing population trends over time.

A permanent survey grid is now in place, and has facilitated an annual census of all known individuals. The total population size has varied from 9,293 to 13,244 individuals during the time the census has been conducted (1995–2003) (R. Scott, Central Wyoming College Herbarium, *in litt.* 2004). Scott has hypothesized that some of the changes in population numbers censused could be in response to higher than normal precipitation over the study period (R. Scott, Central Wyoming College, pers. comm., 2001).

Surveys conducted between 1990 and 1994 failed to locate additional

populations of *Yermo xanthocephalus* on outcrops of the Split Rock, White River, Wagon Bed, and Wind River formations in the Cedar Rim and Beaver Rim areas of southern Fremont County (Fertig 1995). No additional populations were located during follow-up surveys conducted during 1997 along Beaver Rim in Fremont and Natrona Counties, as well as in the Shirley Basin in Carbon County (Heidel 2002). Additional surveys were conducted during 2001 in segments of Cedar Rim and Beaver Rim and surrounding areas not previously surveyed; however, no new populations were located (Heidel 2002).

Yermo xanthocephalus is vulnerable to extinction from randomly occurring, catastrophic events, as well as from even small-scale habitat degradation, due to its small population size and limited geographic range. As described by Fertig (1995), the species is characterized by a long-lived perennial growth form, adaptation to severe habitats, and low annual reproductive output. This low reproductive output would make the species increasingly vulnerable to extinction due to a chance event if the population size declined, because it is unlikely that the species would exhibit a high rate of population growth even if environmental conditions improved after such an event.

While not known to have impacted *Yermo xanthocephalus* to date, oil and gas development could impact the population of *Y. xanthocephalus.* The known population is encompassed by, and adjacent to, oil and gas leases with no specific lease stipulations included to protect the plant. Construction of well pads, access roads, and pipelines through occupied habitat, as well as seismic exploration of oil and gas producing formations, could result in direct destruction or crushing of plants and soil compaction and erosion. Additionally, a network of roads and well pads in the area would result in more human intrusion into what is now a relatively remote area.

The presence of locatable minerals in the area and their potential extraction also could impact the known *Yermo xanthocephalus* population. Uranium and zeolites are found in the Beaver Rim area (BLM 1986). The latter is a locatable mineral with properties useful in water softening, manufacturing of catalysts, pollution control, and removal of radioactive products from radioactive waste. Private parties can stake a mining claim, explore for, and extract locatable minerals in accordance with the 1872 General Mining Law. Such activity should it occur in the vicinity of the known *Y. xanthocephalus* population could result in direct destruction of individual plants and habitat.

Recreational off-road vehicle use threatens to crush *Yermo xanthocephalus* plants and compact or erode soil. A two-track, four-wheel drive vehicle trail leading to an abandoned oil well bisects the population and is open to hunters or other recreationists driving four-wheel drive trucks and other smaller all-terrain vehicles.

The *Yermo xanthocephalus* population is in a grazing allotment pasture where trampling may occur as cattle casually move along ''cow trails'' or other tracks while grazing or moving to water. Focused or prolonged use of the area by cattle could result in damage to the habitat and individual plants. Scott (2000) noted signs of moderate wild horse traffic adjacent to the habitat. However, at this time, grazing has not been documented as impacting the *Y. xanthocephalus* population.

Additionally, the invasion of non-native species, particularly noxious weeds, could accompany many of the activities discussed above. The resulting changes to the vegetative community could have significant adverse impacts on the population of *Yermo xanthocephalus.*

The current BLM Lander Resource Management Plan (RMP), which covers the area designated as critical habitat for *Yermo xanthocephalus,* was approved in 1987, 3 years prior to the species' discovery. Therefore, the Lander RMP does not specifically mention *Y. xanthocephalus.* In response to the proposal listing of the species, the BLM developed a draft conservation agreement, assessment, and strategy for *Y. xanthocephalus* (BLM 1998) in order to promote its conservation and recovery on BLM lands. However, the document was never finalized or signed.

Since complete population counts were started in 1995, the *Yermo xanthocephalus* population has appeared stable (Heidel 2002; R. Scott, Central Wyoming College Herbarium, *in litt.* 2004). Current conditions appear favorable to the species and its habitat. Even small changes to the habitat, such as protective fencing around the plant's location, or changes in livestock and wildlife use or numbers, may have negative impacts by altering water flow patterns and trails that currently carry water and soil flows. These kinds of changes also may allow native and non-native plant species to outcompete *Y. xanthocephalus* for water and habitat.

Previous Federal Action

On March 14, 2003, we published the proposed rule to designate critical habitat for *Yermo xanthocephalus* (68 FR 12326). In that proposed rule (beginning on page 12328), we included a detailed summary of the previous Federal actions completed prior to publication of the proposal. On January 27, 2004, the Service announced the availability of the Draft Economic Analysis of Critical Habitat Designation for the Desert Yellowhead (Draft Economic Analysis) and the Draft Environmental Assessment for Designation of Critical Habitat for the Desert Yellowhead (Draft EA) (69 FR 3871), and opened the comment period on all three documents through February 26, 2004.

Summary of Comments and Recommendations

In the March 14, 2003, proposed rule, we requested that all interested parties submit comments or information concerning the designation of critical habitat for *Yermo xanthocephalus.* A 60-day comment period closed on May 13, 2003. We contacted interested parties (including elected officials, media outlets, local jurisdictions, and interest groups) through a press release and related faxes, mailed announcements, telephone calls, and e-mails. On January 27, 2004, the Service opened a 30-day comment period on the Draft Economic Analysis, Draft EA, and Proposed Rule (69 FR 3871). We received three comments from the State of Wyoming and eight comments from the public. Of the public comments, five comments opposed designation or favored reduced designation, one comment supported designation or favored expanded designation, and two were deemed neutral regarding critical habitat. Relatively minor editing changes suggested by commenters have been incorporated into this final rule as appropriate.

In accordance with our policy published on July 1, 1994 (59 FR 34270), we seek the expert opinions of at least three appropriate independent specialists regarding proposed rules. The purpose of such review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses. We solicited opinions of four independent experts to peer-review the proposed critical habitat designation. All four peer reviewers provided comments.

Peer Review Comments

Comment 1: One reviewer recommended decreasing the size of the critical habitat and identified specific areas he believed could be considered for removal. However, the reviewer specifically deferred to the opinion of another reviewer.

Our Response: We reviewed the suggested removals from the critical habitat designation. We remain convinced that these areas are essential to the conservation of the species and may require special management. We believe the areas contain one or more of the Primary Constituent Elements (PCEs) identified in this rule. In fact, one area suggested for removal actually contains individual *Yermo xanthocephalus* plants. Additionally, we believe these areas are important because they contain the topographic features/relief and physical processes that maintain the habitat and hydrology upon which *Y. xanthocephalus* depends. Furthermore, the reviewer to whom this reviewer deferred was one of two reviewers to suggest that the designated critical habitat be made larger.

Comment 2: Two reviewers recommended enlarging the designated critical habitat. One reviewer provided specific suggestions for areas that should be included in the critical habitat designation and thought the enlarged area would provide a slightly greater buffer. The other peer reviewer suggested that the rarity of *Yermo xanthocephalus* warrants extra caution that would be provided by enlargement of the designated critical habitat.

Our Response: By definition under section 3(5)(A) of the Act, critical habitat includes areas known to be essential to conserve the species. While the areas suggested for addition to critical habitat appear to have one or more of the PCEs identified in this rule, we do not believe they are essential to the conservation of the species. These areas are outside of the area containing the topographic features necessary to maintain the habitat and hydrology for the known population of *Yermo xanthocephalus*. While some of the areas appear to contain the appropriate soils and plant communities to support *Y. xanthocephalus*, these areas appear to be outside of the areas in which the plant typically is found. We understand that, in recent years, the plant's distribution has been static, even on a relatively fine scale. We further understand that individual plants that might appear to be colonizing new habitat and becoming established further from the general population location tend to be short-lived and never truly establish an extension of the population. Even so, we believe the critical habitat designation encompasses these areas *Y. xanthocephalus* temporarily colonized in the past to provide for the future possibility of a slight expansion of the population.

We share the reviewers' concerns regarding the vulnerability of *Yermo xanthocephalus* due to its rare nature and small distribution. It is vulnerable to impacts from activities within and outside of designated critical habitat. Yet, the definition of critical habitat does not include areas that are not deemed essential to the conservation of the species. However, section 7(a)(2) of the Act requires each Federal agency to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. In considering the effects of a proposed action, the Federal agency looks at the direct and indirect effects of an action on the species or critical habitat. Indirect effects are caused by the proposed action, are later in time, and are reasonably certain to occur. They may occur outside of the area directly affected by the action. Therefore, actions occurring outside of the critical habitat boundaries, but possibly affecting *Y. xanthocephalus* or its critical habitat, will still be reviewed for their effect and modified if necessary. Because the designated critical habitat is completely surrounded by Federal land, this requirement of the Act effectively provides the same level of protection for *Y. xanthocephalus*.

Comment 3: One reviewer was critical of the manner in which the Service used Dorn's initial visual estimate of the *Yermo xanthocephalus* population size (Dorn 1991), indicating that the estimate should not be used in conjunction with the quantitative data, particularly to speculate regarding population changes over time. The reviewer also provided more current census information for the population.

Our Response: We have revised the background section of this rule to better reflect the nature of Dorn's estimate, and have incorporated the current census data.

Comment 4: Several peer reviewers commented on various threats to the critical habitat area (such as invasive weeds), as well as needed management within critical habitat. Two reviewers specifically expressed concern regarding the existing system of two track roads in the area, with one reviewer citing recent resource and plant damage. That reviewer suggested that closure, obliteration, and restoration of some roads is appropriate.

Our Response: In the proposed rule, the Service acknowledged the potential for several activities to destroy or adversely modify critical habitat. Management of the critical habitat area will be addressed through consultation between the Service and the BLM. The Service and BLM were unaware of recent plant damage associated with the road system and have begun coordination to evaluate and address the problem.

Comment 5: Two reviewers stressed the importance of continued monitoring of *Yermo xanthocephalus*. One reviewer emphasized that the importance of monitoring has increased, because publication of maps and information has increased the vulnerability of this rare plant.

Our Response: We agree. The Service will support monitoring efforts as resources allow. Monitoring needs also will be addressed during recovery planning.

Comment 6: One reviewer commented that more detailed maps and other information would have been valuable in evaluating the adequacy of the critical habitat proposal.

Our Response: We agree. However, even the more detailed maps in our office do not provide the location of all the two-track roads, livestock trails, livestock water tanks, and other details of interest to this reviewer.

State Agencies

We received comments from the Office of the Governor (Governor), Wyoming Game and Fish Department (WGFD), and the Wyoming Department of Agriculture (WDA). Issues raised by the State agencies are addressed below.

State Comment 1: The Governor indicated that the State is opposed to designation of critical habitat for *Yermo xanthocephalus* based on the potential modification of existing land uses in this area.

Our Response: Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We anticipate only minor changes to existing land uses in the area, although we acknowledge that some costs are associated with section 7 consultation due to the listing of *Yermo xanthocephalus* or designation of critical habitat. Those costs are identified in the Final Economic Analysis.

State Comment 2: The Governor commented that existing land uses including livestock grazing appear favorable to the plant and expressed the State's concern that any changes to the existing habitat could be detrimental to this plant and its nurturing habitat. The WDA also commented on the importance of maintaining the current grazing use and avoiding the use of protective fencing.

Our Response: As indicated in our proposed rule, we agree with the Governor. *Yermo xanthocephalus* appears to be stable and we do not propose any changes to land use that would result in changes to the habitat. There has been general agreement among the Service, BLM, and species experts that grazing at the current levels does not appear to be adversely affecting the species, and that fencing the site may cause significant adverse changes to the area.

State Comment 3: The Governor expressed the State's belief that the proposed critical habitat is too expansive and will have an adverse impact on locatable minerals mining or liquid mineral surface occupancy.

Our Response: We believe the entire area designated as critical habitat is essential to the conservation of the species (see our response to Peer Review Comment 1). We understand the Governor's concern that critical habitat designation could potentially have an adverse impact on locatable minerals mining or liquid mineral surface occupancy. However, we believe that these impacts will be minor.

Although the BLM is pursuing withdrawal of the critical habitat designation from locatable mineral development, it appears the uranium and zeolite resources at the site have only marginal commercial value. This is supported by the fact that there are no active load or placer claims on the critical habitat designation and the extraction of potential uranium and zeolite resources is not economical in the current price environment.

The critical habitat designation is located within the BLM's Beaver Creek Management Unit, which is rated as having a low potential for oil and gas. There are two leases encompassing the critical habitat unit. From 1952 to the present, four wells have been drilled in the general vicinity of the designated critical habitat, and all have resulted in dry holes, further supporting the low potential for oil and gas. Currently, the BLM's Lander RMP prohibits surface occupancy when necessary within a 200-meter (656-foot) buffer of the plants. The BLM plans to continue implementing the buffer area until the existing leases expire. At that time, BLM plans to exclude the designated critical habitat area from drilling activities, necessitating the use of directional drilling by new lease holders. We acknowledge that these project modifications result in an impact to the operators. The estimated costs to the oil and gas industry of critical habitat designation are around $460,000 over 10 years and are more fully described in the Final Economic Analysis.

Public Comments

We reviewed all comments received for substantive issues and new data regarding critical habitat and *Yermo xanthocephalus,* the Draft Economic Analysis, and the Draft EA. In the following summary of issues we address comments received on all documents during the public comment periods. No comments were received regarding the Draft EA. Comments of a similar nature are grouped into issues.

Comment 1: Several commenters, including county government, indicated the designation was either unnecessary or excessive, and recommended removing areas generally at the north end of the designation.

Our Response: We believe the entire area designated as critical habitat is essential to the conservation of the species (see our response to Peer Review Comment #1). We remain convinced that the northern portion of the critical habitat is essential to maintain the habitat and hydrology that support *Yermo xanthocephalus.*

Comment 2: One commenter stated that the critical habitat should be expanded in all directions. The commenter was concerned that hydrological and other physical processes, occurring on the land to the east of the critical habitat would not be protected. The commenter was also concerned that the plant would be impacted by various activities, such as motorized vehicle use and oil and gas activities, occurring outside critical habitat to the north, south, and west.

Our Response: We do not agree that expansion of the critical habitat is necessary. See our response to Peer Review Comment 2.

Comment 3: Several commenters expressed concerns regarding the potential for critical habitat designation to impact various activities occurring in the area, such as grazing, public access, mining, and oil and gas development. Several commenters expressed concerns that fencing the area to restrict grazing would actually cause harm to *Yermo xanthocephalus.*

Our Response: See our response to State Comments 2 and 3.

Comment 4: More surveys for other populations of *Yermo xanthocephalus* are needed before designating critical habitat.

Our Response: As required by section 4(b)(2) of the Act, we have designated critical habitat on the basis of the best scientific and commercial information available. Extensive surveys of nearby suitable habitat have found it to be unoccupied by *Yermo xanthocephalus.* It is unlikely other populations of this plant exist. However, in the unlikely event additional populations are discovered in the future, we will evaluate their importance to the conservation of this species and take appropriate action.

Comment 5: The observations of Dr. Dick Scott should form the basis for the designation, as he is the species expert.

Our Response: Dr. Scott reviewed our proposed rule and provided comments.

Comment 6: A recovery plan crafted in close consultation with Federal agencies and State and local governments should be finalized.

Our Response: We agree and intend to begin the recovery planning process as soon as resources allow.

Comment 7: One commenter criticized the lack of detail provided on the map accompanying the critical habitat proposal. The map should have included all two-track roads, topographic features, and other information.

Our Response: See our response to Peer Review Comment 6. Regulation 50 CFR 424.12(c) requires us to define critical habitat according to ''specific limits using reference points and lines as found on standard topographic maps of the area.'' We have done this by basing the critical habitat legal description on section lines associated with the Public Land Survey System. In addition to the legal descriptions, we also published maps providing an overview of the critical habitat boundaries in the proposed rule. The **Federal Register** maps are only intended for illustrative purposes. The proposed rule references the U.S. Geological Survey (USGS) 7.5″ quadrangle maps Dishpan Butte and Sweetwater Station, Wyoming. These maps would provide the topographic detail and possibly more information regarding locations of two-track roads, although many two-tracks do not show on the 7.5″ quadrangle maps.

Prior to publication of the proposed rule, several interested parties expressed concern regarding increased knowledge of the precise location of *Yermo xanthocephalus* population and the potential for vandalism of the population. The Service tried to balance

their concerns with the need to publish a map along with the proposed rule.

Comment 8: Nearby unoccupied areas of suitable habitat should be included in the designation of critical habitat.

Our Response: Based upon data collected during nine years of annual census, the population of *Yermo xanthocephalus* appears stable. Extensive surveys of nearby suitable habitat have found it to be unoccupied by *Y. xanthocephalus.* There is no evidence that the plant has ever occurred outside of the area currently occupied. While we agree that there could be additional security against extinction for the species if there were multiple populations, there appears to be no foundation upon which to make a determination that the conservation needs of *Y. xanthocephalus* require designation of critical habitat outside of the geographic area occupied by the species.

Comment 9: One commenter asked that we consider ecosystem services, species recovery, and passive values when developing the economic analysis of this critical habitat designation.

Our Response: Our Draft and Final Economic Analyses address those issues.

Comment 10: One commenter expressed concerns having to do with the status of section 7 consultation between BLM and the Service regarding *Yermo xanthocephalus.*

Our Response: We encourage the commenter to contact the Service's Wyoming Field Office (*see* **ADDRESSES** section) to discuss the status of the consultation.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions authorized, funded, or carried out by a Federal agency. Section 7 of the Act also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act against such activities.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat must also require special management or protection to be included in critical habitat. Critical habitat identifies those areas that need alternation or protection to provide for the recovery of the species. We do not include areas where existing management is sufficient to conserve the species.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, impacts to national security, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Critical habitat designations do not signal that habitat outside the designation is unimportant to *Yermo xanthocephalus.* Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts.

Methods

In determining areas that are essential to conserve *Yermo xanthocephalus*, we used the best scientific information available, as required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12). We reviewed available information that pertains to the habitat requirements of this species, including information from the final rule listing the species as threatened (67 FR 11442; March 14, 2002), data from research and survey observations at the known population site, status reports compiled by the Wyoming Natural Diversity Database, the BLM's RMP/Environmental Impact Statement for the Lander Resource Area (1986), Geological Survey Bulletins regarding the geology of central Wyoming and the Beaver Rim area, data regarding soils at the known population site, and discussions with botanical experts and BLM employees.

We mapped critical habitat based on USGS 7.5″ quadrangle maps (Dishpan Butte and Sweetwater Station, Wyoming). We included the areas occupied by the subpopulations of *Yermo xanthocephalus* based upon existing maps of the subpopulations, as well as site visits by Service and BLM employees. We included adjacent areas of suitable soils and vegetative

communities to allow for maintenance of the seed bank and dispersal. Additionally, we identified areas with topographic features (outcroppings, cliffs, and hills) influencing the microscale dynamics of local winds, erosional processes, and hydrologic processes needed to maintain the integrity of the shallow deflation hollows providing *Y. xanthocephalus* habitat, as well as the sheet wash that provides increased moisture to the habitat. We believe these areas are necessary because of the unstable nature of the landscape (Bynum 1993) and the more mesic nature of the hollows than the surrounding arid landscape (R. Scott, Central Wyoming College, pers. comm. 2002). We delineated the boundary of this area using section lines and quarter-section lines where feasible, in order to facilitate BLM management and enforcement.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we must consider those physical and biological features (Primary Constituent Elements, PCEs) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. The area designated as critical habitat for *Yermo xanthocephalus* is within the geographical area presently occupied by the species and contains these physical or biological features (PCEs) essential for the conservation of the species.

Based on our knowledge to date, the Primary Constituent Elements for *Yermo xanthocephalus* consist of, but are not limited to:

(1) Recent soils derived from sandstones and limestones of the Split Rock Formation at its junction with the White River Formation. These are shallow, loamy soils of the Entisol order that can be classified as course-loamy over sandy-skeletal, mixed, Lithic Torriorthent. The surface stratum has little organic matter and subsurface layers show no accumulation of humus, clay, gypsum, salts, or carbonates.

(2) Plant communities associated with *Yermo xanthocephalus* that include, but may not be limited to, sparsely-vegetated cushion plant communities with scattered clumps of *Oryzopsis hymenoides* (Indian ricegrass) between 2,043 and 2,073 m (6,700 and 6,800 ft) in Fremont County, Wyoming. Species common to these communities include *Arenaria hookeri* (Hooker's sandwort), *Astragalus kentrophyta* (thistle milkvetch), *Hymenoxys acaulis* (stemless hymenoxy), and *Phlox muscoides* (squarestem phlox). These cushion-plant communities also contain natural openings.

(3) Topographic features/relief (outcroppings, cliffs, and hills) and physical processes, particularly hydrologic processes, that maintain the shape and orientation of the hollows characteristic of *Yermo xanthocephalus* habitat (through microscale dynamics of local winds and erosion) and maintain moisture below the surface of the ground (through sheet wash from the adjacent outcroppings, cliffs, and hills).

Criteria Used To Identify Critical Habitat

We identified critical habitat essential for the conservation of *Yermo xanthocephalus* in the only area where it is known to occur. There are no known historic locations for this species. While we acknowledge the high degree of threat that arises from chance catastrophic events given the limited geographic distribution of this species, we find no compelling evidence that the plant ever existed at other locations. We believe conservation of the species can be achieved through management of threats to the population within this designation of critical habitat.

Given the clustered distribution pattern of *Yermo xanthocephalus* and our assumption that dispersal distances are short and possibly fostered by water erosion, a limited amount of critical habitat is essential for maintenance of the seed bank and dispersal. Additionally, the persistence of the species requires some surrounding habitat to maintain the ecological processes that allow the population and the PCEs to persist.

Even though we did not propose sites other than where the population is currently known to occur, we do not imply that habitat outside the designation is unimportant or may not be required for recovery of the species. Areas that support newly discovered populations in the future, but are outside the critical habitat designation, will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act, as determined on the basis of best available information at the time an action is proposed.

Critical Habitat Designation

The critical habitat areas described below include one or more of the primary constituent elements described above and constitute our best assessment at this time of the areas needed for the conservation of *Yermo xanthocephalus*. The site includes the only known location where the species currently occurs and, as such, is essential.

The designated critical habitat is approximately 146 ha (360 ac) of Federal lands managed by BLM in the Beaver Rim area approximately 10 km (6 mi) north of Sweetwater Station in southern Fremont County, Wyoming. Within this area, *Yermo xanthocephalus* occurs in sparsely-vegetated cushion plant communities associated with shallow soils on low slopes, rim margins, colluvial fans, and bottoms within deflation hollows. Additionally, as discussed previously, we included areas supporting topographic features (outcroppings, cliffs, and hills) influencing the microscale dynamics of local winds, erosional processes, and hydrologic processes needed to maintain the integrity of the shallow deflation hollows providing *Y. xanthocephalus* habitat, as well as the sheet wash that provides increased moisture to the habitat. Within the critical habitat, *Y. xanthocephalus* occurs in 3 subpopulations with a total population size of 11,967 plants in 2001 (R. Scott, Central Wyoming College, pers. comm. 2001). Dispersal from these subpopulations is limited and frequently occurs along colluvial washes.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service,

to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect Y*ermo xanthocephalus* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or any other Federal action (*e.g.*, funding or authorization from the Federal Highway Administration), also will be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that, when carried out, funded or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat or may be affected by the designation include, but are not limited to:

(1) Activities that have the potential to appreciably degrade or destroy *Yermo xanthocephalus* habitat (and its PCEs), including mining, oil and gas exploration and development, herbicide use, intensive livestock grazing, clearing, discing, farming, residential or commercial development, off-road vehicle use, and heavy recreational use;

(2) Alteration of existing hydrology by lowering the groundwater table or redirection of sheet flow from areas adjacent to deflation hollows;

(3) Compaction of soil through the establishment of new trails or roads;

(4) Activities that foster the introduction of non-native vegetation, particularly noxious weeds, or create conditions that encourage the growth of non-natives. These activities could include, but are not limited to: irrigation, supplemental feeding of livestock, and ground disturbance associated with pipelines, roads, and other soil-disturbing activities; and

(5) Indirect effects that appreciably decrease habitat value or quality (*e.g.*, construction of fencing along the perimeter of the critical habitat leading to cattle congregation at the fence and resultant focused disturbance, erosion, and changes to drainage patterns, soil stability, and vegetative community composition).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Wyoming Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, P.O. Box 25486, DFC, Denver, Colorado 80225–0486 (telephone: 303–236–7400; facsimile: 303–236–0027).

Relationship to Section 3(5)(A) and 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection. As such, for an area to be designated as critical habitat for a species, it must meet both provisions of the definition. In those cases where a specific area does not provide those physical and biological features essential to the conservation of the species, it has been our policy to not include the area in designated critical habitat. Likewise, if an area determined to be biologically essential has an adequate management plan that covers the species, then special management and protection are already being provided. These areas would not meet the second provision of the definition and would not be proposed as critical habitat.

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the

enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances that the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. An area may be excluded from critical habit if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such an area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from critical habitat based on economic impacts, impacts on national security, or other relevant impact such as preservation of conservation partnerships or military readiness considerations, if we determine that the benefits of excluding an area from critical habitat outweigh the benefits of including the area in critical habitat, provided the exclusion will not result in the extinction of the species.

In summary, we use both the definitions in section 3(5)(A) and the provisions of section 4(b)(2) of the Act to evaluate those specific areas that are proposed for designation as critical habitat as well as for those areas that are subsequently finalized (*i.e.*, designated as critical habitat). On that basis, it has been our policy to not include in proposed critical habitat, or exclude from designated critical habitat, those areas: (1) Not biologically essential to the conservation of a species, (2) covered by an individual (project-specific) or regional Habitat Conservation Plan (HCP) that covers the subject species, (3) covered by a complete and approved Integrated Natural Resource Management Plan (INRMP) for specific Department of Defense (DOD) installations, or (4) covered by an adequate management plan or agreement that protects the primary constituent elements of the habitat.

We have not excluded any lands from this designation pursuant to section 3(5)(A) and 4(b)(2) of the Act. No HCPs that include *Yermo xanthocephalus* are in development or completed, the designation does not include any DOD installations, and no management plans that protect *Y. xanthocephalus* have been finalized.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We based this final rule on the best scientific and commercial data available. In order to make a final critical habitat designation, we further utilized the draft and final Economic Analyses and our analysis of other relevant impacts and considered all comments and information submitted during the public comment periods. No areas proposed as critical habitat were excluded or modified because of economic impacts.

Our economic analysis estimates the economic impact of compliance with the protections derived from the designation of critical habitat for *Yermo xanthocephalus,* including habitat protections that may be coextensive with the listing of the species. The measurement of direct compliance costs focuses on the implementation of section 7 of the Act. Federal agencies are required to consult with the Service under section 7 of the Act to ensure that any action they authorize, fund, or carry out will not likely jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of a listed species' habitat. Categories of potential cost and benefits considered in the analysis include costs associated with: (1) Conducting section 7 consultations associated with the listing or with critical habitat; (2) modifications to projects, activities, or land uses resulting from section 7 consultations; (3) costs related to the uncertainty associated with the outcome of section 7 consultations; and (4) potential benefits of designating critical habitat.

Activities potentially affected by this designation of critical habitat include oil and gas extraction, geophysical oil and gas exploration, cattle grazing, utility right-of-way (ROW), and BLM activities. Impacts are defined in terms of both the anticipated number and effort level of future consultations as well as any associated project modifications taking place under section 7 of the Act.

In our final economic analysis, we found that total costs that may be attributable to future section 7 consultations resulting from the listing of *Yermo xanthocephalus* and the critical habitat designation could range from $530,000 to $630,000 over the next ten years. Consultations associated with oil and gas extraction activities are expected to comprise about 73 percent (approximately $460,000) of the total economic impact, and more than 90 percent of these costs (approximately $430,000) are expected to stem from the implementation of project modifications (*i.e.*, directional well drilling). While the BLM estimates two consultations for oil and gas extraction activities during the next 10 years, the existing lessee has no plans to drill within the lease areas during the remaining terms of each lease. Therefore, any future consultations for oil and gas development will occur after the current leases expire in 2006 and 2007. In addition to oil and gas extraction projects, activities potentially affected by the designation of critical habitat for *Y. xanthocephalus* are: Review and revision of BLM's Lander Resource Management Plan (20 percent of total expected costs); cattle grazing (two percent); utility ROWs (two percent); and geophysical oil and gas exploration (two percent). Of the total anticipated costs, four percent will be administrative costs borne by the Service (approximately $27,000), and 21 percent will be administrative and operational costs borne by the BLM (approximately $133,000). The remainder of the cost is expected to be borne by third parties (approximately $469,000).

A copy of the final economic analysis and supporting documents are included in our supporting record for this rulemaking, and may be obtained by contacting the Wyoming Field Office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government.

This designation will not create inconsistencies with other agencies'

actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not reviewed this final critical habitat designation.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

On the basis of information in our final economic analysis, we have determined that a substantial number of small entities are not affected by the critical habitat designation for *Yermo xanthocephalus.* Therefore, we are certifying that the designation will not have a significant effect on a substantial number of small entities. The factual basis for certifying that this rule will not have a significant economic impact on a substantial number of small entities is as follows.

Small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. The RFA/SBREFA requires that agencies use the Small Business Administration's definition of ''small business'' that has been codified at 13 CFR 121.201. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. The RFA/SBREFA does not explicitly define either ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In addition, Federal courts and Congress have indicated that an RFA/SBREFA is properly limited to impacts to entities directly subject to the requirements of the regulation (Service 2002). Therefore, entities not directly regulated by the listing or critical habitat designation are not considered in this section of the analysis. The RFA/SBREFA defines ''small governmental jurisdiction'' as the government of a city, county, town, school district, or special district with a population of less than 50,000. Although certain State agencies may be affected by this critical habitat designation, State governments are not considered small governments, for the purposes of the RFA. SBREFA further defines ''small organization'' as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

The economic analysis identified small businesses in the oil and gas extraction, cattle ranching, and geophysical oil and gas exploration industries as potentially being affected by section 7 protection for *Yermo xanthocephalus.* Because oil and gas extraction and geophysical oil and gas exploration companies that operate in Fremont County, Wyoming, are typically headquartered outside the State, the relevant area of analysis for these two industries is the United States. The estimated number of small businesses in these industries that will be affected is less than 1 percent for each industry per year. The economic analysis estimates that seven ranchers will be involved in a single section 7 consultation related to livestock grazing during the 10-year period. In relative terms, the analysis estimates that 13 percent of small businesses in the cattle industry are affected by section 7 consultation for *Y. xanthocephalus* annually. However, the seven ranchers involved in the single consultation will share the work and cost of the consultation, and the cost per rancher is only about $1,000.

Even where the requirements of section 7 might apply due to critical habitat, based on our experience with section 7 consultations for all listed species, virtually all projects, including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations under section 7, can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures by definition must be economically feasible and within the scope of authority of the Federal agency involved in the consultation.

For these reasons, we are certifying that the designation of critical habitat for *Yermo xanthocephalus* will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et. seq.)

Under the SBREFA (5 U.S.C. 801 *et seq.*), this rule is not a major rule. Based on the effects identified in the economic analysis, we believe that this critical habitat designation will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Our detailed assessment of the economic effects of this designation is described in the economic analysis.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order (E.O.) 13211, on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy production, supply, and distribution facilities because no such facilities are included within designated critical habitat. As described in the economic analysis, Fremont County, Wyoming, produces less than ten barrels of crude oil per well on a daily basis (based on historic well production records). In the worst-case scenario that section 7 consultation causes lessees to forego drilling and operating two future production wells in the area that will be affected by critical habitat designation, it is extremely unlikely that crude oil supply will drop by more than the threshold specified in E.O. 13211 (10,000 barrels per day). Thus we do not believe that designation of critical habitat for *Yermo xanthocephalus* will significantly affect future energy production. Therefore, this action is not

a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

The Unfunded Mandates Reform Act, UMRA (2 U.S.C. 1501 *et seq.*) requires each agency, unless otherwise prohibited by law, to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. Under section 202 of UMRA, we must prepare a written statement, including a cost-benefit analysis, for significant regulatory actions that include a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Even though the economic analysis that was prepared in support of this rulemaking fully assesses the effects of this designation on Federal, State, local, and tribal governments, and to the private sector, the designation of critical habitat will not result in a Federal mandate imposing an enforceable duty upon those entities; therefore a written statement is not required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights,'' March 18, 1988; 53 FR 8859), we have analyzed the potential takings implications of the designation of critical habitat for *Yermo xanthocephalus.* The takings implications assessment concludes that this final rule does not pose significant takings implications. A copy of this assessment can be obtained by contacting the Wyoming Field Office (*see* **ADDRESSES**).

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Wyoming. The designation of critical habitat within the geographic range occupied by *Yermo xanthocephalus* imposes no additional restrictions to those currently in place and, therefore, has little additional impact on State and local governments and their activities.

The designation may have some benefit to these governments in that the area essential to the conservation of the species is more clearly defined, and the PCEs of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the PCEs within the designated area to assist the public in understanding the habitat needs of *Yermo xanthocephalus.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

Our position is that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F .3d 1495 (Ninth Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)). However, when the range of the species includes States within the Tenth Circuit, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F .3d 1429 (Tenth Cir. 1996), we will complete a NEPA analysis. The range of *Yermo xanthocephalus* includes States within the Tenth Circuit; therefore, we completed a draft EA and made it available for public review and comment. A final EA and Finding of No Significant Impact have been prepared for this designation and are available from the Wyoming Field Office (*see* **ADDRESSES**).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We are required to assess the effects of critical habitat designation on Tribal lands and Tribal trust resources. We believe that no Tribal lands or Tribal trust resources are essential for the conservation of *Yermo xanthocephalus.*

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Wyoming Field Office (*see* **ADDRESSES** section).

Author

The primary author of this rule is Mary E. Jennings (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.12(h), revise the entry for *Yermo xanthocephalus* under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Yermo xanthocephalus.	Desert yellowhead ..	U.S.A. (WY)	Asteraceae—Sunflower.	T	723	17.96(a)	NA
*	*	*	*	*	*		*

■ 3. In § 17.96, amend paragraph (a) by adding an entry for *Yermo xanthocephalus* in alphabetical order under Asteraceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Asteraceae: *Yermo xanthocephalus* (Desert yellowhead)

(1) Critical habitat unit is depicted for Fremont County, Wyoming, on the map below.

(2) The primary constituent elements of critical habitat for *Yermo xanthocephalus* are those habitat components that are essential for the primary needs of the species. Based upon our current knowledge of this species, the primary constituent elements include, but are not limited to:

(i) Recent soils derived from sandstones and limestones of the Split Rock Formation at its junction with the White River Formation. These are shallow, loamy soils of the Entisol order that can be classified as course-loamy over sandy-skeletal, mixed, Lithic Torriorthent. The surface stratum has little organic matter, and subsurface layers show no accumulation of humus, clay, gypsum, salts, or carbonates.

(ii) Plant communities associated with *Yermo xanthocephalus* that include, but may not be limited to, sparsely vegetated cushion plant communities with scattered clumps of *Oryzopsis hymenoides* (Indian ricegrass) between 2,043 and 2,073 m (6,700 and 6,800 ft) in Fremont County, Wyoming. Species common to these communities include *Arenaria hookeri* (Hooker's sandwort), *Astragalus kentrophyta* (thistle milkvetch), *Hymenoxys acaulis* (stemless hymenoxy), and *Phlox muscoides* (squarestem phlox). These cushion-plant communities also contain natural openings.

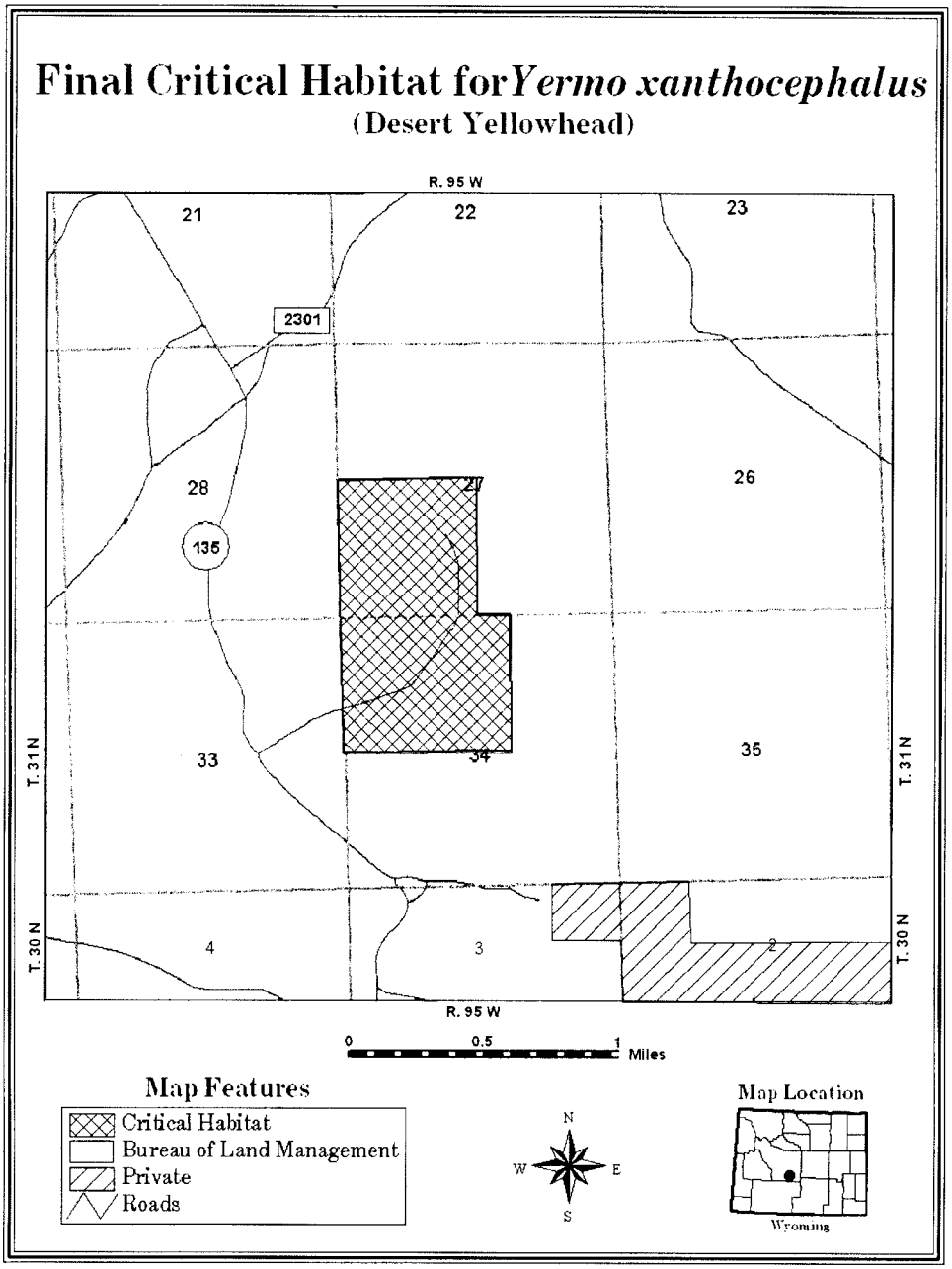
(iii) Topographic features/relief and physical processes, particularly hydrologic processes, that maintain the shape and orientation of the hollows characteristic of *Yermo xanthocephalus* and maintain moisture below the surface of the ground.

(3) Critical habitat: Fremont County, Wyoming.

(i) From U.S. Geological Survey 7.5″ quadrangle maps Dishpan Butte and Sweetwater Station, Wyoming. T. 31 N., R. 95 W., SW¼ sec. 27, NW¼ sec. 34, and W½ W½ NE¼ sec. 34.

(ii) Map follows:

BILLING CODE 4310–55–P



* * * * *

Dated: March 8, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–5591 Filed 3–15–04; 8:45 am]

BILLING CODE 4310–55–C

Proposed Rules

Federal Register
Vol. 69, No. 51
Tuesday, March 16, 2004

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–149752–03]

RIN 1545–BC87

Exclusion of Employees of 501(c)(3) Organizations in 401(k) and 401(m) Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations under section 410(b) of the Internal Revenue Code. The proposed amendments permit, in certain circumstances, employees of a tax-exempt organization described in section 501(c)(3) to be excluded for the purpose of testing whether a section 401(k) plan (or a section 401(m) plan that is provided under the same general arrangement as the section 401(k) plan of the employer) meets the requirements for minimum coverage specified in section 410(b). These regulations will affect tax-exempt employers described in section 501(c)(3), retirement plans sponsored by these employers, and participants in these plans.

DATES: Written or electronic comments and requests for a public hearing must be received by June 14, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–149752–03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–149752–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS Internet site at *www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, R. Lisa Mojiri-Azad, 202–622–6060, or Stacey Grundman, 202–622–6090; concerning submissions and delivery of comments, Treena Garrett, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 410(b) of the Internal Revenue Code of 1986 (Code). The amendments implement a directive by Congress, contained in section 664 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107–16, 115 Stat. 38) (EGTRRA), to amend § 1.410(b)–6(g) of the regulations.

Prior to the enactment of the Small Business Job Protection Act of 1996 (Pub. L. 104–188, 110 Stat. 1755) (SBJPA), both governmental and tax-exempt entities generally were subject to the section 410(b) coverage requirements and precluded from maintaining section 401(k) plans pursuant to section 401(k)(4)(B). To prevent the section 401(k)(4)(B) prohibition from causing a plan to fail section 410(b), the existing regulations provide that employees of either governmental or tax-exempt entities who are precluded from being eligible employees under a section 401(k) plan by reason of section 401(k)(4)(B) may be treated as excludable in applying the minimum coverage rules to a section 401(k) plan or a section 401(m) plan that is provided under the same general arrangement as the section 401(k) plan, if more than 95 percent of the employees of the employer who are not precluded from being eligible employees by section 401(k)(4)(B) benefit under the plan for the plan year. Although tax-exempt organizations described in section 501(c)(3) were precluded by section 401(k)(4)(B) from maintaining a section 401(k) plan, they were permitted to allow their employees to make salary reduction contributions to a plan or contract that satisfies section 403(b) (a section 403(b) plan).

Section 1426(a) of SBJPA amended section 401(k)(4)(B) to allow nongovernmental tax-exempt organizations (including organizations exempt under section 501(c)(3)) to maintain section 401(k) plans. Thus, a section 501(c)(3) tax-exempt organization can now maintain a section 401(k) plan, a section 403(b) plan, or both. In light of this provision of SBJPA, section 664 of EGTRRA directed the Secretary of the Treasury to modify the regulations under section 410(b) to provide that employees of a tax-exempt organization described in section 501(c)(3) who are eligible to make salary reduction contributions under a section 403(b) plan may be treated as excludable employees for the purpose of testing whether a section 401(k) plan or a section 401(m) plan that is provided under the same general arrangement as the section 401(k) plan meets the minimum coverage requirements contained in section 410(b) if (1) no employee of the organization is eligible to participate in the section 401(k) or section 401(m) plan and (2) at least 95 percent of the employees of the employer who are not employees of the organization are eligible to participate in the section 401(k) or section 401(m) plan.

The change recognizes that many tax-exempt organizations maintained section 403(b) plans prior to the enactment of SBJPA and is needed to allow the continued maintenance of section 403(b) plans by these organizations without requiring the same employees to be covered under a section 401(k) plan and the section 403(b) plan. The change will help an employer that maintains both a section 401(k) plan and a section 403(b) plan to satisfy the section 410(b) coverage requirements without the employer having to provide dual coverage for employees.

Explanation of Provisions

These regulations provide that employees of a tax-exempt organization described in section 501(c)(3) who are eligible to make salary reduction contributions under a section 403(b) plan may be treated as excludable employees for the purpose of testing whether a section 401(k) plan or a section 401(m) plan that is provided under the same general arrangement as the section 401(k) plan meets the minimum coverage requirements contained in section 410(b) if (1) no employee of the tax-exempt organization is eligible to participate in the section 401(k) or section 401(m) plan and (2) at least 95 percent of the employees of the employer who are not employees of the tax-exempt

organization are eligible to participate in the section 401(k) or section 401(m) plan.

The proposed regulations do not include any changes to the treatment of governmental plans under the current regulations. Unless grandfathered, State and local governmental entities continue to be precluded from maintaining section 401(k) plans pursuant to section 401(k)(4)(B). However, as a result of section 1505(a)(1) of the Taxpayer Relief Act of 1997 (Public Law 105–34, 111 Stat. 788), which added section 401(a)(5)(G) to the Code, governmental plans (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof) are not subject to the minimum coverage requirements contained in section 410(b). Consequently, the IRS and Treasury request comments on whether it would be appropriate to modify the special rule for governmental plans contained in § 1.410(b)–6(g) to reflect the addition of section 401(a)(5)(G) (including whether there continues to be a need for this special rule with respect to governmental plans).

Effective Date

As directed by Congress in section 664 of EGTRRA, the amendments to § 1.410(b)–6(g) are proposed to be effective for plan years beginning after December 31, 1996. Taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are R. Lisa Mojiri-Azad and Stacey Grundman of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for §§ 1.410(b)–2 through 1.410(b)–10 and adding entries in numerical order to read, in part, as follows:

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

Section 1.410(b)–2 also issued under 26 U.S.C. 410(b)(6).

Section 1.410(b)–3 also issued under 26 U.S.C. 410(b)(6).

Section 1.410(b)–4 also issued under 26 U.S.C. 410(b)(6).

Section 1.410(b)–5 also issued under 26 U.S.C. 410(b)(6).

Section 1.410(b)–6 also issued under 26 U.S.C. 410(b)(6) and section 664 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107–16, 115 Stat. 38).

Section 1.410(b)–7 also issued under 26 U.S.C. 410(b)(6).

Section 1.410(b)–8 also issued under 26 U.S.C. 410(b)(6).

Section 1.410(b)–9 also issued under 26 U.S.C. 410(b)(6).

Section 1.410(b)–10 also issued under 26 U.S.C. 410(b)(6).* * *

Par. 2. Section 1.410(b)–0, table of contents, the entry for 1.410(b)–6 is amended by:

1. Revising the paragraph heading for 1.410(b)–6(g).

2. Adding paragraph headings for 1.410(b)–6(g)(1) and (g)(2).

The revision and additions read as follows:

§ 1.410(b)–0 Table of contents.

* * * * *

§ 1.410(b)–6 Excludable employees.

* * * * *

(g) Employees of certain governmental or tax-exempt entities.

(1) Employees of governmental entities.

(2) Employees of tax-exempt entities.

* * * * *

Par. 3. In § 1.410(b)–6, paragraph (g) is revised to read as follows:

§ 1.410(b)–6 Excludable employees.

* * * * *

(g) *Employees of certain governmental or tax-exempt entities.* For purposes of testing either a section 401(k) plan or a section 401(m) plan that is provided under the same general arrangement as a section 401(k) plan, an employer may treat as excludable those employees described in paragraphs (g)(1) and (2) of this section.

(1) *Employees of governmental entities.* Employees of governmental entities who are precluded from being eligible employees under a section 401(k) plan by reason of section 401(k)(4)(B)(ii) may be treated as excludable employees if more than 95 percent of the employees of the employer who are not precluded from being eligible employees by section 401(k)(4)(B)(ii) benefit under the plan for the plan year.

(2) *Employees of tax-exempt entities.* Employees of a tax-exempt organization described in section 501(c)(3) who are eligible to make salary reduction contributions under a section 403(b) plan may be treated as excludable employees if —

(i) No employee of the organization is eligible to participate in the section 401(k) or section 401(m) plan; and

(ii) At least 95 percent of the employees of the employer who are not employees of the organization are eligible to participate in the section 401(k) or section 401(m) plan.

* * * * *

Mark E. Mathews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–5903 Filed 3–15–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA213–4026, FRL–7636–5]

Approval and Promulgation of Implementation Plans; Pennsylvania; Revision to the Rate of Progress Plan for the 1-Hour Ozone Standard for the Pennsylvania Portion of the Philadelphia Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Pennsylvania State Implementation Plan (SIP). Specifically, EPA is proposing approval of the revised mobile emission inventories and 2005 motor vehicle emissions budgets (MVEBs) which have been developed using MOBILE6, an updated model for calculating mobile emissions of ozone precursors. These inventories and MVEBs are part of the Rate of Progress (ROP) plan approved for the Pennsylvania portion of the Philadelphia-Wilmington-Trenton severe 1-Hour ozone nonattainment area (the Philadelphia area). The intended effect of this action is to approve a SIP revision that will better enable the Commonwealth of Pennsylvania to continue to plan for attainment of the 1-Hour national ambient air quality standard (NAAQS) for ozone in the Pennsylvania portion of the Philadelphia area. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before April 15, 2004.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Martin T. Kotsch, Energy, Radiation and Indoor Environment, Mail Code 3AP23, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *Kotsch.Martin@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, and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Martin T. Kotsch, Energy, Radiation and Indoor Environment Branch, U.S. Environmental Protection Agency, 1650 Arch Street, Mail Code 3AP23, Philadelphia, Pennsylvania 19103–20209, (215) 814–3335, or by e-mail at *Kotsch.Martin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The MOBILE model is an EPA emissions factor model for estimating pollution from on-road motor vehicles. The MOBILE model calculates emissions of volatile organic compounds (VOCs), nitrogen oxides (NO_X) and carbon monoxide (CO) from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. The model accounts for emission factors such as changes in vehicle emission standards, changes in vehicle populations and activity, and variation in local conditions such as temperature, humidity, fuel quality, and air quality programs. The MOBILE model is used to calculate current and future inventories of motor vehicle emissions at the national and local levels. Inventories based on MOBILE are also used to meet the Federal Clean Air Act's SIP and transportation conformity requirements.

The MOBILE model was first developed in 1978. It has been updated many times to reflect changes in the vehicle fleet and fuels, to incorporate EPA's growing understanding of vehicle emissions, and to cover new emissions regulations and modeling needs. EPA officially released the MOBILE6 motor vehicle emissions factor model on January 29, 2002 (67 FR 4254). Although some minor updates were made in 1996 with the release of MOBILE5b, the MOBILE6 version of the model is its first major revision since MOBILE5a was released in 1993.

II. Summary of the SIP Revisions and EPA's Evaluation

A. The Revised Emission Inventories

On January 9, 2004, the Commonwealth of Pennsylvania submitted proposed SIP revisions, and requested that EPA parallel process its approval of those SIP revisions concurrent with the state's process for amending its SIP. These proposed SIP revisions revise the 1990 and 2005 motor vehicle emissions inventories and the 2005 motor vehicle emissions budgets using the MOBILE6 model. The January 9, 2004, submittal demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to demonstrate ROP for the 1-Hour ozone NAAQS for the Pennsylvania portion of the Philadelphia area for the year 2005.

Table 1 summarizes the revised motor vehicle emissions inventories area in tons per summer day (tpd). These revised inventories were developed using the latest planning assumptions, including 2002 vehicle registration data, vehicle miles traveled (VMT), speeds, fleet mix, and SIP control measures.

TABLE 1.—REVISED MOTOR VEHICLE EMISSIONS INVENTORIES

Nonattainment Area	1990		2005	
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
Pennsylvania Portion of the Philadelphia Area	239.95	252.93	79.69	144.73

EPA has articulated its policy regarding the use of MOBILE6 in SIP development in its ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity.'' [1] Consistent with this policy guidance, the Commonwealth of Pennsylvania's January 9, 2004, submittal includes a relative reduction comparison to show that its 1-Hour Ozone ROP Plan continues to demonstrate ROP for attainment using revised MOBILE6 inventories for its portion of the Philadelphia area. The

[1] Memorandum, ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity,'' issued January 18, 2002. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

Commonwealth's methodology for the relative reduction comparison consisted of comparing the new MOBILE6 inventories with the previously approved (66 FR 54143) MOBILE5 inventories for the Pennsylvania portion of the Philadelphia area. Specifically, the state calculated the relative reductions (expressed as percent reductions) in ozone precursors between the MOBILE5-based 1990 base year and attainment year inventory. These percent reductions were then compared to the percent reductions between the revised MOBILE6-based 1990 base year and attainment year inventories. It should again be noted that the latest planning assumptions were used in modeling for the Commonwealth's relative reduction comparison.

Pennsylvania's relative reduction comparison shows that for the Pennsylvania portion of the Philadelphia area, the percent reductions in VOC and NO_X emissions achieved in the revised MOBILE6-based inventories are lower than the percent reductions calculated with MOBILE5. The analysis determined that the new MOBILE6 analysis resulted in a 6.65 tons per day NO_X shortfall and a 0.82 tons per day VOC shortfall.

Based upon the emission inventories and using EPA guidance titled ''NO_X Substitution'' United States Environmental Protection Agency, Office of Air Quality Planning and Standards, dated December 1993, Pennsylvania determined that for the Philadelphia area approximately 1 ton of NO_X emissions is equivalent to 1.37 tons of VOC emissions, as emissions of those pollutants relate to their potential to form ozone. Using this factor, Pennsylvania converted their NO_X shortfall to a VOC equivalent shortfall (6.65 tons of NO_X per day $\times$ 1.37 tons VOC/ton of NO_X = 9.11 tons of VOC). Combining this with the previously calculated VOC shortfall of 0.82 tons per day results in a total VOC shortfall of 9.93 tons per day. In order to continue to demonstrate adequate emission reductions for ROP, credit from recently adopted control programs pursuant to the Ozone Transport Commission (OTC) Model rules were added as control measures to the 2005 ROP plan. These new measures include the following Pennsylvania regulations developed in accordance with the OTC Model Rules: consumer products, portable fuel containers, AIM coatings, mobile equipment finishing and solvent cleaning operations. These control measures have total creditable VOC reduction of 41.89 tons per day, which is more than adequate to offset the increase in mobile emissions as calculated with MOBILE6.

EPA's policy guidance also required the state to consider whether growth and control strategy assumptions for non-motor vehicle sources (*i.e.*, point, area, and non-road mobile sources) were still accurate at the time the January 9, 2004, submittal was developed. Pennsylvania reviewed the growth and control strategy assumptions for non-motor vehicle sources, and concluded that these assumptions continue to be valid for its 1-Hour Ozone ROP Plan.

Pennsylvania's January 9, 2004, submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to demonstrate ROP for the year 2005 in the Pennsylvania portion of the Philadelphia area.

B. The Revised Motor Vehicle Emissions Budgets (MVEBs)

The MVEBs are the on-road components of VOC and NO_X emissions of the 2005 attainment inventories. Table 2 summarizes Pennsylvania's revised MVEBs contained in the January 9, 2004, submittal. These budgets were developed using the latest planning assumptions, including 2002 vehicle registration data, VMT, speeds, fleet mix, and SIP control measures. Because Pennsylvania's January 9, 2004, submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to demonstrate ROP for 2005 for the Pennsylvania portion of the Philadelphia area, EPA is proposing to approve these budgets.

TABLE 2.—PENNSYLVANIA'S MOTOR VEHICLE EMISSIONS BUDGETS

Nonattainment Area	2005 Attainment	
	VOC (tpd)	NO_X (tpd)
Pennsylvania Portion of the Philadelphia Area	79.69	144.73

III. Proposed EPA Action

EPA is proposing to approve the Pennsylvania revisions to the 2005 ROP plan which were submitted on January 9, 2004. These revisions amend the Pennsylvania's 1990 and 2005 motor vehicle emission inventories and the 2005 motor MVEBs for the Pennsylvania portion of the Philadelphia area to reflect the use of MOBILE6. These revisions are being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrent with the state's procedures for amending its ROP Plans. If the proposed revisions are substantively changed in areas other than those identified in this action, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantive changes are made to the currently proposed SIP revision, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by Pennsylvania and submitted formally to EPA for incorporation into the SIP. EPA is soliciting public comments on this proposed rule. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting either electronic or written comments. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA213–4026 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 *Kotsch.Martin@EPA.gov,* attention PA213–4026. 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 Regulations.gov at *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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Public Law 104–4).

This proposed 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 proposes to approve 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 proposed 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 proposing to approve Pennsylvania's revised 1990 and 2005 motor vehicle emission inventories and 2005 MVEBs of the 2005 ROP plan using MOBILE6 for the Pennsylvania

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

List of Subjects in 40 CFR Part 52

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

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

Dated: March 5, 2004.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 04–5872 Filed 3–15–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–362; MB Docket No. 04–33; RM–10847]

Radio Broadcasting Services; Cordele, Dawson, and Pinehurst, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by West Com Corp., permittee of Station WMRZ(FM) (''WMRZ''), Dawson, Georgia, and Metro Com Corp., licensee of Station WQXZ(FM) (''WQXZ''), Cordele, Georgia. The petition proposes to upgrade Channel 251A, Station WMRZ, to Channel 251C3 and to reallot Channel 252A, Station WQXZ, from Cordele to Pinehurst, Georgia. The reallotment of Channel 252A to Pinehurst will provide Pinehurst with its first local aural transmission service. The coordinates for requested Channel 251C3 at Dawson, Georgia, are 31–37–25 NL and 84–19–49 WL, with a site restriction of 20 kilometers (12.4 miles) southeast of Dawson. The coordinates for requested Channel 252A at Pinehurst, Georgia, are 32–10–03 NL and 83–37–51 WL, with a site restriction of 12.9 kilometers (8.0 miles) east of Pinehurst.

Petitioners' proposal complies with the provisions of §§ 1.420(g)(3) and (i) of the Commission's rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 251C3 at Dawson, Georgia, or Channel 252A at Pinehurst, Georgia, or require the licensees to demonstrate the availability of additional equivalent class channels for use by other parties.

DATES: Comments must be filed on or before April 19, 2004, and reply comments on or before May 4, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Dan J. Alpert, Esq., the Office of Dan J. Alpert, 2120 N. 21st Road, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MB Docket No. 04–33, adopted February 25, 2004, and released February 27, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, 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.

The 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. The FM Table of Allotments, section 73.202(b) does not reflect the allotment of Channel 251A at Dawson, Georgia. In 1993, Station WAZE(FM) license was modified to specify operation on Channel 251A in lieu of Channel 221A at Dawson, Georgia. *See* 58 FR 36375, published July 7, 1993.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Channel 251C3 and by removing Channel 221A at Dawson; removing Channel 252A at Cordele; and adding Pinehurst, Channel 252A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–5918 Filed 3–15–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–503; MB Docket No. 04–42; RM–10850]

Radio Broadcasting Services; Bowling Green and Glasgow, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Heritage Communications, Inc. requesting the reallotment of Channel 236C0 from Glasgow, Kentucky, to Bowling Green, Kentucky, and modification of the license for Station WGGC to reflect the changes. Channel 236C0 can be allotted to Bowling Green at coordinates 36–54–43 and 86–11–21. The license for Station WGGC was modified to specify operation on Channel 236C0 in lieu of Channel 236C at Glasgow, Kentucky. *See* BMLH–19990728KA. The proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 236C0 at Bowling Green.

DATES: Comments must be filed on or before April 19, 2004, and reply comments on or before May 4, 2004.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Mark N. Lipp, J. Thomas Nolan, Vinson & Elkins,

L.L.P., 1455 Pennsylvania Avenue, Washington, DC 20004–1008.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–42, adopted February 25, 2004, and released February 27, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of l980 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

Radio, Radio broadcasting.

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.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 236C at Glasgow and adding Channel 236C0 at Bowling Green.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–5911 Filed 3–15–04; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 69, No. 51

Tuesday, March 16, 2004

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the United States Department of Agriculture announces a meeting of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

DATES: The National Agricultural Research, Extension, Education, and Economics Advisory Board will meet March 23–25, 2004.

The public may file written comments before or up to two weeks after the meeting with the contact person.

ADDRESSES: The meeting will take place at the Hotel Washington, 515 15th Street, NW., Washington, DC 20004. Written comments from the public may be sent to the Contact Person identified in this notice at: The National Agricultural Research, Extension, Education, and Economics Advisory Board; Research, Education, and Economics Advisory Board Office, Room 344–A, Jamie L. Whitten Building, United States Department of Agriculture, STOP 2255, 1400 Independence Avenue, SW., Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board; telephone: (202) 720–3684; fax: (202) 720–6199; or e-mail: *dhanfman@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION: On Tuesday, March 23, 2004, the National Agricultural Research, Extension, Education, and Economics Advisory Board will convene its meeting at 1 p.m. in the Washington Room of the Hotel Washington. A brief business meeting of the Board will be followed by reports of three Board working groups and by USDA responses to the Board's prior written recommendations on ''Obesity Prevention.'' An evening reception and program to kickoff the next day's focus session titled, ''Agriculture, National Resources and the Environment: Implications for Sustainable Agricultural Systems,'' will be held at 7 p.m. in the Capital Room, with a keynote speaker from the W. K. Kellogg Foundation.

On Wednesday, March 24, 2004, from 7:30 a.m. to 4 p.m., the focus session will be held with briefings by USDA agencies of the Research, Education, and Economics (REE) mission area and the Natural Resources and Environment mission area. Distinguished speakers and leaders with expertise on the environment, natural resources, economics, and the social sustainability of agricultural systems will speak throughout the day. A meeting from noon to 1:30 p.m. will highlight agricultural research perspectives from Professional Majority and Minority Staff Members of the U.S. Congress House of Representatives Agriculture Committee. An informal focus session reception to highlight key issues of the day will be held from 6 p.m. to 8 p.m.

On Thursday, March 25, 2004, the Advisory Board will reconvene at 7:30 a.m. with the invited chairman of the REE Task Force to discuss progress being made on the Task Force's Congressional mandate. Wrap-up discussions on the findings of the Board's working groups and the focus session will follow. The Board will adjourn by 11:30 a.m.

Opportunities for public comment will be available at the end of each meeting day. Written comments for the public record on any of the topics discussed during the Advisory Board Meeting are welcomed before and up to two weeks following the meeting. All statements will become a part of the official record of the National Agricultural Research, Extension, Education, and Economics Advisory Board and will be kept on file for public review in the Research, Education, and Economics Advisory Board Office.

Done at Washington, DC, this 5th day of March, 2004.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 04–5845 Filed 3–15–04; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. TM–04–02]

Nominations for Members of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Organic Foods Production Act (OFPA) of 1990, as amended, requires the establishment of a National Organic Standards Board (NOSB). The NOSB is a 15-member board that is responsible for developing and recommending to the Secretary a proposed National List of Approved and Prohibited Substances. The NOSB also advises the Secretary on all other aspects of the National Organic Program. The U.S. Department of Agriculture (USDA) is requesting nominations to fill five (5) upcoming vacancies on the NOSB. The positions to be filled are: organic producer (2 positions), organic handler, retailer, and environmentalist. The Secretary of Agriculture will appoint a person to each position to serve a 5-year term of office that will commence on January 24, 2005, and run until January 24, 2010. USDA encourages eligible minorities, women, and persons with disabilities to apply for membership on the NOSB.

DATES: Written nominations, with resumes, must be post-marked on or before June 14, 2004.

ADDRESSES: Nominations should be sent to Ms. Katherine E. Benham, Advisory Board Specialist, USDA–AMS–TMP–NOP, 1400 Independence Avenue, SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine E. Benham, (202) 205–7806; E-mail: *katherine.benham@usda.gov*; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION: The OFPA of 1990, as amended (7 U.S.C. Section

6501 *et seq.*), requires the Secretary to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods. In developing this program, the Secretary is required to establish an NOSB. The purpose of the NOSB is to assist in the development of a proposed National List of Approved and Prohibited Substances and to advise the Secretary on other aspects of the National Organic Program.

The current NOSB made recommendations to the Secretary regarding the establishment of the initial organic program. It is anticipated that the NOSB will continue to make recommendations on various matters, including recommendations on substances it believes should be allowed or prohibited for use in organic production and handling.

The NOSB is composed of 15 members; 4 organic producers, 2 organic handlers, a retailer, 3 environmentalists, 3 public/consumer representatives, a scientist, and a certifying agent. Nominations are being sought to fill the following five (5) upcoming NOSB vacancies: organic producer (2 positions), organic handler, retailer, and environmentalist. Individuals desiring to be appointed to the NOSB at this time must be either an owner or operator of an organic production operation, an owner or operator of an organic handling operation, an individual who owns or operates a retail establishment with significant trade in organic products, or an individual with expertise in areas of environmental protection and resource conservation. Selection criteria will include such factors as: demonstrated experience and interest in organic production, handling and retailing; diverse commodity and geographic representation; support of consumer and public interest organizations; demonstrated experience with environmental matters; and such other factors as may be appropriate for specific positions.

Nominees will be supplied with a biographical information form that must be completed and returned to USDA within 10 working days of its receipt. Completed biographical information forms are required for a nominee to receive consideration for appointment by the Secretary.

Equal opportunity practices will be followed in all appointments to the NOSB in accordance with USDA policies. To ensure that the members of the NOSB take into account the needs of the diverse groups that are served by the Department, membership on the NOSB will include, to the extent practicable, individuals who demonstrate the ability to represent minorities, women, and persons with disabilities.

The information collection requirements concerning the nomination process have been previously cleared by the Office of Management and Budget (OMB) under OMB Control No. 0505–0001.

Dated: March 10, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–5894 Filed 3–15–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV–04–301]

United States Standards for Grades of Greenhouse Tomatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and extension of the comment period.

SUMMARY: Notice is hereby given that the comment period on possible changes to the United States Standards for Greenhouse Tomatoes is reopened and extended.

DATES: Comments must be received by March 31, 2004.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; fax (202) 720–8871; E-mail *FPB.DocketClerk@usda.gov.,* or you may also send your comments by the electronic process available at Federal eRulemaking portal at *http://www.regulations.gov.* Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: David L. Priester, at the above address or call (202) 720–2185; E-mail *David.Priester@usda.gov.*

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register,** December 10, 2003, (Vol. 68, No. 237, Pages 68859–68860) requesting comments on the possible revisions of the United States Standards for Grades of Greenhouse Tomatoes. The possible revisions include: amending the method for determining percentages from a weight to count basis, and changing the size classifications from ounces to diameter. Additionally, the Agricultural Marketing Service (AMS) is seeking comments regarding any other revisions that may be necessary to better serve the industry. The comment period ended February 9, 2004.

A comment was received from an industry association representing fresh tomato production in North America, requesting additional time to consider possible revisions. The association requested the comment period be extended to allow the association an opportunity to meet with their members to discuss possible revisions.

After reviewing the request, AMS is reopening and extending the comment period in order to allow sufficient time for interested persons, including the association, to file comments.

Authority: 7 U.S.C. 1621–1627.

Dated: March 12, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–5990 Filed 3–15–04; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss 2004 projects and the Fred Burr 80 project, receive reports on Forest Plan Revision community groups, discuss public outreach methods, and hold a short public forum (question and answer session). The meeting is being held 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 (Public Law 106–393). The meeting is open to the public.

DATES: The meeting will be held on March 23, 2004, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by

facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: March 9, 2004.

David T. Bull,

Forest Supervisor.

[FR Doc. 04–5843 Filed 3–15–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 6–2004]

Foreign-Trade Zone 114—Peoria, Illinois Area; Application For Foreign-Trade Subzone Status, Rockwell Automation, Inc. (Industrial Automation Products), Champaign, IL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Economic Development Council for Central Illinois, grantee of FTZ 114, requesting special-purpose subzone status for the warehousing, processing and distribution facility (industrial automation products) of Rockwell Automation, Inc. (Rockwell), located in Champaign, Illinois. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 5, 2004.

The Rockwell facility is located at 2802 West Bloomington Road, Champaign (30 acres total; 239,211 sq. ft. of enclosed space, with potential expansion to include an additional 373,402 sq. ft.). The facility (approximately 125 employees) may be used under FTZ procedures for warehousing, packaging, processing, inspecting, quality-control auditing, relabeling and distributing industrial automation power, control, and information products. Rockwell's application indicates that approximately 60 percent of the merchandise handled by the facility is domestically sourced. No authority is being sought for activity conducted under FTZ procedures that would result in a change in tariff classification.

Zone procedures would exempt Rockwell from Customs duty payments on foreign-status merchandise that is reexported. On its domestic shipments, Rockwell would be able to defer duty payments until merchandise is shipped from its facility. The company would be able to avoid duty on foreign merchandise which becomes scrap/waste, estimated at approximately one percent of imported inputs. The application indicates that Rockwell anticipates realizing significant logistical/procedural benefits, with potential future savings also possible from zone-to-zone merchandise transfers. All of the above-cited savings from FTZ procedures could help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is May 17, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 1, 2004.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the Economic Development Council for Central Illinois, 124 SW. Adams Street, Suite 300, Peoria, IL 61602.

Dated: March 8, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–5923 Filed 3–15–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 7–2004]

Foreign-Trade Zone 201—Holyoke, MA; Application For Foreign-Trade Subzone Status, Hazen Paper Company (Paper Conversion), Holyoke, MA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Holyoke Economic Development & Industrial Corporation, grantee of FTZ 201, requesting special-purpose subzone status for the warehousing and manufacturing facilities (paper conversion—the final product is ''graphic arts quality base paper'') of the Hazen Paper Company (Hazen), located in Holyoke, Massachusetts. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 8, 2004.

The Hazen facilities are located at four sites in Holyoke (9 acres total; 226,100 sq. ft. of enclosed space): Site #1—Headquarters Plant (4.2 acres; 106,000 sq. ft.)—240 South Water Street; Site #2—West Plant (1.7 acres; 68,000 sq. ft.)—210 South Water Street; Site #3—West Plant (1.1 acres; 39,000 sq. ft.)—717 Main Street; and Site #4—Sulco Warehouse (2 acres; 13,100 sq. ft. within 134,000 sq. ft. warehouse)—11 Berkshire Street.

The facilities (194 employees) may be used under FTZ procedures for warehousing and manufacturing activities—Hazen's manufacturing processes include laminating and coating (printing), embossing, rewinding/slitting, and sheeting/cutting. For Hazen's current manufacturing, foreign-sourced material accounts for 17 to 30 percent of finished-product value. The application indicates that the only material which may be sourced from abroad is graphic-arts quality aluminum foil (this falls into two tariff-schedule categories: With thickness not exceeding .01 millimeter, and with thickness exceeding .01 millimeter but less than .15 millimeter). The current duty rate for this input material is 5.8 percent.

Zone procedures would exempt Hazen from Customs duty payments on the foreign input when used in export production. On its domestic sales, Hazen would be able to defer duty payments, and to choose the lower duty rate that applies to the finished product's category (duty-free) for the foreign input listed above. Hazen would be able to avoid duty on foreign input which becomes scrap/waste, estimated at 14 percent of imported material. All of the above-cited savings from zone procedures could help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the

Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is May 17, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 1, 2004.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the Holyoke Economic Development & Industrial Corporation, One Court Plaza, Holyoke, MA 01040.

Dated: March 9, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–5922 Filed 3–15–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 53–2003]

Foreign-Trade Zone 200—Mercer County, NJ, Area; Amendment of Expansion Application

Notice is hereby given that the application by Mercer County, New Jersey, grantee of FTZ 200, in Mercer County, New Jersey, for authority to expand its zone in the Mercer County, New Jersey area (Doc. 53–2003, 68 FR 58652, 10/10/03), has been amended as follows:

Proposed Site 3a located at the Marine Terminal Industrial Park, between 1463–2785 Lambert Street, Trenton, has been reduced from 85 acres to 78 acres.

Proposed Site 3b (20 acres) located at the Roebling Market (Park) in Trenton has been removed from the expansion proposal.

Proposed Site 3c located at the Hill Industrial Park, between Pennington Ave., Ingham Ave. and Chelton Ave., Trenton, has been changed to *New Proposed Site 3b,* and it has also been reduced from 24 acres to 7 acres. The Globe Street location has been removed.

Proposed Site 4a located at the Northwest Business Park, between the intersection of Interstate 195 and the New Jersey Turnpike Exit 7A, Municipality of Washington, has been reduced from 883 acres to 882 acres.

Proposed Site 4b located at the Windsor Industrial Park, between 92–120 North Main Street, Municipality of Washington, has been changed to between 92–108 North Main Street, and reduced from 243 acres to 71 acres.

Proposed Site 4c located at the North Gold Industrial Park, along North Gold Drive, Municipality of Washington, has been reduced from 33 acres to 31 acres.

Proposed Site 5 located at the New Jersey Turnpike Exit 8–Route 33 Corridor, Municipality of East Windsor, has been reduced from 361 acres to 350 acres.

Proposed Site 6a (629 acres) located at the East State Street Corridor, the Industrial Drive Business Area and the Fairgrounds Industrial Park area in the Municipality of Hamilton, has been removed from the expansion proposal.

Proposed Site 6b (562 acres) formerly located at the Crossroads Corporate Center, the Edgerbrook Business Park, the Kuser Road Business Development Area, the Hamilton Business Park, the Interstate 95 Business Park, the Matrix Industrial Park and the Horizon Center, in the Municipality of Hamilton, has been changed to *New Proposed Site 6* (229 acres) located at the Hamilton Business Park between Gold Drive and Marlen Drive, the Matrix Industrial Park on Cabot Drive and the Horizon Center between Horizon Center Blvd. and Horizon Drive, in the Municipality of Hamilton. The application otherwise remains unchanged.

Comments on the changes may be submitted to the Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230, by April 16, 2004.

Dated: March 8, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–5924 Filed 3–15–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 8–2004]

Foreign-Trade Zone 66—Wilmington, NC; Request for Processing Authority, Siemens Westinghouse Power Corporation (Industrial Power Generating Equipment)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the North Carolina Department of Commerce, grantee of FTZ 66, pursuant to § 400.28(a)(2) of the Board's regulations (15 CFR part 400), requesting authority on behalf of Siemens Westinghouse Power Corporation (SWPC) to process foreign-origin and domestic industrial power generating equipment under FTZ procedures within FTZ 66. It was formally filed on March 9, 2004.

SWPC is a producer of large industrial power generating turbines and generators that are installed in combined-cycle power plants operated by electric generation utilities. In the proposed processing activity (as defined in § 400.2(l)), foreign-origin steam turbines with a capacity of greater than 100 megawatts (HTSUS 8406.81.1070) would be admitted to the zone under nonprivileged foreign status (19 CFR 146.42) and U.S.-produced electric generators would be admitted under domestic status on a nonconcurrent basis. The turbines and generators would then be transferred from the zone in a combined Customs entry under the classification of electric generating sets (HTSUS 8502.39.0000), as provided by specific Customs rulings. The company indicates that this activity would occur on a recurring regular basis.

FTZ procedures would exempt SWPC from Customs duty payments on the foreign power generation turbines processed for export as electric generating sets. On withdrawals from the zone for Customs entry, SWPC would be able to elect the duty rate that applies to electric generator sets (2.5%) for the foreign turbines (6.7%). The application indicates that the savings from FTZ procedures would help improve the SWPC's international competitiveness.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is April 12, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 20, 2004).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No.1 listed above.

Dated: March 9, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–5921 Filed 3–15–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Petroleum Wax Candles from the People's Republic of China: Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review of Dongguan Fay Candle Co., Ltd. (Fay) under the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) for the period August 1, 2002 through July 31, 2003. This rescission, in part, is based on the withdrawal of requests for review by the National Candle Association (petitioner) and Fay.

EFFECTIVE DATE: March 16, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley or Sally Gannon at (202) 482–3148 and (202) 482–0162, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department published in the **Federal Register** an antidumping duty order on petroleum wax candles from the PRC on August 28, 1986 (51 FR 30686). Pursuant to its *Notice of Opportunity to Request an Administrative Review*, 68 FR 45218 (August 1, 2003), and in accordance with section 751(a)(1)(B) of the Act and section 351.213(b) of the Department's regulations, the Department received a timely request by petitioner to conduct an administrative review of the antidumping duty order on petroleum wax candles from the PRC for 23 companies, including Fay. Fay, along with one other company, Qingdao Kingking Applied Chemistry Co., Ltd. (Qingdao Kingking), named in petitioner's request as well, also requested a review.

On September 30, 2003, the Department published its *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Review*, 68 FR 56262 (September 30, 2003) (*Initiation Notice*), initiating on all 23 candle companies for which a review was requested. On December 24, 2003, the Department received a timely withdrawal from petitioner of its request for a review of all 23 companies for which it had requested a review. Consequently, on January 27, 2004, the Department rescinded the review for 21 of the 23 companies. *Petroleum Wax Candles from the People's Republic of China: Rescission, in Part, of Antidumping Duty Administrative Review*, 69 FR 6258 (February 10, 2004). Because Fay and Qingdao Kingking had requested reviews themselves, we did not rescind the review of these two companies. However, in a letter dated January 26, 2004, Fay withdrew its request for a review.

Rescission, in Part, of Administrative Review

Pursuant to section 351.213(d)(1) of the Department's regulations, the Department may rescind an administrative review, ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' Because petitioner and Fay have now both withdrawn their requests for review, and because they were the only parties to request a review for Fay, we are rescinding this administrative review, in part, for the period August 1, 2002 to July 31, 2003, for Fay. We will continue the administrative review with respect to Qingdao Kingking.

Petitioner's request was received within the 90–day period for withdrawal of review requests specified in section 351.213(d)(1). Fay's request was received after the end of this period. However, the Department is authorized to extend this deadline if it decides that it is reasonable to do so. *See* section 351.213(d)(1). Although Fay submitted its withdrawal request more than 90 days after the initiation publication date, the Department has decided that it is reasonable to extend the deadline and accept the request. Petitioner and Fay were the only parties to request this review and the review has not progressed to a point where it would be unreasonable to allow parties to withdraw their requests for review. *See Certain In–Shell Raw Pistachios from Iran: Rescission of Antidumping Duty Administrative Review*, 68 FR 16764 (April 7, 2003). Additionally, we conclude that this withdrawal does not constitute an ''abuse'' of our procedures. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27317 (May 19, 1997).

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (Customs) within 15 days of the publication of this notice. The Department will direct Customs to assess antidumping duties for Fay at the cash deposit rate in effect on the date of entry for entries during the period August 1, 2002 to July 31, 2003.

Notification to Parties

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of time. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 351.213(d)(4) of the Department's regulations and sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: March 3, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–5917 Filed 3–15–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030404A]

Fisheries off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; 2004 Bank-specific Harvest Guidelines

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

ACTION: Notification of no harvest guidelines for crustaceans.

SUMMARY: NMFS announces that annual harvest guidelines for the commercial lobster fishery in the Northwestern Hawaiian Islands (NWHI) will not be issued for the year 2004.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, NMFS Pacific Islands Regional Office, at 808–973–2937.

SUPPLEMENTARY INFORMATION: Under the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region, 50 CFR 660.50(b)(2), NMFS is required to publish the harvest guidelines for lobster Permit Area 1 around the NWHI. The fishery has been closed since 2000. This action is (a) taken as a precautionary measure to prevent overfishing of the lobster resources; (b) in compliance with an order of the U.S. District Court for the District of Hawaii to keep the crustacean fisheries closed until an environmental impact statement and a biological opinion have been prepared for the crustacean fisheries in the western Pacific region; and (c) consistent with Executive Orders 13178 and 13196, issued in December 2000 and January 2001, that respectively, might be interpreted to close the NWHI crustacean fishery. NMFS announces that it will not be publishing any harvest guideline for this fishery for the year 2004 and no harvest of NWHI lobster resources will be allowed. NMFS intends to continue to conduct biological research on the status of the NWHI lobster resources and to examine the resulting data for indications as to the appropriate direction for future fishery management actions.

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

Dated: March 10, 2004.

Alan D. Risenhover,

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

[FR Doc. 04–5893 Filed 3–15–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense; Renewal of the Department of Defense Historical Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense Historical Advisory Committee was renewed, effective January 23, 2004, in consonance with the public interest, and in accordance with the provisions of the ''Federal Advisory Committee Act.''

The DoD Historical Advisory Committee consists of three subcommittees (Historical Records Declassification Advisory Panel, the Department of The Army's Historical Advisory Subcommittee, and the Secretary of the Navy's Subcommittee on Naval History) which advise the Office of the Secretary of Defense and the Secretaries of the Army and Navy regarding the professional standards, historical methodology, program priorities, liaison with professional groups, and adequacy of resources associated with Department of Defense historical programs.

The DoD Historical Advisory Committee will continue to be well balanced in terms of the interest groups represented and functions to be performed. The members include distinguished representatives from academia, current U.S. Government and private sector historians, authors and librarians, and retired general officers of general/flag rank.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Spaeth, DoD Committee Management Officer, 703–588–8151.

Dated: March 10, 2004.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–5868 Filed 3–15–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense; Renewal of 18 Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Notice.

SUMMARY: Under the provisions of Pub. L. 92–463, the ''Federal Advisory Committee Act,'' notice is hereby given that the following 18 advisory committees have been determined to be in the public interest and were renewed on February 28, 2004:

A. Board of Visitors National Defense University

B. Strategic Advisory Group for the U.S. Strategic Command

C. Advisory Group on Electron Devices

D. Defense Science Board

E. Defense Advisory Committee on Military Personnel Testing

F. DoD Wage Committee

G. National Security Agency Advisory Board

H. Armed Forces Epidemiological Board

I. Army Science Board

J. Army Education Advisory Committee

K. Chief of Engineers Environmental Advisory Board

L. Scientific Advisory Board of the Armed Forces Institute of Pathology

M. Board of Advisors to the President, Naval War College

N. Board of Advisors to the Superintendent, Naval Postgraduate School

O. Chief of Naval Operations Executive Panel Advisory Committee

P. Naval Research Advisory Committee

Q. Air University Board of Visitors

R. U.S. Air Force Scientific Advisory Board

These committees provide necessary and valuable advice to the Secretary of Defense and other senior officials in the DoD in their respective areas of expertise. They make important contributions to DoD efforts in research and development, education, and training, and various technical program areas. Some of the are authorized by statute.

It is a continuing DoD policy to make every effort to achieve a balanced membership on all DoD advisory committees. Each committee is evaluated in terms of the functional disciplines, levels of experience, professional diversity, public and private association, and similar characteristics required to ensure a high degree of balanced is obtained.

FOR FURTHER INFORMATION CONTACT: Jennifer Spaeth, DoD Committee Management Officer, 703–588–8151.

Dated: March 10, 2004.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–5867 Filed 3–15–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (FEIS) for the 2d Armored Cavalry Regiment (ACR) Transformation and Installation Mission Support, Joint Readiness Training Center (JRTC) and Fort Polk, LA, and Long-Term Military Training Use of Kisatchie National Forest Lands

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army, the USDA Forest Service, and the DOT Federal Aviation Administration (FAA) announce the availability of the FEIS for the 2d ACR Transformation and Installation Mission Support, Joint Readiness Training Center (JRTC) and Fort Polk, Louisiana, and Long-Term Military Training Use of Kisatchie National Forest Lands. The FEIS evaluates environmental impacts associated with the Army's proposal for implementing force transformation and mission capability enhancements at the installation and at England Industrial Airpark, along with long-term military training use of Kisatchie National Forest lands. The Army's proposed action involves fielding of new vehicles and equipment; construction and improvement of firing ranges, roads, stream crossings, and support facilities; land use agreements and leases; training and deployment of Army troops; and continued environmental stewardship. In addition, the FEIS considers a Forest Service proposal to thin approximately 21,500 acres of upland pine stands on the Vernon Unit, Calcasieu Ranger District of the Kisatchie National Forest to improve habitat conditions for the endangered red-cocked woodpecker. The FAA proposes to approve an amendment of the Alexandria International Airport Layout Plan as influenced by proposed Army projects and activities at England Industrial Airpark.

DATES: The waiting period will end 30 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments or requests for copies of the FEIS may be submitted to: Dan Nance, Fort Polk Public Affairs Office, 7073 Radio Road, Fort Polk, LA 71459–5342; phone: (337) 531–7203; fax: (337) 6014; e-mail: *eis@polk.army.mil.*

FOR FURTHER INFORMATION CONTACT: Questions about the FEIS may be directed to Ms. Stacy Basham-Wagner, Joint Agency Liaison, Attention: AFZX–PW–E (Basham-Wagner), 1799 23rd Street, Fort Polk, LA 71459; telephone (337) 531–7458, fax: (337) 531–2627. For further information on the Forest Service's Record of Decision, contact Ms. Cynthia A. Dancak, 2500 Shreveport Highway, Pineville, LA 71360; phone (318) 473–7160.

SUPPLEMENTARY INFORMATION: In support of Army initiatives to meet evolving security requirements, the Army has designated the 2d ACR to transform to the 2d Cavalry Regiment, a medium-weight force equipped with Stryker vehicles that will be strategically responsive and more rapidly deployable by air. In addition to transformation of the 2d ACR, units stationed at other Army installations would participate in exercises at the JRTC and Fort Polk on a rotational basis. To these ends, the Army proposes to implement force transformation and installation mission support activities at the JRTC and Fort Polk with respect to home station training (maneuver and gunnery exercises for Army units assigned to Fort Polk), rotational unit exercises, and facilities construction. The Army also proposes renewal of a Special Use Permit agreement with the Forest Service for continued use of Kisatchie National Forest lands to suport military training. The areas of the Kisatchie National Forest proposed for Army use are known as the Intensive Use Area and Limited Use Area of the Vernon Unit, Calcasieu Ranger District and the Special Limited Use Area (also known as Horse's Head) of the Kisatchie Ranger District.

Proposals for installation mission support involve 20 construction projects that would occur on Army lands, national forest lands, and at England Industrial Airpark in Alexandria, Louisiana. The projects include 13 facilities in the Fort Polk cantonment area, digitization and expansion of the Multi-Purpose Ranger Complex on Fort Polk's main post, road construction/improvements and construction of a sniper range in the Intensive Use Area, construction of 20 stream crossings in the Limited Use Area, construction of 20 stream crossings in the Limited Use Area, and 3 deployment support facilities at England Industrial Airpark. The JRTC and Fort Polk also propose to create additional helicopter training areas and to conduct limited types of non-live fire training on private lands.

The Army is the lead agency in preparing the FEIS, and the Forest Service and FAA are cooperating agencies. The decision to be made by the Army, based on the results of the EIS and upon consideration of all relevant factors (including mission, cost, technical factors, and environmental considerations) is how to provide for military training, readiness, and facilities requirements while ensuring the sustained use of resources entrusted to the stewardship of the Army. The Federal Aviation Administration (FAA) intends to rely on analyses in this EIS to make decisions concerning the Alexandria International Airport Layout Plan as it may be affected by three Army projects proposed to occur at the airport and consequent movement of aircraft, materiel, and personnel through that facility.

Based on the FEIS, the Forest Service has decided to authorize certain Army activities and land uses on Kisatchie National Forest lands and to thin, over a 10-year period, approximately 21,500 acres of upland pine stands in the Intensive Use Area to enhance habitat conditions for the endangered red-cockaded woodpecker. The Forest Service (in coordination with the U.S. Fish and Wildlife Service) has also decided to classify as ''deleted'' red-cockaded woodpecker clusters documented to have been inactive for a five-year period.

The FEIS identifies eight alternatives, two of which are analyzed in detail: (1) The proposed action, summarized above, and (2) a no action alternative. The FEIS also includes a mitigation and monitoring plan developed by the Army and Forest Service to rectify, reduce, or eliminate adverse effects to land cover, soils, water quality, and biological resources.

The Forest Service's decision is subject to appeal pursuant to 36 CFR 215.11. A written appeal, including attachments, must be postmarked or received within 45 days after the date of the legal notice of the decision is published in the Alexandria Daily Town Talk. The Appeal shall be sent to USDA, Forest Service, ATTN: Appeals Deciding Officer, 1720 Peachtree Rd., NW., Suite 811N, Atlanta, Georgia 30309–9102, within 45 days of the date of the legal notice. Appeals may be faxed to (404) 347–5401. Hand-delivered appeals must be received within normal business hours of 8 a.m. to 4:30 p.m. Appeals may also be mailed electronically in a common digital format to *appeals-southern-regional-office@fs.fed.us.* Appeals must meet the content requirements of 36 CFR 215.14. If no appeal is received, implementation of the decision may occur on, but not before, five business days from the close of the appeal filing period. If an appeal is received, implementation may not occur for 15 business days following the

date of appeal disposition (36 CFR 215.9).

Copies of the FEIS and Forest Service Record of Decision are available for review at the following libraries: Allen Parish Library (Oberlin Branch), 320 S. Sixth Street, Oberlin; Beauregard Parish Library, 205 South Washington Avenue, DeRidder; Calcasieu Public Library, 301 W. Claude Street, Lake Charles; East Baton Rouge Parish Library, 7711 Goodwood Boulevard, Baton Rouge; Lafayette Public Library, 301 W. Congress Street, Lafayette; Lincoln Parish Library, 509 West Alabama Avenue, Ruston; Natchitoches Parish Library, 431 Jefferson Street, Natchitoches; New Orleans Public Library (Orleans Parish), 219 Loyola Avenue, New Orleans; New Orleans Public Library (Algiers Point Branch), 725 Pelican Avenue, New Orleans; Ouachita Parish Library, 1800 Stubbs Avenue, Monroe; Rapides Parish Library, 411 Washington Street, Alexandria; Vernon Parish Library, 1401 Nolan Trace, Leesville; Sabine Parish Library, 705 Main Street, Many; and Shreve Memorial Library (Caddo Parish), 424 Texas Street (71101), Shreveport. The FEIS, as well as additional information concerning the EIS process, may be reviewed at *http://notes.tetratech-ffx.com/PolkEIS.nsf.*

Dated: March 9, 2004.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 04–5853 Filed 3–15–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notification of Plans for a Public Hearing on the Draft Environmental Impact Statement for the Proposed Low-Emission Boiler System Proof-of-Concept Project

AGENCY: National Energy Technology Laboratory, U.S. Department of Energy.

ACTION: Notice of public hearing.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality NEPA regulations (40 CFR parts 1500–1508), and the DOE Regulations Implementing NEPA (10 CFR part 1021), the U.S. Department of Energy (DOE), has issued a Draft Environmental Impact Statement (the Draft EIS) for the Low-Emission Boiler System Proof-of-Concept Project in Logan County, IL, and scheduled a public hearing in Elkhart, IL, to receive comments on the Draft EIS.

The Draft EIS (DOE/EIS–0284) has been distributed to members of Congress, Federal and state regulatory agencies, state and local government officials, national stakeholders, and other interested persons and organizations. Copies of the Draft EIS have been made available at the Elkhart Public Library for public review, and the Draft EIS is also available for review at the following Internet site: *http://www.eh.doe.gov/nepa/docs/deis/deis.html*.

DATES: DOE invites members of Congress; State, local, and tribal governments; other Federal agencies; and the general public to provide comments on the Draft EIS. The comment period on the Draft EIS runs through April 19, 2004; DOE will consider all comments received by that date in preparing a Final EIS. Comments received after April 19, 2004, will be considered to the extent practicable. Written, oral, fax, or e-mail comments will be considered (see **ADDRESSES**). DOE will conduct a public hearing on March 30, 2004, to provide an opportunity for the public to present comments on the draft document, ask questions, and discuss concerns with DOE officials regarding the Draft EIS. The date, time, and location for the public hearing are as follows: March 30, 2004, 7 p.m.–9 p.m., Elkhart Grade School, 206 South Gillett Street, Elkhart, IL. DOE officials will be available beginning at 5 p.m. on the day of the meeting for informal discussions on the project and the NEPA process. Displays and other forms of information about the proposed Low-Emission Boiler System Proof-of-Concept Project will be available.

ADDRESSES: A copy of the Draft EIS may be obtained upon request by writing to Lloyd Lorenzi, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, Pittsburgh, PA, 15236; by telephone (412) 386–6159; by facsimile (412) 386–4822; or by e-mail (*lorenzi@netl.doe.gov*).

Comments concerning the Draft EIS can be submitted by the means described above or by leaving a message at toll-free number 1–800–276–9851. Specific information regarding the public hearing can also be obtained from the DOE contact noted above.

FOR FURTHER INFORMATION CONTACT: For general information on the Low-Emission Boiler System Proof-of-Concept Project or the NEPA process for this Project, please contact Mr. Lloyd Lorenzi at the address provided above. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; telephone 202–586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The Draft EIS evaluates the potential environmental impacts of the Low-Emission Boiler System project that was proposed by Babcock Power, Inc., to demonstrate reliable and economical technologies for meeting the environmental performance requirements of coal-fired power generation. DOE's proposed action is to provide cost-shared funding of approximately $30 million (about 23.5% of the total cost) for the proposed project. The Department of Agriculture, Rural Utilities Service, is participating as a cooperating agency in the preparation of this EIS, and may provide financing for a portion of the proposed project. The project would involve constructing and operating a 91 megawatt-electric coal-fired generating plant on property owned by Turris Coal Company adjacent to its existing mining operations near Elkhart, IL. The plant would be owned and operated by Corn Belt Energy Corporation.

The Draft EIS also evaluates the environmental impacts of a no-action alternative under which DOE would not provide cost-shared funding. Alternative sites and technologies that were considered in developing the proposed project are also presented. The Draft EIS analyzes potential impacts on air quality, aesthetics and land use, surface water and groundwater, solid waste, traffic and transportation, ecological and cultural resources, noise, socioeconomics, environmental justice, and other resources.

Public Hearing Process: DOE will conduct a public hearing at the Elkhart Grade School, 206 South Gillett Street, Elkhart, IL, on March 30, 2004, at 7 p.m. In addition, the public is invited to an informal session at this location beginning at 5 p.m. to learn more about the proposed Low-Emission Boiler System project. Displays and other information about the project will be available, and DOE personnel will be present to discuss the proposed project and the NEPA process.

The formal hearing will begin at 7 p.m. DOE invites people who wish to speak at this public hearing to contact Mr. Lloyd Lorenzi, either by phone, fax, e-mail, or in writing (see **ADDRESSES** in this notice). People who do not arrange in advance to speak may register at the

meeting and will be provided opportunities to speak following previously scheduled speakers. Speakers will be requested to limit their initial comments to about five minutes. Speakers who need more than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, DOE may need to limit speakers to five minutes initially but will provide additional opportunities as time permits. Speakers may also provide written materials to supplement their presentations. Oral and written comments will be given equal consideration.

DOE will begin the meeting with an overview of the proposed Low-Emission Boiler System Project. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined. However, speakers may be asked questions to help ensure that DOE fully understands their comments or suggestions. A presiding officer will establish the order of speakers and provide any additional procedures necessary to conduct the meeting.

Issued in Pittsburgh, PA, on March 8, 2004.

Lloyd Lorenzi, Jr.,

NEPA Compliance Officer, National Energy Technology Laboratory.

[FR Doc. 04–5881 Filed 3–15–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Availability of the Final Environmental Assessment Addendum for Waste Disposition Activities at the Paducah Site, Paducah, KY

AGENCY: Oak Ridge Operations Office, Department of Energy (DOE).

ACTION: Notice of availability.

SUMMARY: The Department of Energy announces the availability of the Finding of No Significant Impact (FONSI) and Environmental Assessment Addendum (EA Addendum) for Waste Disposition Activities at the Paducah Site (DOE/EA–1339A). The EA Addendum has been prepared in accordance with the requirements of the National Environmental Policy Act of 1969 as amended (NEPA) (42 U.S.C. 4321 *et seq.*); Council on Environmental Quality regulations implementing NEPA, 40 CFR parts 1500–1508; and, DOE NEPA Implementing Procedures, 10 CFR part 1021.

The U.S. Department of Energy has completed an Environmental Assessment Addendum (DOE/EA–1339A) for the disposition of additional waste currently located at the Paducah Site, Paducah, Kentucky. This EA Addendum follows the original EA (DOE/EA–1339), completed November 5, 2002, which analyzed continued waste management operations including disposition of waste from the Paducah Site.

The EA Addendum analyzes transportation of additional waste for disposal at various locations in the United States. Based on the results of the impact analysis reported in the EA Addendum, DOE has determined that the proposed action is not a major federal action that would significantly affect the quality of the human environment within the context of the National Environmental Policy Act of 1969 (NEPA). Therefore, preparation of an environmental impact statement was not necessary, and DOE is issuing this Finding of No Significant Impact (FONSI).

ADDRESSES: Copies of the EA may be obtained from: U.S. Department of Energy, Paducah Site Office, Attn: Mr. Greg Bazzell, P.O. Box 1410, Paducah, KY 42001, by fax (1–270–441–6801), or electronically (*bazzellga@oro.doe.gov*).

The EA is available for review at the U.S. Department of Energy Environmental Information Center, Barkley Centre, 115 Memorial Drive, in Paducah, Kentucky. The EA is also available at the U.S. Department of Energy Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN 37830.

For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–4600, or leave a message at 1–800–472–2756.

Issued in Oak Ridge, Tennessee on March 8, 2004.

James L. Elmore,

Alternate Oak Ridge Operations, National Environmental Policy Act, Compliance Officer.

[FR Doc. 04–5882 Filed 3–15–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB) Chairs Meeting. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 21, 2004, 8:15 a.m.–5:15 p.m. Thursday, April 22, 2004, 8:15 a.m.–12:15 p.m.

ADDRESSES: Department of Energy, 1000 Independence Avenue, SW., Room 1E–245, Forrestal Building, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Jay Vivari, Program Management Specialist (EM–30.1), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5143.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the EM SSAB is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Wednesday, April 21

8:15 a.m. Welcome; Introductions; Meeting Expectations (Waisley; Schoener)
8:45 a.m. Round Robin on Sites' Key Issues, *e.g.* Risk-Based End States; Structure of the CABs; Future of CABs at Closure Sites, etc. (Preparation for A/S Roberson Meeting)
9:45 a.m. Break
10 a.m. Discussion with Assistant Secretary for Environmental Management Jessie Roberson; includes two minutes for expression of concerns from each site
10:45 a.m. Board's Discussion following Roberson Dialogue
11:45 a.m. Public Comment Period
Noon Lunch
1 p.m. Presentation on Risk-Based End States (RBES): Status at Headquarters; Reports on RBES from each site; Discussion on Public Participation in RBES; Paths Forward
2:30 p.m. Break
2:45 p.m. Resume and complete discussion on RBES
3:15 p.m. Presentation on EM's FY '05 Budget Request to Congress, Including High Level Waste Funding Issues; Discussion
4:15 p.m. Discussion on Possible End-of-Meeting Work Product
4:45 p.m. Public Comment Period
5 p.m. Wrap Up and Conclusion to Day One
5:15 p.m. Adjourn

Thursday, April 22, 2004

8:15 a.m. Welcome; Day One Recap; Day Two Expectations

8:30 a.m. Presentation on Responsibility for Long Term Stewardship (LTS) at Closure Sites vs. Responsibility for LTS at Sites with On-Going Missions; Discussion
9:45 a.m. Break
10 a.m. Presentation on TRU Waste and WIPP by EM; Discussion
10:45 a.m. Presentation on EM Headquarters Reorganization; Discussion
11 a.m. Discussion of Possible SSAB Workshop Topics, Dates, Locations; Initial Planning for Next Meeting
11:45 a.m. Public Comment Period
Noon Meeting Evaluation
12:15 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jay Vivari at the address above or by telephone at (202) 586–5143. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4.p.m., Monday–Friday except Federal holidays. Minutes will also be available by calling Jay Vivari at (202) 586–5143.

Issued at Washington, DC, on March 10, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–5883 Filed 3–15–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, April 6, 2004, 6 p.m.–9 p.m.

ADDRESSES: Fernald Closure Project Site, 7400 Willey Road, Trailer 214, Hamilton, OH 45253.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6 p.m. Call to Order
6–8 p.m. Tour of Silos Project Area
8–8:30 p.m. Chair's Remarks, Ex Officio Announcements and Updates
8:30–8:45 p.m. Update on Stewardship Issues
8:45–9 p.m. Public Comment
9 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, c/o Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on March 11, 2004.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–5884 Filed 3–15–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the Form FE–746R, ''Imports and Exports of Natural Gas,'' to the Office of Management and Budget (OMB) for revision and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq).

DATES: Comments must be filed by April 15, 2004. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*,

the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Form FE–746R, ''Import and Export of Natural Gas.''
2. Office of Fossil Energy.
3. OMB Number 1901–0294.
4. Revision and Three-year extension.
5. Mandatory.
6. Form FE–746R collects data to be used by the Office of Fossil Energy from persons seeking authorization to import or export natural gas, and the information collected monthly and quarterly to monitor such trade under the North American Free Trade Agreement (NAFTA), as well as other trade falling outside the parameters of NAFTA.
7. Business or other for-profit.
8. 10320 (300 respondents × 16.5 responses per year × 2.08 hours per response).

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

Issued in Washington, DC, February 26, 2004.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group Energy Information Administration.

[FR Doc. 04–5880 Filed 3–15–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–208–000]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

March 10, 2004.

Take notice that on March 4, 2004, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fiftieth Revised Sheet No. 7 and Fiftieth Revised Sheet No. 8, with a proposed effective date of March 1, 2004.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules FSS and SST. The costs of the above referenced storage service comprise the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 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 e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–603 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12141–001]

Energy Recycling Company; Notice of Surrender of Preliminary Permit

March 10, 2004.

Take notice that the permittee for the subject project has requested to surrender its preliminary permit. Investigations and feasibility studies have shown that the project would not be economically feasible.

Project No.	Project name	Stream	State	Expiration date
12141–001	Proposed Pumped Storage	None	OR	06–30–2005

The permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. E4–598 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–76–000]

Equitrans, L.P.; Notice of Application

March 8, 2004.

Take notice that on March 1, 2004, Equitrans, L.P. (Equitrans), 100 Allegany Center, Pittsburgh, PA 15275, filed in

Docket No. CP04–76–000 an application pursuant to section 7 of the Natural Gas Act (NGA) for all of the necessary authorizations required to refunctionalize certain of its facilities from transmission/storage to gathering, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The facilities that Equitrans is seeking to refunctionalize include: (1) Approximately 275 miles of low-pressure, predominantly small diameter pipeline; (2) 14 compressor engines, located at 8 compressor stations, having a total of 14,395 horsepower; and (3) various meters and appurtenant facilities, all of which are primarily used to gather gas from numerous gas wells in Pennsylvania and West Virginia and transport such gas to Equitrans' downstream transportation facilities. The facilities are located in Armstrong and Greene Counties, Pennsylvania; and Armstrong, Braxton, Doddridge, Lewis, Marion and Wetzel Counties, West Virginia. Equitrans states that concurrently with the submission of this application, it is also submitting an application under section 4 of the NGA seeking approvals for the rate treatment associated with the refunctionalized facilities.

Equitrans further requests that the Commission grant any waivers of its regulations that the Commission may deem necessary to grant the authorizations requested in its application.

Any questions concerning this application may be directed to David K. Dewey, General Counsel, Equitrans, L.P., 100 Allegheny Center, Pittsburgh, PA 15275, at (412) 395–2566 and Mark Cook, BakerBotts, L.P., Pennsylvania Avenue, NW., Washington, DC 20004, at 202 639–7779.

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 on or before the date as indicated below. 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 ''e-Filing'' link.

Comment Date: March 22, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–566 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–023]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rates

March 10, 2004.

[Docket No. RP02–361–023]

Take notice that on March 4, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet Nos. 8T and 8U, reflecting an effective date of January 1, 2004.

Gulfstream states that this filing is being made to implement a Loan negotiated rate transaction under Rate Schedule PALS pursuant to Section 31 of the General Terms and Conditions of Gulfstream's FERC Gas Tariff. Gulfstream states that Original Sheet Nos. 8T and 8U identify and describe the negotiated rate agreement, including the exact legal name of the relevant shipper, the negotiated rate, the rate schedule, the contract term, and the contract quantity. Gulfstream also states that Original Sheet Nos. 8T and 8U include footnotes where necessary to provide further details on the agreement listed thereon.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 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 e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–601 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-209-000]

KO Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

March 10, 2004.

Take notice that on March 5, 2004, KO Transmission Company (KOT) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourteenth Revised Sheet No. 10, to become effective April 1, 2004.

KOT states that the proposed change is made pursuant to the provisions of Section 24, Transportation Retainage Adjustment of the General Terms and Conditions (GT&C) of KOT's Tariff, which provides that KOT may adjust its fuel retainage as operating conditions warrant. KOT states that the proposed change will lower KOT's retainage to 1.00%, from its current rate of 1.05%.

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 e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–604 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–207–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 10, 2004.

Take notice that on March 4, 2004, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 303A, with an effective date of April 3, 2004. Northern Border is also filing certain potentially non-conforming Global Agreements.

Northern Border states that certain Agreements are being submitted for the Commission's review and information and have been listed on the tendered tariff sheets as potentially nonconforming agreements.

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 e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–602 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–70–000]

Northern Natural Gas Company; Notice of Application

March 10, 2004.

Take notice that Northern Natural Gas Company (Northern Natural), 1111 South 103rd Street, Omaha Nebraska 68124, filed in Docket No. CP04–70–000 on February 27, 2004 an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, to abandon by sale to Sid Richardson Gas Pipeline, Ltd. (Richardson), certain pipeline facilities, with appurtenances consisting of 50 miles of 24-inch diameter pipeline (Northern Natural's B-Line), located in Winkler, Ward, Reeves and Pecos Counties, Texas, together with delivery and receipt points located along the length of the pipeline. Northern Natural also proposes to abandon by removal certain associated interconnects and cross-over pipeline and valves, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web 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 (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Michael T. Loeffler, Director, Certificates and Reporting, Northern Natural, 1111 South 103rd Street, Omaha Nebraska, at (402) 398–7103.

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, before the comment date of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

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.

Comment Date: March 31, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–606 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–374–005]

Northwest Pipeline Corporation; Notice of Negotiated Rates

March 10, 2004.

Take notice that on March 5, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised

Volume No. 1, Eighth Revised Sheet No. 375, to be effective April 5, 2004.

Northwest states that the purpose of this filing is to replace the shipper name Calpine Energy Services, L.P. (Calpine) with Goldendale Energy Center, LLC (Goldendale) on the list of negotiated rate service agreements contained in Northwest's Tariff. Northwest states that the shipper name is revised to reflect the assignment of Calpine's negotiated rate service agreement to Goldendale.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested State regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 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 e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–595 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–081, EL00–95–074, EL00–95–086, EL00–98–069, EL00–98–062, and EL00–98–073]

San Diego Gas & Electric Company Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange; Notice of Conference

March 9, 2004.

The staff of the Federal Energy Regulatory Commission is convening a conference to discuss a settlement reached by some of the parties in the above captioned proceeding. The conference will be held on Thursday, March 18, 2004, from 1 p.m. to 5 p.m. at: Pacific Gas and Electric Company, Conference Room A, 245 Market Street, San Francisco, California.

The purpose of the conference is to inform parties of the terms of a settlement agreement recently entered into between the Williams Companies, Inc. and Williams Power Company, Inc. (collectively, Williams), on the one hand, and Southern California Edison Company and Pacific Gas and Electric Company, on the other. The settlement provides that certain additional parties may elect to join the settlement as to Williams and receive refunds in accordance with the settlement's terms. The conference will be governed by rule 602 of the Commission's rules of practice and procedures, 18 CFR 385.602 (2003). For additional information concerning the conference, interested persons may contact Robert Pease at *robert.pease@ferc.gov* or Lee Ann Watson *leeann.watson@ferc.gov*. No telephone communication bridge will be provided at this conference.

Magalie R. Salas,

Secretary.

[FR Doc. E4–563 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-99-001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

March 10, 2004.

Take notice that on March 5, 2004, Tennessee Gas Pipeline Company, (Tennessee) tendered for filing as part of its FERC Gas Tariff, the pro forma tariff sheets attached at Appendix A to the filing.

Tennessee states that the tariff sheets are being filed in compliance with the Commission's Order issued January 26, 2004, in the referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–605 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–60–004]

Trunkline LNG Company, LLC; Notice of Filing

March 8, 2004.

Take notice that on February 27, 2004, Trunkline LNG Company, LLC

(Trunkline LNG), P.O. Box 4967, Houston, Texas 77210–4967, filed in the captioned docket an abbreviated application, pursuant to section 3(a) of the Natural Gas Act (NGA) and part 157 of the Commission's rules and regulations, to amend the authority granted for its LNG Terminal Expansion Project by Commission Order dated December 18, 2002, in Docket Nos. CP02–60–000, as amended by the October 27, 2003, order in Docket No. CP02–60–003. The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Trunkline LNG requests authorization to amend its Original Expansion Project, as amended, with the following modifications: the layberth will be converted into an LNG unloading dock. Three LNG unloading arms, one vapor return/delivery arm, and support trestles will be installed. These facilities will permit continuous unloading of ships from either of the two docks; however, no simultaneous unloading of LNG ships will occur. The facilities will be designed to provide a maximum allowable operating pressure (MAOP) of 1,261 psig. The amended expansion project is needed to provide additional firm vaporization service and increased sendout capability for Trunkline LNG's customer, BG LNG Services, LLC (BGLS). The modification will not change the level of Trunkline LNG terminal's storage capacity of 9.0 Bcf. The sustained sendout capacity of the terminal will be increased from 1.2 to 1.8 Bcf/d, with 2.1 Bcf/d peak sendout capacity. BGLS will have 100% of the terminal's expanded capacity under a long-term contract which terminates on December 31, 2023.

Any questions regarding the application are to be directed to William W. Grygar, Vice President of Rates and Regulatory Affairs, 5444 Westheimer Road, Houston, Texas 77056.

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 below listed 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 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 19, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–570 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG04–38–000, et al.]

Redbud Energy LP, et al.; Electric Rate and Corporate Filings

March 9, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Redbud Energy LP

[Docket No. EG04–38–000]

Take notice that on March 5, 2004, Redbud Energy LP (Redbud) tendered for filing with the Commission an application for redetermination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Comment Date: March 26, 2004.

2. Covanta Union, Inc.

[Docket Nos. ER03–1085–002 and ER04–616–000]

Take notice that on March 3, 2004, Covanta Union, Inc. (Covanta Union) tendered for filing: (1) A notice of change in facts from those described in its application for authorization to sell power at market-based rates; (2) a triennial market power analysis; and (3) a revised market-based rate tariff in compliance with the Commission's order issued November 17, 2003, in Docket No. EL01–118–000, Investigation

of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003). Covanta Union's filing also revises the format of its market-based rate tariff to comply with the Commission's rules in Order No. 614, Designation of Electric Rate Schedule Sheets, 90 FERC ¶ 61,352 (2000). Covanta Union requests an effective date of March 4, 2004, for the revisions to its market-based rate schedule.

Covanta Union states that a copy of this filing was served on the New Jersey Board of Public Utilities.

Comment Date: March 24, 2004.

3. FPL 251 Wind, LLC

[Docket No. ER04–124–001]

Take notice that on February 20, 2004, the FPL 251 Wind, LLC filed a withdrawal of their Rate Schedule Nos. 1 through 4.

Comment Date: March 22, 2004.

4. Mid-Continent Area Power Pool

[Docket No. ER04–155–001]

Take notice that on February 27, 2004, the Mid-Continent Area Power Pool (MAPP) submitted additional information regarding their November 4, 2003 filing of an amendment to section 21.2 of Schedule F, which governs modifications of transmission service on a firm basis. MAPP requests a March 1, 2004, effective date of the Schedule F amendment filed on November 4, 2003, and accepted by the Commission on December 11, 2003.

Comment Date: March 19, 2004.

5. New York Independent System Operator, Inc.

[Docket No. ER04–294–002]

Take notice that on March 5, 2004, the New York Independent System Operator, Inc. (NYISO) tendered for filing corrected tariff sheets to its Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff) filed March 3, 2004, in compliance with the Commission's February 2, 2004, order in Docket No. ER04–294–000.

NYISO states that copies of this filing have been served on all parties listed on the official service list maintained by the Secretary of the Commission in these proceedings. The NYISO has also served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission, and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: March 26, 2004.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER04–621–000]

Take notice that on March 5, 2004, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an Interconnection Agreement by and between Con Edison and Astoria Energy LLC. Con Edison states that the agreement provides for the interconnection to Con Edison's transmission system of a 1,000 MW electric generating facility that Astoria Energy LLC proposes to construct and operate in the Borough of Queens, New York.

Con Edison states that copies of this filing have been served on Astoria Energy LLC and the New York Independent System Operator, Inc.

Comment Date: March 26, 2004.

7. Redbud Energy LP

[Docket No. ER04–622–000]

Take notice that on March 5, 2004, Redbud Energy LP (Redbud) tendered for filing its proposed tariff and supporting cost data for its proposed rates to recover costs associated with its ownership of a switchyard on the Oklahoma Gas & Electric Company transmission network. Redbud requests an effective date of May 4, 2004.

Comment Date: March 26, 2004.

8. New England Power Pool

[Docket No. ER04–623–000]

Take notice that on March 8, 2004, the New England Power Pool (NEPOOL) Participants Committee filed revisions to NEPOOL Market Rule 1 to allow Self-Scheduled generating Resources to receive in defined circumstances Operating Reserve Credits during non-Self-Scheduled hours. A March 1, 2004, effective date is requested.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: March 29, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–564 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF03–2011–001, et al.]

United States Department of Energy, et al.; Electric Rate and Corporate Filings

March 8, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. U.S. Department of Energy Bonneville Power Administration

[Docket No. EF03–2011–001]

Take notice that on March 2, 2004, the Bonneville Power Administration (BPA) tendered for filing an amendment to its July 29, 2003, filing of a proposed Safety-Net Cost Recovery Adjustment Clause under the 2002 General Rate Schedule Provisions pursuant to section 7(a)(2) of the Pacific Northwest Electric Power Planning and Conversation Act, 16 U.S.C. 839e(a)(2).

Comment Date: March 23, 2004.

2. Central Hudson Gas & Electric Corp.

[Docket No. ER97–2872–004]

Take notice that on March 4, 2004, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing (1) an updated market power analysis in compliance with the Commission's Order in Docket No. ER97–2872–000 granting Central Hudson market-based rate authority, and (2) an amendment to its market-

based rate tariff to adopt the Commission's new Market Behavior Rules issued in Docket No. EL01–118.

Comment Date: March 25, 2004.

3. Michigan Electric Transmission Company, LLC

[Docket No. ER02–320–007]

Take notice that on March 3, 2004, Michigan Electric Transmission Company, LLC (METC), in compliance with the terms of the Commission's orders of February 13, 2002, and March 29, 2002, in Docket Nos. EC02–23–000, *et al.*, submitted a request to extend the deferral mechanisms and rate moratorium previously approved by the Commission.

METC states that copies of this filing have been served upon all transmission customers within the METC pricing zone within the Midwest Independent Transmission System Operator, Inc. and on the Michigan Public Service Commission.

Comment Date: March 24, 2004.

4. New York Independent System Operator, Inc.

[Docket No. ER03–647–005]

Take notice that on February 26, 2004, New York Independent System Operator, Inc. (NYISO) in compliance with the Commission's May 20, 2003, Order in Docket No. ER03–647–000 submitted a Report on Status of Regional Adequacy Markets Working Group.

Comment Date: March 18, 2004.

5. ISO New England, Inc.

[Docket No. ER04–23–004]

Take notice that on February 27, 2004, ISO New England Inc. (ISO) filed an informational filing submitting notification that one of the generating units covered by the Amended Reliability Agreement between the ISO and Devon Power LLC (Devon) is no longer need for reliability purposes and stating that the ISO will terminate the Amended Reliability Agreement with respect to one of Devon's units.

ISO states that copies of the filing have been served upon all parties to the proceedings.

Comment Date: March 24, 2004.

6. PSI Energy, Inc.

[Docket No. ER04–90–001]

Take notice that on March 3, 2004, PSI Energy, Inc. (PSI), submitted a compliance filing pursuant to the letter order issued December 1, 2003, in Docket No. ER04–90–000.

PSI states that a copy of this is being served on Hoosier Energy Rural Electric Cooperative, Inc., Southern Indiana Gas and Electric Company and the Indiana Utility Regulatory Commission.

Comment Date: March 24, 2004.

7. New York Independent System Operator, Inc.

[Docket No. ER04–294–001]

Take notice that on March 3, 2004, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing in connection with the Commission's February 2, 2004, order in Docket No. ER04–294–000.

The NYISO states that it has served a copy of this filing to all parties listed on the official service list maintained by the Secretary of the Commission in these proceedings. The NYISO also states that it has also served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: March 24, 2004.

8. Commonwealth Edison Company

[Docket No. ER04–393–001]

Take notice that on March 2, 2004, Commonwealth Edison Company (ComEd) tendered for filing additional information with respect to interconnection agreements between ComEd and Zilkha Renewable Energy Midwest I, LLC, and between ComEd and Zilkha Renewable Energy Midwest VI, LLC filed with the Commission on January 12, 2004.

Comment Date: March 23, 2004.

9. Orion Power Midwest, LP

[Docket No. ER04–500–001]

Take notice that on March 3, 2004, Orion Power MidWest, LP filed its Rate Schedule No. 1 to comply with the letter order of the Commission in Docket No. ER04–500–000 issued February 25, 2004.

Comment Date: March 24, 2004.

10. Vermont Electric Cooperative, Inc.

[Docket No. ER04–519–001]

Take notice that on March 3, 2004, Vermont Electric Cooperative, Inc. (VEC) tendered for filing an amendment to its initial rate filing in Docket No. ER04–519–000, and designated its amendment as proposed First Revised Rate Schedule FERC No. 10.

VEC states that each of the customers under the rate schedule, Citizens, the Vermont Public Service Board, and the Vermont Department of Public Service were mailed copies of the filing.

Comment Date: March 24, 2004.

11. Onondaga Cogeneration Limited Partnership

[Docket No. ER04–546–001]

Take notice that on March 4, 2004, Onondaga Cogeneration Limited Partnership (Onondaga), pursuant to a request from Commission staff, submitted for filing a Substitute Original Sheet No. 2 to its market-based rate tariff deleting a reference to sales of black start capacity into the market administered by the New York Independent System Operator.

Comment Date: March 25, 2004.

12. California Independent System Operator Corporation

[Docket No. ER04–609–000]

Take notice that on March 2, 2004, the California Independent System Operator Corporation (ISO) tendered for filing a revision to the ISO Tariff, Amendment No. 58, for acceptance by the Commission. The ISO states that the purpose of Amendment No. 58 is to (1) clarify the application of the Tolerance Band during Waiver Denial Periods; (2) define Constrained Output Generation; (3) clarify the implementation of Uninstructed Deviation Penalties to dynamically scheduled System Resources; and (4) provide for consistent treatment of unit data for Reliability Must-Run and market transactions. The ISO is requesting that the amendment be made effective on the later of May 1, 2004, or when the Phase 1–B modifications are put into service.

The ISO states that this filing has been served on the Public Utilities Commission, the California Energy Commission, the California Electricity Oversight Board, parties in Docket No. ER03–1046, and parties with effective Scheduling Coordinator Agreements under the ISO Tariff.

Comment Date: March 23, 2004.

13. Kentucky Utilities Company

[Docket No. ER04–610–000]

Take notice that on March 2, 2004, Kentucky Utilities Company (KU) submitted for filing, pursuant to section 205 of the Federal Power Act and part 35 of the Commission's regulations, an amendment to a Service Agreement between KU and City of Nicholasville, Kentucky, for the addition of a new metering point, Substation No. 8, for wholesale power service.

KU states that a copy of this filing has been served upon the City of Nicholasville, Kentucky.

Comment Date: March 23, 2004.

14. BP West Coast Products LLC—Wilmington Calciner

[Docket No. ER04–611–000]

Take notice that on March 2, 2004, BP West Coast Products LLC—Wilmington Calciner submitted a Notice of Change of Legal Name changing ARCO CQC Kiln, Inc., to BP West Coast Products LLC—Wilmington Calciner effective January 1, 2002.

Comment Date: March 23, 2004.

15. PPL Electric Utilities Corporation

[Docket No. ER04–612–000]

Take notice that on March 3, 2004, PPL Electric Utilities Corporation (PPL Electric) filed an Interconnection Agreement between PPL Electric and the Borough of Ephrata, Pennsylvania. PPL Electric request an effective date of February 1, 2004.

PPL Electric states that it has served a copy of this filing on the Borough of Ephrata.

Comment Date: March 24, 2004.

16. PPL Electric Utilities Corporation

[Docket No. ER04–613–000]

Take notice that on March 3, 2004, PPL Electric Utilities Corporation (PPL Electric) filed an Interconnection Agreement between PPL Electric and the Borough of Perkasie, Pennsylvania. PPL Electric requests an effective date of February 1, 2004.

PPL Electric states that it has served a copy of this filing on the Borough of Perkasie.

Comment Date: March 24, 2004.

17. PJM Interconnection, LLC

[Docket No. ER04–614–000]

Take notice that on March 3, 2004, PJM Interconnection, LLC (PJM), submitted for filing an executed interconnection service agreement (ISA) among PJM, Conectiv Atlantic Generation, LLC, and Atlantic City Electric Company d/b/a Conectiv Power Delivery. PJM requests a waiver of the Commission's 60-day notice requirement to permit a February 29, 2004, effective date for the ISA.

PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: March 24, 2004.

18. New York Independent System Operator, Inc.

[Docket No. ER04–615–000]

Take notice that on March 3, 2004, the New York Independent System Operator, Inc. (NYISO), filed modifications to recently-approved provisions contained in its December 12, 2003, filing, in which the NYISO proposed to revise its Open Access Transmission Tariff (OATT) and Market Administration and Control Area Services Tariff (Services Tariff) to reduce the magnitude of congestion rent shortfalls. NYISO states that the proposed modifications will change the OATT and Services Tariff to include the appropriate Point of Injection and Point of Withdrawal for two sets of Existing Transmission Capacity for Native Load (ETCNL) listed in both Table 2 of Attachment M of the OATT and Table 1 of part IV of Attachment B of the Services Tariff. The NYISO has requested that the modifications become effective on February 2, 2004, the date that the provisions in the December 12, 2003, filing became effective.

The NYISO states that it has served a copy of this filing upon all parties that have executed Service Agreements under the NYISO's OATT or Services Tariff, the New York State Public Service Commission, and the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: March 24, 2004.

19. Black River Generation, LLC

[Docket No. ER04–617–000]

Take notice that on March 4, 2004, Black River Generation, LLC filed with the Commission an application pursuant to section 205 of the Federal Power and part 35 of the Commission's regulations for authorization to sell energy, capacity, and ancillary services wholesale at market-based rates.

Comment Date: March 25, 2004.

20. American Transmission Systems, Incorporated

[Docket No. ER04–618–000]

Take notice that on March 4, 2004, American Transmission Systems, Incorporated (ATSI) tendered for filing a proposed Schedule 2—Reactive Supply and Voltage Control from Generation Sources Service under its Open Access Transmission Tariff, ATSI FERC Electric Tariff, Third Revised Volume No. 1 and a new Schedule 2.1—Revenue Requirement for Reactive Power.

ATSI states that the proposed Schedule 2 and 2.1 are intended to allow collection of revenues associated with the supply of Reactive Supply Service within the FirstEnergy Control Area by multiple generation suppliers and the distribution of all revenues collected in a fair and equitable manner. ATSI has proposed to make the revisions effective on May 1, 2004.

Comment Date: March 25, 2004.

21. Virginia Electric and Power Company

[Docket No. ER04–619–000]

Take notice that on March 4, 2004, Virginia Electric and Power Company (d/b/a Dominion Virginia Power) tendered for filing revised rate schedule sheets (Revised Sheets) in its First Revised Rate Schedule FERC No. 109 (Rate Schedule) with Virginia Municipal Electric Association No. 1 (VMEA). Dominion Virginia Power states that, consistent with the terms of the Rate Schedule, the Revised Sheets provide for the advance payment for construction of excess facilities with a voltage-appropriate carrying charge and modify the rates for service. Dominion Virginia Power requests waiver of the Commission's regulations to allow the Revised Sheets to become effective as of April 1, 2004.

Dominion Virginia Power states that copies of the filing were served upon VMEA, the North Carolina Utilities Commission and the Virginia State Corporation Commission.

Comment Date: March 25, 2004.

22. American Transmission Systems, Incorporated

[Docket No. ER04–620–000]

Take notice that on March 4, 2004, American Transmission Systems, Incorporated (ATSI) tendered for filing a revised Generator Interconnection and Operating Agreement (GIOA) to provide a connection of electric generating facilities owned and operated by Troy Energy, LLC to the ATSI Transmission System and for coordination of the operation and maintenance of those facilities with ATSI. ATSI states that the revisions to the GIOA were negotiated in conjunction with settlement discussions in *Troy Energy, LLC*, Docket No. ER03–1396–000. ATSI has proposed to make the revisions effective on May 1, 2004.

Comment Date: March 25, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the

extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–571 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2192–009]

Consolidated Water Power Company; Notice of Availability of Environmental Assessment

March 10, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has prepared an Environmental Assessment (EA) for an application requesting Commission approval for the transfer of project land and water withdrawal for the Biron Hydroelectric Project. The project is located on the Wisconsin River in Wood and Portage Counties in central Wisconsin. The Biron Dam is located at river mile 219 in the Village of Biron.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that the transfer of land and water withdrawal would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is attached to the March 5, 2004 Commission Order titled ''Order Amending License for Non-Project Use of Project Lands and Waters,'' which is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (prefaced by P–) in the docket number field to access the document. For assistance, contact FERC On Line Support at *FERCOnlineSupport@ferc.gov* or call toll free at (866) 208–3676, or for TTY contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–600 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2056–016]

Northern States Power Company (Xcel Energy); Notice of Availability of Final Environmental Assessment

March 8, 2004.

In accordance with the National Environmental Policy Act of 1969 and Part 380 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380; FERC Order No. 486 and 52 FR 47897, the Office of Energy Projects Staff (staff) reviewed the application for a new license for the St. Anthony Falls Hydroelectric Project, located on the Mississippi River in the city of Minneapolis in Hennepin County, Minnesota, and prepared a final environmental assessment (EA) for the project. The project does not use or occupy any federal facilities or lands.

In this final EA, the staff analyzes the potential environmental effects of the existing project and concludes that licensing the project, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the final EA and application is available for review at the Commission in the Public Reference Room, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–568 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To Prepare an Environmental Impact Statement and Notice of Scoping Meetings and Soliciting Scoping Comments

March 9, 2004.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* New major license.

b. *Project No.:* 2114–116.

c. *Date Filed:* October 29, 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 portions of 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. 791(a)–825(r).

h. *Applicant Contact:* Ms. Laurel Heacock, Licensing Manager, Public Utility District No. 2 of Grant County, 30 C Street, SW., Ephrata, Washington 98823, telephone (509) 754–6622.

i. *FERC Contact:* Charles Hall, telephone (202) 502–6853, e-mail *charles.hall@ferc.gov*.

j. *Deadline for Filing Scoping Comments:* May 3, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application is not ready for environmental analysis at this time.

l. The project includes two developments with a total authorized capacity of 1,755 megawatts (MW) as follows: (a) The Wanapum development consisting of a dam 186.5 feet high and 8,637 feet long with upstream fish passage facilities, a reservoir with an approximate surface area of 14,680 acres, a powerhouse with ten turbine-generator units with a total nameplate capacity of 900 MW, transmission lines, and appurtenant facilities; and (b) the Priest Rapids development consisting of a dam 179.5 feet high and 10,103 feet long with upstream fish passage facilities, a reservoir with an approximate surface area of 7,725 acres, a powerhouse with ten turbine-generator units with a total nameplate capacity of 855 MW, transmission lines, and appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:* The Commission staff intends to prepare an Environmental Impact Statement (EIS) on the project in accordance with the National Environmental Policy Act. The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings: The Commission staff will conduct a site visit, one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, resource agencies, and Indian tribes are invited to attend one or all of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EIS. The times and locations of these meetings are as follows:

Site Visit

When: Tuesday, April 6, 2004, 9 a.m. to 3 p.m.

Where: Meet at Wanapum Dam at 9 a.m. near Beverly, Washington; RSVP to Applicant Contact (item h) by March 22.

Public Scoping Meeting

When: Tuesday, April 6, 2004, 7 p.m. to 9 p.m.

Where: Moses Lake Convention Center, 1475 Nelson Rd, NE., Moses Lake, WA.

Agency Scoping Meeting

When: Wednesday, April 7, 2004, 9:30 a.m. to 2:30 p.m.

Where: Moses Lake Convention Center, 1475 Nelson Rd, NE., Moses Lake, WA.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EIS were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link (*see* item m above).

Objectives: At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EIS; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EIS; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures: The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Magalie R. Salas,

Secretary.

[FR Doc. E4–561 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2207–009]

Mosinee Paper Corporation; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests and Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

March 9, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 2207–009.

c. *Date Filed:* December 18, 2002.

d. *Applicant:* Mosinee Paper Corporation.

e. *Name of Project:* Mosinee Hydroelectric Project.

f. *Location:* On the Wisconsin River in the town of Mosinee, Marathon County, Wisconsin. The project does not utilize lands of the United States.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeff Verdoorn, Mosinee Paper Corporation, 100 Main Street, Mosinee, Wisconsin 54455, (715) 693–2111.

i. *FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

j. Pursuant to section 4.34(b) of the Commission's Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991), the deadline for filing comments, interventions, protests, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice. Reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly

encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

l. *Filing and Service of Responsive Documents*—(All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''PROTEST,'' ''MOTION TO INTERVENE,'' ''RECOMMENTDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

The Commission's rules of practice and procedure also require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

m. *Status of Environmental Analysis:* This application has been accepted and is ready for environmental analysis at this time.

n. *Description of Project:* The existing Mosinee Project consists of: (1) Three dam sections spanning bedrock islands described from east to west side as comprised of; (a) a 392–foot-long concrete-capped overflow spillway dam, with flashboards; (b) a middle concrete-capped overflow spillway dam; (c) the western most dam section called a guardhouse with 9 lift gates and 4 stop log sections; (2) a 1,377–acre reservoir at normal pool elevation of 1137.75 feet msl; (3) an 850–foot-long power canal; (4) two powerhouses are at the end of the power canal with a total installed capacity of 3,050–kilowatts; (5) two 18–foot-wide, 9–foot-high Taintor gates; (6) two 2000–foot-long, 5 kilo-volt transmission lines; and (7) appurtenant facilities. The applicant estimates that the average annual generation is 23,680 megawatthours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. *Procedures Schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. The Staff intends to issue a Notice of Availability of EA in June 2004. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to the staff proposed alternative procedure, they should file comments as stipulated in item j above, briefly explaining the basis for their objection.

q. Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E4–562 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2207–009]

Mosinee Paper Corporation; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests and Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

March 8, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2207–009.

c. *Date Filed:* December 18, 2002.

d. *Applicant:* Mosinee Paper Corporation.

e. *Name of Project:* Mosinee Hydroelectric Project.

f. *Location:* On the Wisconsin River in the town of Mosinee, Marathon County, Wisconsin. The project does not utilize lands of the United States.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeff Verdoorn, Mosinee Paper Corporation, 100 Main Street, Mosinee, Wisconsin 54455 (715) 693–2111.

i. *FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

j. Pursuant to § 4.34(b) of the Commission's Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991), the deadline for filing comments, interventions, protests, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice. Reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, motions to intervene, protests, recommendations, terms and

conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. *Status of environmental analysis:* This application has been accepted and is ready for environmental analysis at this time.

l. *Description of Project:* The existing Mosinee Project consists of: (1) Three dam sections spanning bedrock islands described from east to west side as comprised of; (a) a 392-foot-long concrete-capped overflow spillway dam, with flashboards; (b) a middle concrete-capped overflow spillway dam; (c) the western most dam section called a guardhouse with 9 lift gates and 4 stop log sections; (2) a 1,377-acre reservoir at normal pool elevation of 1137.75 feet msl; (3) an 850-foot-long power canal; (4) two powerhouses are at the end of the power canal with a total installed capacity of 3,050-kilowatts; (5) two 18-foot-wide, 9-foot-high Taintor gates; (6) two 2000-foot-long, 5 kilo-volt transmission lines; and (7) appurtenant facilities. The applicant estimates that the average annual generation is 23,680 megawatthours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', ''PROTEST'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

n. *Procedures schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to the staff proposed alternative procedure, they should file comments as stipulated in item j above, briefly explaining the basis for their objection. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Issue Notice of availability of EA: June 2004.

o. This notice also consists of the following standard paragraphs:

B1. *Protests or Motions to Intervene:* Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E4–565 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1979–012]

Wisconsin Public Service Corporation; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

March 8, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 1979–012.

c. *Date Filed:* June 21, 2002.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Alexander Hydroelectric Project.

f. *Location:* On the Wisconsin River near the City of Merrill, Lincoln County, Wisconsin. The project occupies 3.59 acres of public land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. David W. Harpole, Wisconsin Public Service Corporation, 700 N. Adams Street, P.O. Box 19002, Green Bay, Wisconsin 54307 (920) 433–1264.

i. *FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

j. Pursuant to § 4.34(b) of the Commission's Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991), the deadline for filing comments, interventions, protests, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice. Reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission

to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. *Status of environmental analysis:* This application is ready for environmental analysis at this time.

l. *Description of Project:* The existing project consists of: (1) A dam, described from east to west side as comprised of a gated spillway controlled by 11 Taintor gates each measuring 26-feet-wide and 15-feet-high, the powerhouse, a 385-foot-long concrete wall with earth backfill, and a 515-foot-long, 20-foot-high earthen embankment dam; (2) a reservoir with a surface area of 803 acres and, a 7,000 acre-foot storage volume at normal pond elevation; (3) the powerhouse contains three generating units with an total installed capacity of 4,200-kilowatts (4) a transmission substation; and (5) appurtenant facilities. The applicant estimates that the average annual generation is 23,550 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', ''PROTEST'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

n. *Procedures schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to the staff proposed alternative procedure, they should file comments as stipulated in item j above, briefly explaining the basis for their objection. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Issue Notice of availability of EA: June 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–567 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2180–007]

PCA Hydro Inc.; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

March 8, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New major license.

b. *Project No.:* 2180–007.

c. *Date Filed:* June 26, 2001.

d. *Applicant:* PCA Hydro Inc.

e. *Name of Project:* Grandmother Falls Hydroelectric Project.

f. *Location:* On the Wisconsin River near the town of Bradley, Lincoln County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kenneth Schulz, Packaging Company of America, N9090 County Road E, Tomahawk, Wisconsin 54487 (715) 453–2131 Ext. 499.

i. *FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov*, (202) 219–2846.

j. Pursuant to § 4.34(b) of the Commission's regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991), the deadline for filing comments, interventions, protests, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice. Reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time.

l. *Description of Project:* The existing project consists of: (1) A 39-foot-high, 450-foot-long concrete gravity dam with integral powerhouse and a gated section containing 8 Taintor gates; (2) a 370-foot-long, rock-filled dike with clay core; (3) a 758 acre reservoir with a normal storage capacity of 1,940 area-feet, at a normal pool elevation of 1,419.3 mean sea level; (4) a

powerhouse containing three Francis turbines connected to generators with a combined capacity of 3,000 kW, and an average annual generation 17,897 MWh; (5) a 2,900-foot-long transmission line extending from the powerhouse to the Wisconsin Public Service line; and (5) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', ''PROTEST'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

n. *Procedures Schedule:* The Commission staff proposes to issue one Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application. If any person or organization objects to the staff proposed alternative procedure, they should file comments as stipulated in item j above, briefly explaining the basis for their objection. The application will be processed according to the following schedule, but revisions to the schedule may be made as appropriate:

Issue Notice of availability of EA: June 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–569 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Surrender of Exemption From Licensing and Soliciting Comments, Motions To Intervene, and Protests

March 10, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of small conduit exemption.

b. *Project No.:* 11178–003.

c. *Date Filed:* February 11, 2004.

d. *Applicant:* City of Tucson, Arizona.

e. *Name of Project:* Tucson Hydroelectric Project .

f. *Location:* Units of the project would have been located at eleven pressure reducing stations within the city's municipal water system, which obtains water from a U.S. Bureau of Reclamation aqueduct in Pima County, Arizona. No lands of the United States would be affected.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r .

h. *Applicant Contact:* Mr. Mike Sanders, Tucson Water Department, P.O. Box 27210, Tucson, AZ 85726–7210, (520) 791–2630.

i.

FERC Contact: James Hunter, (202) 502–6086.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for Filing Comments and or Motions:* April 12, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–11178–003) on any comments or motions filed.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ;''e-Filing'' link. The Commission strongly encourages electronic filings.

l. *Description of Request:* The City of Tucson proposes to surrender its exemption for the 4,246-kilowatt (kW) Tucson Project because of current economic conditions and failure to secure a viable arrangement with its energy provider. The project would have consisted of eleven powerhouses containing generating units with capacities ranging from 49 kW to 1,275 kW. The City states that it will reapply at such time as conditions change and the project is determined to be feasible.

m. *Locations of the Application:* This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the web at using the ''eLibrary'' link. Enter the docket number, here P–11178, 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 Tucson Water Department.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *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. E4–596 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Surrender of Preliminary Permits

March 10, 2004.

Symbiotics, LLC, Lake Bistineau Hydro, LLC, Chittenden Hydro, LLC, Mohawk Hydro, LLC, Dover Hydro, LLC, Bridgeport Hydro, LLC, Arbuckle Hydro, LLC, Rathbun Hydro, LLC, Avalon Hydro, LLC, DeGray Hydro, LLC, Bayview Hydro, LLC, Pleasant Hill Hydro, LLC, Wills Creek Hydro, LLC, Bumping Lake Hydro, LLC, Lower Anacoco Hydro, LLC, Project Nos. 11915–001, 12230–001, 12273–001, 12290–001, 12300–001, 12182–001, 12211–001, 12258–001, 12216–001, 12256–001, 12284–001, 12292–001, 12180–001, 12188–001 and 12234–001.

Take notice that the permittees for the subject projects have requested to surrender their preliminary permits. Investigations and feasibility studies have shown that the projects would not be economically feasible.

Project No.	Project name	Stream	State	Expiration date
11915–001	Willamette Fall	Willamette River	OR	09–30–2005
12230–001	Lake Bistineau Dam	Loggy Bayou	LA	10–31–2005
12273–001	Hiram M Chittenden Dam	Lake Washington Ship Canal	WA	01–31–2006
12290–001	Mohawk Dam	Walhonding River	OH	01–31–2006
12300–001	Dover Dam	Tuscarawas River	OH	10–31–2005
12182–001	Bridgeport Dam	East Walker River	CA	08–31–2006
12211–001	Arbuckle Dam	Rock Creek	OK	05–31–2006
12258–001	Rathbun Dam	Chariton River	IA	09–30–2005
12216–001	Avalon Dam	Pecos River	NM	11–30–2005
12256–001	DeGray Reregulating Dam	Caddo River	AR	12–31–2005
12284–001	Bayview Lake Dam	Village Creek	AL	10–31–2005
12292–001	Pleasant Hill Dam	Clear Fork Branch of the Mohican River	OH	10–31–2005
12180–001	Wills Creek Dam	Wills Creek	OH	09–30–2005
12188–001	Bumping Lake Dam	Bumping River	WA	08–31–2006
12234–001	Lower Anacoco Dam	Bayou Anacoco	LA	08–31–2006

The permits shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case each permit shall remain in effect through the first business day following that day. New applications involving these project sites, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. E4–597 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1971–079]

Idaho Power Company, Idaho/Oregon; Notice of Tribal Consultation Briefing

March 10, 2004.

The Commission intends to hold meetings with the Indian Tribes potentially affected by the relicensing of the Hells Canyon Project [1] to discuss the Commission's relicensing process, how the tribes can participate to the fullest extent possible, the tribes' interests and concerns in the affected area, and how to establish procedures to ensure appropriate communication between Commission and tribal staff. These meetings will occur between March 29 and March 31, 2004.

To ensure that all parties are made aware of the issues raised during each tribal consultation meeting, the Commission staff will also be holding a separate, tribal consultation briefing. This meeting will be held on Thursday, April 1, 2004, from 9:30 a.m. to 11:30 a.m. at the Boise Center on the Grove, 850 Front Street, Boise, Idaho.

The Commission encourages parties interested in the Hells Canyon proceeding to come and discuss the issues raised at tribal consultation meetings.

[1] These tribes include the Shoshone-Bannock, Shoshone-Paiute, Nez Perce, Umati.

For more information, contact Alan Mitchnick at (202) 502–6074 or *alan.mitchnick@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–599 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

March 9, 2004.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of

the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	Date filed	Presenter or requester
Prohibited:		
1. CP04–58–000	2–19–04 through 3–4–04	Tricia Bartholome, *et al.*[1]
Exempt:		
1. CP04–41–000 CP04–36–000	2–18–04	Hon. John F. Kerry.
2. CP04–58–000	3–02–04	Mr. Michael R. Peevey.
3. EL04–01–000	2–25–04	Hon. Harry Reid, Hon. John Ensign.
4. ER04–316–000	2–24–04	Hon. Chris Cannon.
5. ER04–316–000	3–03–04	Hon. John T. Doolittle.

[1] This communication is one among numerous form letters sent to the Commission by the Greenpeace, USA organization. Only representative samples of these prohibited non-decisional documents are posted in this docket on the Commission's eLibrary system (*http://www.ferc.gov*).

Magalie R. Salas,

Secretary.

[FR Doc. E4–560 Filed 3–15–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0003, FRL–7636–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Annual Public Water Systems Compliance Report, EPA ICR Number 1812.02; OMB Control Number 2040–0186

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 17, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–003 to EPA online using EDOCKET (our preferred method), by email to *delaney.acquanetta@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Enforcement and Compliance Assurance Docket (OECA), mail code 2201T, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Acquanetta Delaney, Compliance Assistance and Sector Programs Division (2224A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (202) 564–7061; fax number: (202) 564–0009; email address; *delaney.acquanetta@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OECA–2004–003, which is available for public viewing at the Office of Enforcement and Compliance Assurance (OECA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Enforcement and Compliance Assurance Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment,

including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: States, Tribes, and territories that have primary enforcement authority and meet the definition of ''state'' under the Safe Drinking Water Act (Act).

Title: Annual Public Water Systems Compliance Report, EPA ICR number 1812.02, OMB Control Number 2040–0186. The current ICR expires September 30, 2004.

Abstract: Section 1414 (c)(3)(A) of the Safe Drinking Water Act requires that each state that has primary enforcement authority under the Act shall prepare, make readily available to the public, and submit to the Administrator of EPA, an annual report of violations of national primary drinking water regulations in the state. The states' reports are to include violations of maximum contaminant levels, treatment requirements, variances and exemptions, and monitoring requirements determined to be significant by the Administrator after consultation with the states. Section 1414(c)(3)(B) of the Safe Drinking Water Act requires EPA to prepare and make available to the public an annual report that summarizes and evaluates the reports submitted by the states pursuant to section 1414(c)(3)(A). EPA's annual national report must also provide specified information about implementation of the public water system supervision system on Indian reservations and make recommendations concerning the resources necessary to improve compliance with the Safe Drinking Water Act. The States have already prepared and published seven annual reports. EPA has prepared and published six national reports.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and 48 CFR chapter 15. In an effort to minimize a state's burden in preparing its annual statutorily-required report, EPA issued guidance that explains what section 1414(c)(3)(A) requires and provides model language and reporting templates. EPA also annually makes available to the states a computer query that generates for each state (from information states are already required to submit to EPA's national database on a quarterly basis) the required violations information in a table consistent with the reporting template in EPA's guidance.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 208 hours for annual response. The number of respondents is 54 states, commonwealths and territories. The estimated total annual hour burden is 11,232 hours. The estimated total annualized cost burden is $669,400.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: February 23, 2004.

Lisa Lund,

Acting Director, Office of Compliance.

[FR Doc. 04–5876 Filed 3–15–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7636–4]

Technical Panel Formation and First Panel Meeting to Continue Evaluation on Issues Relating to Impacts of the Collapse of the World Trade Center Towers

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the formation of an expert technical review panel whose purpose is to provide for greater input on ongoing efforts to monitor the situation for New York residents and workers impacted by the collapse of the World Trade Center. The panel members will help guide the EPA's use of the available exposure and health surveillance databases and registries to characterize any remaining exposures and risks, identify unmet public health needs, and recommend any steps to further minimize the risks associated with the aftermath of the World Trade Center attacks. The panel will meet several times over the course of approximately two years, and these panel meetings will be open to the public, except where the public interest requires otherwise. Information on the panel meeting agendas, documents (except where the public interest requires otherwise), and public registration to attend the meetings will be available from an Internet Web site. EPA has established an official public docket for this action under Docket ID No. ORD–2004–0003.

DATES: The first meeting of this panel will be held on March 31, 2004, from 10 a.m. to 5 p.m., eastern standard time. On-site registration will begin at 9 a.m.

ADDRESSES: The meeting will be held at the Alexander Hamilton U.S. Custom House, One Bowling Green, New York, NY in the Auditorium (basement level). A government-issued identification (*e.g.,* driver's license) is required for entry.

SUPPLEMENTARY INFORMATION:

I. Meeting Information

Eastern Research Group, Inc., (ERG), an EPA contractor, will facilitate the meeting. To attend the meeting as an observer, please register by visiting the Web site at: *http://www.epa.gov/wtc/panel.* You may also register for the meeting by calling ERG's conference registration line at (781) 674–7374 or by faxing a registration request to (781) 674–2906 (include full address and contact information). Pre-registration is strongly recommended as space is limited, and registrations will be accepted on a first-come, first-served basis. The deadline for pre-registration is March 26, 2004. Registrations will continue to be accepted after this date, including on-site registration, if space allows. In addition, there will be a limited time at the meeting for oral comments from the public. Oral comments will be limited to five (5) minutes each. If you wish to make a statement during the observer comment period, please check the appropriate box when you register at the Web site.

FOR FURTHER INFORMATION CONTACT: For meeting information, registration and logistics, please *see* the Web site *http://www.epa.gov/wtc/panel* or contact ERG at (781) 674–7374. The meeting agenda and logistical information will be posted on the Web site and will also be available in hard copy. For further information regarding the technical panel, please contact Ms. Lisa Matthews, EPA Office of the Science Advisor, (202) 564–4499.

II. Background Information

Immediately following the September 11, 2001, terrorist attack on New York City's World Trade Center, many Federal agencies, including the EPA, were called upon to focus their technical and scientific expertise on the national emergency. EPA, other Federal agencies, New York City, and New York State public health and environmental authorities focused on numerous cleanup, dust collection and ambient air monitoring activities to ameliorate and better understand the human health impacts of the disaster. Detailed information concerning the environmental monitoring activities that were conducted as part of this response is available at the EPA Response to 9–11 Web site at *http://www.epa.gov/wtc/.*

In addition to environmental monitoring, EPA efforts also included toxicity testing of the dust on laboratory mice, as well as the development of a human exposure and health risk assessment. This risk assessment document, *Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster* (*http://www.epa.gov/ncea/wtc.htm*), has been subjected to public comment and expert peer review, and is currently undergoing revisions prior to finalization. Numerous additional studies by other Federal and State agencies, universities, and other organizations have documented impacts to both the outdoor and indoor environments, and to human health.

While these monitoring and assessment activities were ongoing, and the cleanup at Ground Zero itself was occurring, EPA began planning for a program to clean and monitor residential apartments. From June 2002 until December 2002, residents impacted by World Trade Center dust and debris in an area of about 1 mile by 1 mile south of Canal Street were eligible to request federally funded cleaning and monitoring for airborne asbestos or only monitoring of their residences. The cleanup continued into the summer of 2003, by which time the EPA had cleaned and monitored 3400 apartments and monitored an additional 800 apartments. Detailed information on this portion of the EPA response is also available at *http://www.epa.gov/wtc/.*

A critical component of understanding long-term human health impacts is the establishment of health registries. The World Trade Center Health Registry is a comprehensive and confidential health survey of those most directly exposed to the contamination resulting from the collapse of the World Trade Center towers. It is intended to give health professionals a better picture of the health consequences of 9/11. It was established by the Agency for Toxic Substances and Disease Registry (ATSDR) and the New York City Department of Health and Mental Hygiene (NYCDHMH), in cooperation with a number of academic institutions, public agencies and community groups. Detailed information about the registry can be obtained from the registry Web site at: *http://www.nyc.gov/html/doh/html/wtc/index.html.*

In order to obtain individual advice on the effectiveness of these programs, unmet needs and data gaps, the EPA will convene a technical panel of experts who have been involved with World Trade Center assessment activities. Dr. Paul Gilman, EPA Science Advisor, will serve as Chair of the panel, and Dr. Paul Lioy, Professor of Environmental and Community Medicine at the Environmental and Occupational Health Sciences Institute of the Robert Wood Johnson Medical School-UMDNJ and Rutgers University, will serve as Vice Chair. A full list of the panel members and a charge statement and operating principles for the panel are available from the panel Web site listed above. Panel meetings will each be one-day meetings, and they will occur over the course of approximately a two-year period. Panel members will provide individual advice on issues the panel addresses. These meetings will occur in New York City and nearby locations. All of the meetings will be announced on the Web site and by a **Federal Register** notice, and they will be open to the public for attendance and also to provide brief oral comment. The focus of the first meeting is to review the proposed mission statement of the panel and the processes and protocols for the conduct of the panel. Future meetings will address planned activities by EPA regarding monitoring, assessment and health registries. Further information on these meetings can be found at the Web site identified earlier: *http://www.epa.gov/wtc/panel.*

III. How To Get Information on E–DOCKET

EPA has established an official public docket for this action under Docket ID No. ORD–2004–0003. 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 Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752; facsimile: (202) 566–1753; or e-mail: *ORD.Docket@epa.gov.*

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.

Dated: March 10, 2004.

Paul Gilman,

EPA Science Advisor and Assistant Administrator for Research and Development.

[FR Doc. 04–5871 Filed 3–15–04; 8:45 am]

BILLING CODE 6560–50–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

Privacy Act of 1974: Revisions to System of Records: New System and Addition of Standard Routine Uses

AGENCY: Office of Administration, Executive Office of the President.

ACTION: Notice of the publication to add a new system of records and add standard routine uses.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Administration, Executive Office of the President (OA/EOP), is proposing to create a new Privacy Act systems of records and add standard routine uses for all its systems of records. This proposal provides notice of the planned: (1) creation of one new system. The new system, OA/EOP/08 ''Employee Transportation Facilitation,'' includes information maintained by the Office of Administration on parking permits, carpool and vanpool members, and transportation subsidies for individuals who work for the following Executive Office of the President Organizations: Council on Environmental Quality, Office of Administration, Office of Management and Budget, Office of National Drug Control Policy, Office of Science and Technology Policy, and the United States Trade Representative. (2) Addition of standard routine uses for all OA/EOP systems of records.

DATES: The notice for the new system of records and standard routine uses will become effective as published on April 26, 2004, unless the Office of Administration publishes a notice to the contrary. Comments on these systems of records should be submitted in writing before April 26, 2004.

ADDRESSES: All written comments concerning these systems of records should be submitted to the General Counsel, Office of Administration, Executive Office of the President, 725 17th Street, NW., Washington, DC 20503 and sent by facsimile to (202) 456–7921.

Keith L. Roberts,

Acting General Counsel.

Privacy Act Systems—Standard Routine Uses—Office of Administration

The following standard routine uses apply, subject to the Privacy Act of 1974, except where otherwise noted or where obviously not appropriate, to each system of records maintained by the Office of Administration.

1. *Law Enforcement*—In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. *Disclosure When Requesting Information*—A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

3. *Disclosure of Requested Information*—A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

4. *Department of Justice or Other Agency*—In the event there is a pending court or formal administrative proceeding, any records which are relevant to the proceeding may be disclosed to the Department of Justice or other agency for purposes of representing the government, or in the course of presenting evidence, or they may be produced to parties or counsel involved in the proceeding in the course of pretrial discovery.

5. *Equal Employment Opportunity Commission and the Merit Systems Protection Board*—In order to facilitate their processing of discrimination complaints, including investigations, hearings, and reviews on appeals; any records which are relevant to the proceeding may be disclosed to the agency conducting the review; responses to other Federal agencies and other organizations having legal and administrative responsibilities related to the OA Equal Employment Opportunity Programs and to individuals in the record.

6. *Congressional Inquires*—Disclosure may be made to a Congressional office from the record of an individual in response to a written inquiry from the Congressional office made on behalf of the individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials which are being used, or are expected to be used, to support prosecution or fines against the individual for violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes. Release is authorized under 49 CFR 10.35(9).

7. *Third Party*—Disclosure may be made to a third party for (1) verification of an employee's status upon written request of the employee; (2) to facilitate the verification of employee contributions for insurance data with carriers and collection agents; (3) to provide various Federal, State, and local taxing authorities itemized listing of withholdings for individual income taxes; (4) to respond to State employment compensation requests for wage and separation data on former employees; (5) to report previous job injuries to worker's compensation organizations; (6) for person to notify in an emergency; (7) to report unemployment record to appropriate State and local authorities; and (8) when requested, provide other employers with work record.

8. *Delinquent Debts*—Where applicable, delinquent debts, and all relevant information related thereto, may be forwarded to (1) the U.S.

Department of Treasury, for collection; and (2) to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, National Directory of New Hires, part of the Federal Parent Locator Service (FPLS) and the Federal Tax Offset System, DHHS/OCSE No. 09–90–0074, for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193); and

9. *Office of Personnel Management*—Disclosure may be made to the Office of Personnel Management concerning information on pay and leave, benefits, retirement deductions, and any other information necessary for the Office of Personnel Management to carry out its legally authorized government-wide personnel management functions and studies.

10. *General Services Administration*—Disclosure may be made to the General Services Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

11. *National Archives and Records Administration*—Disclosure may be made to the National Archives and Records Administration for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

12. *Merit Systems Protection Board*—Disclosure may be made to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of an OA investigation, and such other functions, promulgated in 5 U.S.C 1205 and 1206, or as may be authorized by law.

OA/EOP–08

SYSTEM NAME:

Employee Transportation Facilitation.

SYSTEM LOCATION:

Office of Administration, Human Resources Management, 725 17th Street, NW., Washington, DC 20503 will keep transportation subsidy records. Office of Administration, Facilities Management Division, 725 17th Street, NW., Washington, DC 20503 will keep parking management records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Holders of parking permits, applicants for ridesharing information, members of carpools and vanpools, and applicants and recipients of fare subsidies who are employees with the following organizations within the EOP: Council on Environmental Quality, Office of Administration, Office of Management and Budget, Office of National Drug Control Policy, Office of Science and Technology Policy, and United States Trade Representative. The information in this system of records is kept by the Office of Administration to administer employee transportation programs on behalf of the EOP organizations listed above.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of holders of parking permits and records of carpool and vanpool members. Records and reports of status of rideshare applications; copies of applications and match letters received by rideshare applicants; applications and certifications of fare subsidy recipients; records and reports of disbursements to fare subsidy recipients; and information on local public mass transit facilities and fare subsidy programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Property and Administrative Services Act of 1949, as amended; title 5 U.S.C. 301.

PURPOSE:

Parking management and fare subsidy management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Carpool listing produced for use in creating or enlarging carpools or vanpools. Used for production of listings and reports. Used for periodic review or revalidation. Used as part of a program designed to ensure eligibility for, and receipt of, fare subsidy. *See* Standard Routine Uses.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies (collecting on behalf of the United States Government) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1982 (31 U.S.C. 3701(a)(3)).

POLICES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in hard copy or electronically.

RETRIEVABILITY:

Records can be retrieved in hard copy form by name or electronically by employee name or social security number, or by ZIP code of residence, as applicable.

SAFEGUARDS:

Except for carpool listings, access is accorded only to parking and fare subsidy management offices. Printout of carpool listing used in matching program has name, agency, Office of Administration permit number, and work telephone number only and is available upon request.

RETENTION AND DISPOSAL:

Data are deleted and not retained on ADP once the individual leaves the system for any reason (*i.e.*, is no longer on the ridesharing listing, is no longer a member of a carpool or vanpool, or no longer receives a fare subsidy). Record copies of monthly reports and listings are retained for three years, forwarded to the Federal Records Center for two more years, and then destroyed.

SYSTEM MANAGER (S) AND ADDRESS:

Office of Administration, Human Resources Management, 725 17th Street, NW., Washington, DC 20503 will keep transportation subsidy records. Office of Administration, Facilities Management Division, 725 17th Street, NW., Washington, DC 20503 will keep parking management records.

NOTIFICATION PROCEDURE:

Current or former employees seeking access to information about themselves contained in this system of records should address written inquiries to the system manager. Employees should provide full name, social security number, valid identification; and any other information verifiable from this record.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Applications submitted by individuals for parking permits, carpool and vanpool membership, ridesharing information, and fare subsidies; from notifications from other Federal agencies in the program; and from

periodic certifications and reports regarding fare subsidies, as applicable.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 04–5846 Filed 3–15–04; 8:45 am]

BILLING CODE 3115–W4–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice; OMB approval.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for the revised public information collection, Commercial Availability of Navigation Devices, OMB Control Number 3060–0849. Therefore, the Commission announces that OMB Control No. 3060–0849 is effective March 16, 2004.

DATES: Effective March 16, 2004.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission has received OMB approval for a revised information collection Commercial Availability of Navigation Devices, OMB Control Number 3060–0849, 68 FR 38040, June 26, 2003, which now includes progress reports to be filed by the cable and consumer electronic industries with respect to ongoing inter industry negotiations that may affect the technical specifications for navigation devices. The effective date for collection of the progress reports is March 16, 2004. Through this document, the Commission announces that it received this approval; OMB Control No. 3060–0849.

Pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, an agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Leslie F. Smith, Federal Communications Commission, (202) 418–0217 or via the Internet at *leslie.smith@fcc.gov.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–5906 Filed 3–15–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 5, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 17, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Scope of E911 Service for CMRS.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 662.

Estimated Time Per Response: 1 hour.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 662 hours.

Total Annual Cost: $43,750.

Needs and Uses: The Commission has issued a Report and Order which revises the scope of the enhanced 911 rules to clarify which technologies and services will be required to be capable of transmitting enhanced 911 information to public safety answering points (PSAP).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–5909 Filed 3–15–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 4, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the

information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 15, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1046.

Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, Report and Order (final rules).

Form No: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,023 respondents; 4,854 responses.

Estimated Time Per Response: 100 hours.

Frequency of Response: Annual and quarterly reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 485,400 hours.

Total Annual Cost: N/A.

Needs and Uses: In CC Docket No. 96–128, FCC 03–235, Report and Order, the Commission promulgated rules and requirements under Section 276 of the Act that every payphone service provider be fairly compensated for every completed payphone call made from one of their payphones. The rules require: (1) Each Switch-Based Reseller (SBR) to establish and maintain an accurate call tracking system, and have that system audited for accuracy by a third party; (2) require SBR's to provide quarterly reports to each PSP containing compensation with supporting data; and (3) require each facilities-based long distance carrier (intermediate carrier) that switches payphone calls to other facilities-based long distance carriers to provide each PSP with quarterly reports that include a list of all the facilities-based long distance carriers to which the intermediate carrier switch toll-free and access code calls dialed from each of that payphone service provider's payphones.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–5910 Filed 3–15–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

March 5, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments May 17, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via the internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0655.

Title: Requests for Waivers of Regulatory and Application Fees Predicated on Allegations of Financial Hardship.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households and business or other for profit.

Number of Respondents: 240.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 240 hours.

Annual Cost Burden: $4,800.

Needs and Uses: Pursuant to 47 U.S.C. Section 159, the Commission is required to collect annual regulatory fees from its licensees and permittees. Licensees and permittees may request waivers of the annual regulatory and application fees on grounds of financial hardship. The subject orders lists the types of documents or financial reports which are ordinarily maintained as business records or can be easily assembled, which may be submitted to support claims of financial hardship. The information is used by the FCC to determine if a party is entitled to the waiver. The Commission is requesting an extension (no change to the information collection requirements) in order to obtain the full three-year clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–5914 Filed 3–15–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that, at 9:08 a.m. on Wednesday, March 10, 2004, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's

corporate, supervisory, and personnel activities.

In calling the meeting, the Board determined, on motion of Director John D. Hawke, Jr. (Comptroller of the Currency), seconded by Director Thomas J. Curry, concurred in by Scott M. Albinson, acting in the place and stead of James E. Gilleran (Director, Office of Thrift Supervision), and Vice Chairman John M. Reich, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice of the meeting earlier than March 5, 2004, was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: March 10, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E4–559 Filed 3–15–04; 8:45 am]

BILLING CODE 6714–01–P

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 March 30, 2004.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. David W. Wallace; to acquire additional voting shares of Washington Trust Bancorp, Inc., Westerly, Rhode Island, and thereby indirectly acquire additional voting shares of The Washington Trust Company of Westerly, Westerly, Rhode Island.

Board of Governors of the Federal Reserve System, March 10, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–5859 Filed 3–15–04; 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 April 9, 2004.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Collinsville Savings Mutual Holding Company, Collinsville, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Collinsville Savings Society, Collinsville, Connecticut.

Board of Governors of the Federal Reserve System, March 10, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–5860 Filed 3–15–04; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy; Cancellation of an Optional Form by the Department of State

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of State has cancelled the following Optional Form: OF 141, Application for Service Credit. This form is now a State Department form (DS–5001). You can request copies of the new form from: Department of State, A/RPS/DIR, SA–22, 18th and G Streets, NW., Room 2400, Washington, DC 20522–2201.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Cunningham, Department of State, 202 312–9605.

DATES: Effective March 16, 2004.

Dated: March 5, 2004.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 04–5879 Filed 3–15–04; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting and request for information:

Name: Discussion of the Health Risks Associated with Occupational Exposure to Titanium Dioxide.

Time and Date: 9 a.m.–4 p.m., April 29, 2004.

Place: Robert A. Taft Laboratories, Taft Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: The forum will include scientists and representatives from various government agencies, industry, labor, and other stakeholders, and is

open to the public, limited only by the space available. The meeting room accommodates 80 people. Due to limited space, notification of intent to attend the meeting must be made to Diane Miller no later than Friday, April 16, 2004. Ms. Miller can be reached by telephone at 513/533–8450 or by email at *niocindocket@cdc.gov.* Requests to attend the meeting will be accommodated on a first-come basis.

Purpose: To discuss the health data relevant to titanium dioxide exposure and the scientific and technical issues associated with the development of recommended exposure limits. Special emphasis will be placed on discussion of the following:

(1) What animal and human data best describe the health concerns from exposure to titanium dioxide?

(2) What strategies are being used to control occupational exposure to titanium dioxide (*e.g.,* engineering controls, work practices, personal protective equipment)?

(3) At what workplaces and occupations can exposure to titanium dioxide occur?

(4) What challenges exist in measuring workplace exposures to titanium dioxide?

(5) What are areas of future collaborative efforts (*e.g.,* research, communication, development of exposure measurement and control strategies)?

The public is invited to attend and will have the opportunity to provide comments.

Summary: NIOSH currently recommends that titanium dioxide be considered a potential occupational carcinogen. A review of the recent literature indicates that the NIOSH recommendation may not adequately reflect current scientific information about the potential biological activity of titanium dioxide and other similar substances that have poor solubility and can occur in the workplace. Recent evidence suggests that these substances, which generally have been regarded as causing minimal toxicity in humans, may pose different levels of risk depending on their particle size. Ultrafine particles appear to be more toxic than an equivalent mass dose of larger respirable particles, an effect that appears to be related to the total particle surface area. Moreover, when the exposure-response data are evaluated from studies in rats exposed to titanium dioxide and other similar substances, there appears to be a consistent response that is related to particle surface area. NIOSH presently is reviewing the available toxicity data on titanium dioxide, as well as other relevant health data associated with particle surface area, with the intent of developing new workplace recommendations for titanium dioxide, including recommended exposure limits (RELs).

NIOSH seeks to obtain materials, including published and unpublished reports and research findings, to evaluate the possible health risks of occupational exposure to titanium dioxide (including particle size-specific information). Examples of requested information include, but are not to be limited to, the following:

(1) Identification of industries or occupations in which exposures to titanium dioxide may occur.

(2) Trends in the production and use of titanium dioxide.

(3) Description of work tasks and scenarios with a potential for exposure to titanium dioxide.

(4) Current and historical exposure measurement data in various types of industries and jobs.

(5) Case reports or other health information demonstrating health effects in workers exposed to titanium dioxide.

(6) Reports of experimental in vivo and in vitro studies that provide evidence of a dose-relationship between the particle size of a substance and its biological activity.

(7) Reports of experimental inhalation studies with rodents demonstrating a relationship between the particle size or surface area of a substance and lung inflammation, fibrosis, and biochemical mediators.

(8) Description of work practices and engineering controls used to reduce or prevent workplace exposure to titanium dioxide.

(9) Educational materials for worker safety and training on the safe handling of titanium dioxide.

(10) Data pertaining to the feasibility of establishing particle size-specific RELs for titanium dioxide.

NIOSH will use this information to determine the need for developing new recommendations for reducing occupational exposure to titanium dioxide.

ADDRESSES: Comments should be submitted to the NIOSH Docket Office, ATTN: Diane Miller, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–8450, fax 513/533–8230. Comments may also be submitted by email to: *niocindocket@cdc.gov.* Email attachments should be formatted as Microsoft Word. Comments should be submitted to NIOSH no later than April 16, 2004, and should reference docket number NIOSH–033 in the subject heading.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Contact Persons for Technical Information: Eileen Kuempel, M/S C–15, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, 513/533–8363, or Ralph Zumwalde, M/S C–32, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, 513/533–8320.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 9, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–5855 Filed 3–15–04; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2000N–1449]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Changes to an Approved New Drug Application or Abbreviated New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 15, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs,

OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Changes to an Approved New Drug Application or Abbreviated New Drug Application—(OMB Control Number 0910–0431)—Extension

On November 21, 1997, the President signed the Food and Drug Administration Modernization Act (the Modernization Act) (Public Law 105–115) into law. Section 116 of the Modernization Act amended the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506A (21 U.S.C. 356a), which describes requirements and procedures for making and reporting manufacturing changes to approved new drug applications (NDAs) and abbreviated new drug applications (ANDAs), to new and abbreviated animal drug applications, and to license applications for biological products.

The guidance is intended to assist applicants in determining how they should report changes to an approved NDA or ANDA under section 116 of the Modernization Act, which provides requirements for making and reporting manufacturing changes to an approved application and for distributing a drug product made with such changes.

The guidance provides recommendations to holders of approved NDAs and ANDAs who intend to make postapproval changes in accordance with section 506A of the act. The guidance covers recommended reporting categories for postapproval changes for drugs, other than specified biotechnology and specified synthetic biological products. Recommendations are provided for postapproval changes in these areas: (1) Components and composition, (2) sites, (3) manufacturing process, (4) specification(s), (5) package, (6) labeling, and (7) miscellaneous changes.

Some of the basic elements of section 506A of the act are as follows:

A drug made with a manufacturing change, whether a major manufacturing change or otherwise, may be distributed only after the applicant validates the effects of the change on the identity, strength, quality, purity, and potency of the drug as these factors may relate to the safety or effectiveness of the drug (section 506A(a)(1) and (b) of the act). This section recognizes that additional testing, beyond testing to ensure that an approved specification is met, is required to ensure unchanged identity, strength, quality, purity, or potency as these factors may relate to the safety or effectiveness of the drug.

A drug made with a major manufacturing change may be distributed only after the applicant submits a supplemental application to FDA and the supplemental application is approved by the agency. The application is required to contain information determined to be appropriate by FDA and include the information developed by the applicant when ''validating the effects of the change'' (section 506A(c)(1) of the act).

A major manufacturing change is a manufacturing change determined by FDA to have substantial potential to adversely affect the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug. Such changes include the following possibilities: (1) A change made in the qualitative or quantitative formulation of the drug involved or in the specifications in the approved application or license unless exempted by FDA by regulation or guidance, (2) a change determined by FDA by regulation or guidance to require completion of an appropriate clinical study demonstrating equivalence of the drug to the drug manufactured without the change, and (3) other changes determined by FDA by regulation or guidance to have a substantial potential to adversely affect the safety or effectiveness of the drug (section 506A(c)(2) of the act).

FDA may require submission of a supplemental application for drugs made with manufacturing changes that are not major (section 506A(d)(1)(B) of the act) and establish categories of manufacturing changes for which a supplemental application is required (section 506A(d)(1)(C) of the act). In such a case the applicant may begin distribution of the drug 30 days after FDA receives a supplemental application unless the agency notifies the applicant within the 30-day period that prior approval of the application is required (section 506A(d)(3)(B)(i) of the act). FDA may also designate a category of manufacturing changes that permit the applicant to begin distributing a drug made with such changes upon receipt by the agency of a supplemental application for the change (section 506A(d)(3)(B)(ii) of the act). If FDA disapproves a supplemental application, the agency may order the manufacturer to cease the distribution of drugs that have been made with the disapproved change (section 506A(d)(3)(B)(iii) of the act).

FDA may authorize applicants to distribute drugs without submitting a supplemental application (section 506A(d)(1)(A) of the act) and may establish categories of manufacturing changes that may be made without submitting a supplemental application (section 506A(d)(1)(C) of the act). The applicant is required to submit a report to FDA on such a change and the report is required to contain information the agency deems to be appropriate and information developed by the applicant when validating the effects of the change. FDA may also specify the date on which the report is to be submitted (section 506A(d)(2)(A) of the act). If during a single year an applicant makes more than one manufacturing change subject to an annual reporting requirement, FDA may authorize the applicant to submit a single report containing the required information for all the changes made during the year (annual report) (section 506A(d)(2)(B) of the act).

Section 506A of the act provides FDA with considerable flexibility to determine the information and filing mechanism required for the agency to assess the effect of manufacturing changes in the safety and effectiveness of the product. There is a corresponding need to retain such flexibility in the guidance on section 506A of the act to ensure that the least burdensome means for reporting changes are available. FDA believes that such flexibility will allow it to be responsive to increasing knowledge of and experience with certain types of changes and help ensure the efficacy and safety of the products involved. For example, a change that may currently be considered to have a substantial potential to have an adverse effect on the safety or effectiveness of the product may, at a later date, based on new information or advances in technology, be determined to have a lesser potential to have such an adverse effect. Conversely, a change originally considered to have a minimal or moderate potential to have an adverse effect on the safety or effectiveness of the product may later, as a result of new information, be found to have an increased, substantial potential to adversely affect the product. The guidance enables the agency to respond more readily to knowledge gained from manufacturing experience, further research and data collection, and advances in technology. The guidance describes the agency's current interpretation of specific changes falling into the four filing categories. Section

506A of the act explicitly provides FDA the authority to use guidance documents to determine the type of changes that do or do not have a substantial potential to adversely affect the safety or effectiveness of the drug product. The use of guidance documents allows FDA to more easily and quickly modify and update important information.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Federal Food, Drug, and Cosmetic Act Section	No. of Respondents	No. of Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Hours
506A(c)(1) and (c)(2)—Prior Approval Supplement	263	5.8	1,517	150	227,550
506A(d)(1)(B),(d)(1)(C), and (d)(3)(B)(i)—Changes being effected (CBE) in 30-days Supplement	274	8.5	2,322	95	220,590
506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(ii)—CBE Supplement	202	9.7	1,959	95	186,105
506A(d)(1)(A), (d)(1)(C), (d)(2)(A), and (d)(2)(B)—Annual Report	580	13.2	7,639	35	267,365
Total					901,610

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Section 506A(a)(1) and (b) of the act requires the holder of an approved application to validate the effects of a manufacturing change on the identity, strength, quality, purity, or potency of the drug as these factors may relate to the safety or effectiveness of the drug before distributing a drug made with the change. Under section 506A(d)(3)(A) of the act, information developed by the applicant to validate the effects of the change regarding identity, strength, quality, purity, and potency is required to be submitted to FDA as part of the supplement or annual report. Thus, no separate estimates are provided for these sections in Table 1 of this document; estimates for validation requirements are included in the estimates for supplements and annual reports. The guidance does not provide recommendations on the specific information that should be developed by the applicant to validate the effect of the change on the identity, strength (e.g., assay, content uniformity); quality (e.g., physical, chemical, and biological properties); purity (e.g., impurities and degradation products); or potency (e.g., biological activity, bioavailability, and bioequivalence) of a product as they may relate to the safety or effectiveness of the product.

Section 506A(c)(1) and (c)(2) of the act sets forth requirements for changes requiring supplement submission and approval prior to distribution of the product made using the change (major changes). Under these sections of the act, a supplement must be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a substantial potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product. The applicant must obtain approval of a supplement from FDA prior to distribution of a product made using the change.

Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 1,517 supplements will be submitted annually under section 506A(c)(1) and (c)(2) of the act. FDA estimates that approximately 263 applicants will submit such supplements, and that it will take approximately 150 hours to prepare and submit to FDA each supplement.

Section 506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(i) sets forth requirements for changes requiring supplement submission at least 30 days prior to distribution of the product made using the change (moderate changes). Under these sections, a supplement must be submitted for any change in the product, production process, quality controls, equipment, or facilities that has a moderate potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product. Distribution of the product made using the change may begin not less than 30 days after receipt of the supplement by FDA.

Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 2,322 supplements will be submitted annually under section 506A(d)(1)(B), (d)(1)(C), and (d)(3)(B)(i) of the act. FDA estimates that approximately 274 applicants will submit such supplements, and that it will take approximately 95 hours to prepare and submit to FDA each supplement.

Under section 506A(d)(3)(B)(ii) of the act, FDA may designate a category of changes for the purpose of providing that, in the case of a change in such category, the holder of an approved application may commence distribution of the drug upon receipt by the agency of a supplement for the change. Based on data concerning the number of supplements received by the agency, FDA estimates that approximately 1,959 supplements will be submitted annually under section 506A(d)(3)(B)(ii) of the act. FDA estimates that approximately 202 applicants will submit such supplements, and that it will take approximately 95 hours to prepare and submit to FDA each supplement.

Section 506A(d)(1)(A), (d)(1)(C), (d)(2)(A), and (d)(2)(B) of the act sets forth requirements for changes to be described in an annual report (minor changes). Under these sections, changes in the product, production process, quality controls, equipment, or facilities that have a minimal potential to have an adverse effect on the identity, strength, quality, purity, or potency of the product as these factors may relate to the safety or effectiveness of the product must be documented by the applicant in the next annual report.

Based on data concerning the number of supplements and annual reports received by the agency, FDA estimates that approximately 7,639 annual reports will include documentation of certain manufacturing changes as required under section 506A(d)(1)(A), (d)(1)(C), (d)(2)(A), and (d)(2)(B). FDA estimates that approximately 580 applicants will submit such information and that it will take approximately 35 hours to prepare and submit to FDA the information for each annual report.

In the **Federal Register** of December 19, 2003 (68 FR 70813), FDA published a 60-day notice requesting public comment on the information collection

provisions. One comment was received. The comment did not specifically address the information collection burden estimates. The comment stated that parenteral drug products do not have postapproval change guidance documents, and that this has caused the company to evaluate changes from a very conservative viewpoint, resulting in a high number of man-hours involved in the assembly and submission of postapproval changes. The comment recommended the incorporation of risk-based analysis.

FDA response: The recommendations provided in the guidance have significantly lowered the filing requirements for postapproval changes to parenteral drug products. For example, under 21 CFR 314.70(b)(2)(v), a change to the method of manufacture of a drug product required a prior approval supplement. Under the guidance, elimination of in-process filtration performed as part of the manufacture of a terminally sterilized product (section VII.C.2.a of the guidance *at http://www.fda.gov/cder/guidance/2766fnl.htm#1*) would be submitted as a changes-being-effected supplement. The agency is continuing to work to further address filing requirements for postapproval changes of parenteral drug products.

Dated: March 9, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–5832 Filed 3–15–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0101]

Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents; and Requirements for Donor Notification

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to requirements for testing human blood donors for evidence of infection due to communicable disease agents and for donor notification.

DATES: Submit written or electronic comments on the collection of information by May 17, 2004.

ADDRESSES: Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. All comments should be identified with the docket number found in brackets in the heading of this document. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents; and Requirements for Donor Notification (OMB Control Number 0910–0472)—Extension

Under sections 351 and 361 of the Public Health Service Act (PHS Act)(42 U.S.C. 262 and 264) and the provisions of the Federal Food, Drug, and Cosmetic Act (the act) that apply to drugs (21 U.S.C. 321 *et seq.*), FDA may issue and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between States or Possessions or from foreign countries into the States or Possessions. The public health objective in testing human blood donors for evidence of infection due to communicable disease agents and in donor notification is to prevent the transmission of communicable disease. Section 351 of the PHS Act, applies to biological products. Blood and blood components are considered drugs, as that term is defined in section 201(g)(1) of the act (21 U.S.C. 321(g)(1)).

Section 610.40(c)(1)(ii) (§ 610.40(c)(1)(ii) requires each dedicated donation be labeled, as required under § 606.121 (21 CFR 606.121), and with a label entitled ''INTENDED RECIPIENT INFORMATION LABEL'' containing the name and identifying information of the recipient. (21 CFR 606.121 is approved under OMB control number 0910–0116.) Section 610.40(g)(2) requires an establishment to obtain written approval from FDA to ship human blood or blood components for further manufacturing use prior to completion of testing. Section 610.40(h)(2)(ii)(A) requires an establishment to obtain written approval from FDA to use or ship human blood or blood components found to be reactive by a screening test for evidence of a communicable disease agent(s) or collect from a donor with a record of a reactive screening test. Sections 610.40(h)(2)(ii)(C) and (h)(2)(ii)(D) require an establishment to label reactive human blood and blood components with the appropriate screening test results, and, if they are intended for further manufacturing use into injectable products, with a statement indicating the exempted use specifically approved by FDA. Section 610.40(h)(2)(vi) requires each donation of human blood or blood component that tests reactive by a screening test for syphilis and is determined to be a

biological false positive be labeled with both test results. Section 610.42(a) requires a warning statement, including the identity of the communicable disease agent, on medical devices containing human blood or blood components found to be reactive by a screening test for evidence of infection due to a communicable disease agent(s) or syphilis. Section 630.6(a) (21 CFR 630.6(a)) requires an establishment to make reasonable attempts to notify any donor who has been deferred as required by § 610.41, or who has been determined not to be eligible as a donor. Section 630.6(d)(1) requires establishment to provide certain information to the referring physician of an autologous donor who is deferred based on the results of tests as described in § 610.41.

Section 610.40(g)(1) requires an establishment to appropriately document a medical emergency for the release of human blood or blood components prior to completion of required testing. Section 606.160(b)(1)(ix) requires a facility to maintain records of notification of donors deferred or determined not to be eligible for donation, including appropriate followup. Section 606.160(b)(1)(xi) requires an establishment to maintain records of notification of the referring physician of a deferred autologous donor, including appropriate followup.

Respondents to this collection of information are Whole Blood and Source Plasma establishments that collect blood and blood components, including Source Plasma and Source Leukocytes. Based on information from FDA's Center for Biologics and Evaluation Research database system, there are approximately 84 licensed Source Plasma collection establishments and 858 registered Whole Blood collection establishments for a total of 942 establishments. Based on information received from industry, we estimate that these establishments collect annually an estimated 30 million donations: 15 million donations of Source Plasma from approximately 2 million donors and 15 million donations of Whole Blood, including 600,000 autologous, from approximately 8 million donors.

Assuming each autologous donor makes an average of 2 donations, FDA estimates that there are approximately 300,000 autologous donors. FDA estimates that approximately 5 percent (12,000) of the 240,000 donations that are donated specifically for the use of an identified recipient would be tested under the dedicated donors testing provisions in § 610.40(c)(1)(ii).

Under § 610.40(g)(2) and (h)(2)(ii)(A), the only product currently shipped prior to completion of testing is a licensed product, Source Leukocytes, used in the manufacture of interferon, which requires rapid preparation from blood. Shipments of Source Leukocytes are preapproved under a biologics license application and each shipment does not have to be reported to the agency. Based on information from CBER's database system, FDA receives an estimated 1 application per year from manufacturers of Source Leukocytes.

Under § 610.40(h)(2)(ii)(C) and (h)(2)(ii)(D), FDA estimates that each manufacturer would ship an estimated 1 human blood or blood components per month (12 per year) that would require two labels; one as reactive for the appropriate screening test under paragraph (h)(2)(ii)(C), and the other stating the exempted use specifically approved by FDA under paragraph (h)(2)(ii)(D). According to CBER's database system, there are an estimated 40 licensed manufacturers that ship known reactive human blood or blood components.

Based on information we received from industry, we estimate that approximately 18,000 donations annually test reactive by a screening test for syphilis, and are determined to be biological false positives by additional testing (§ 610.40(h)(2)(vi)).

Human blood or a blood component with a reactive screening test, as a component of a medical device, is an integral part of the medical device, e.g., a positive control for an in vitro diagnostic testing kit. It is usual and customary business practice for manufacturers to include on the container label a warning statement that identifies the communicable disease agent. In addition, on the rare occasion when a human blood or blood component with a reactive screening test is the only component available for a medical device that does not require a reactive component, then a statement of warning is required to be affixed to the medical device. To account for this rare occasion under § 610.42(a), we estimate that the warning statement would be necessary no more than once a year.

Industry estimates that approximately 13 percent of 10 million donors (1.3 million donors) who come to donate annually are determined not to be eligible for donation prior to collection because of failure to satisfy eligibility criteria. It is the usual and customary business practice of virtually all 942 collecting establishments to notify on site and to explain the reason why the donor is determined not to be suitable for donating. Based on such information as is available to FDA, we estimate that two-thirds of the 942 collecting establishments provided on site additional information and counseling to a donor determined not to be eligible for donation as usual and customary business practice. Consequently, we estimate that only one-third or 311 collection establishments would need to provide, under § 630.6(a), additional information and counseling onsite to 433,333 (one-third of 1.3 millions) ineligible donors.

It is estimated that another 4.5 percent of 10 million donors (450,000 donors) are deferred annually based on test results. We estimate that currently 95 percent of the establishments that collect 98 percent of the blood and blood components notify donors who have reactive test results for human immunodeficiency virus (HIV), hepatitis B virus (HBV), hepatitis C virus (HCV), human T-Lymphotropic virus (HTLV), and syphilis as usual and customary business practice. Consequently, 5 percent (47) of the industry (942) collecting 2 percent (9,000) of the deferred donors (450,000) would experience burden related to § 630.6(a). As part of usual and customary business practice, collecting establishments notify an autologous donor's referring physician of reactive test results obtained during the donation process required under § 630.6(d)(1). However, we estimate that 5 percent of the 858 blood collection establishments (43) do not notify the referring physicians of the estimated 2 percent of 300,000 autologous donors with reactive test results (6,000).

FDA has concluded that the use of untested or incompletely tested but appropriately documented human blood or blood components in rare medical emergencies should not be prohibited. We estimate the recordkeeping under § 610.40(g)(1) to be minimal with one or less occurrence per year. The reporting of test results to the consignee in § 610.40(g) does not create a new burden for respondents because it is the usual and customary business practice or procedure to finish the testing and provide the results to the manufacturer responsible for labeling the blood products.

Section 606.160(b)(1)(ix) requires that establishment to maintain records of the notification efforts. We estimate the total annual records based on the 1.3 million donors determined not to be eligible to donate and each of the 450,000 (1.3 + 450,000 = 1,750,000) donors deferred based on reactive test results for evidence of infection due to communicable disease agents. Under

§ 606.160(b)(1)(xi), only the 858 registered blood establishments collect autologous donations and, therefore, are required to notify referring physicians. We estimate that 4.5 percent of the 300,000 autologous donors (13,500) will be deferred under § 610.41 and thus result in the notification of their referring physicians.

The hours per response and hours per record are based on estimates received from industry or FDA experience with similar recordkeeping or reporting requirements.

FDA estimates the burden of this information collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.40(c)(1)(ii)	942	13	12,000	.08	960
610.40(g)(2)	1	1	1	1	1
610.40(h)(2)(ii)(A)	1	1	1	1	1
610.40(h)(2)(ii)(C) and (h)(2)(ii)(D)	40	12	480	0.2	96
610.40(h)(2)(vi)	942	19	18,0000	0.08	1,440
610.42(a)	1	1	1	1	1
630.6(a)[2]	311	1,393	433,333	0.08	34,667
630.6(a)[3]	47	191	9,000	1.5	13,500
630.6(d)(1)	43	140	6,000	1	6,000
Total					56,666

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Notification of donors determined not to be eligible for donation based on failure to satisfy eligibility criteria.
[3] Notification of donors deferred based on reactive test results for evidence of infection due to communicable disease agents.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Record-keepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Records	Total Hours
610.40(g)(1)	858	1	858	.5	429
606.160(b)(1)(ix)	942	1,858	1,750,000	0.05	87,500
606.160(b)(1)(xi)	858	16	13,500	0.05	675
Total					88,604

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 9, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–5833 Filed 3–15–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2000D–1314]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Guidance for Industry on How to Use E-Mail to Submit a Notice of Intent to Slaughter for Human Food Purposes

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled Guidance for Industry on How to Use E-Mail to Submit a Notice of Intent to Slaughter for Human Food Purposes has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 8, 2004 (69 FR 1300), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0450. The approval expires on February 28, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: March 9, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–5834 Filed 3–15–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0199]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Importer's Entry Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Importer's Entry Notice'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 28, 2003 (68 FR 51787), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0046. The approval expires on August 31, 2005. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: March 9, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–5862 Filed 3–15–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0082]

Guidance for Industry and Food and Drug Administration Staff: Class II Special Controls Guidance Document: Factor V Leiden DNA Mutation Detection Systems; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled, ''Class II Special Controls Guidance Document: Factor V Leiden DNA Mutation Detection Systems.'' This guidance document describes a means by which Factor V Leiden deoxyribonucleic acid (DNA) mutation detection systems may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify the Factor V Leiden DNA mutation detection system into class II (special controls). This guidance document is immediately in effect as the special control for Factor V Leiden DNA mutation detection systems, but it remains subject to comment in accordance with the agency's good guidance practices regulation (GGPs).

DATES: Submit written or electronic comments on this guidance at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Factor V Leiden DNA Mutation Detection Systems'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this 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*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Mansfield, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying the Factor V Leiden DNA mutation detection system into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for Factor V Leiden DNA mutation detection systems. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving a written notice of the classification of the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments we receive in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs. The guidance represents the agency's current thinking on Factor V Leiden DNA mutation detection systems. 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 statute and regulations.

III. Electronic Access

To receive ''Class II Special Controls Guidance Document: Factor V Leiden DNA Mutation Detection Systems'' by fax machine, call FDA's Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1236) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a

personal computer with Internet access. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 USC 3501–3520) (the PRA). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number. 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit two paper copies of any mailed comments, except individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 5, 2004.

Beverly Chernaik Rothstein,

Acting Deputy Director for Policy and Regulations, Center for Devices and Radiological Health.

[FR Doc. 04–5865 Filed 3–15–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[HRSA–04–078]

Special Projects of National Significance: An Evaluation of Innovative Methods for Integrating Buprenorphine Opioid Abuse Treatment in HIV Primary Care Settings; CFDA 93.928

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of fiscal year (FY) 2004 funds to be awarded under the Special Projects of National Significance (SPNS) Program for the development and evaluation of innovative methods for integrating buprenorphine opioid abuse treatment in HIV primary care settings.

Program Purpose: The purpose of this new grant initiative is to support and examine the effectiveness of the integration of advancements in substance abuse treatment (buprenorphine) in HIV primary care settings. Grantees are expected to participate in multi-site evaluation activities as well as accomplish a local evaluation of interventions. An Evaluation and Technical Assistance Center (ETAC) will be responsible for coordinating and conducting a multi-site analysis, providing clinical expertise, developing guidelines for integrated programs, conducting cost-effectiveness analysis, and dissemination of results.

Program Requirements: The demonstration projects will focus on the development and evaluation of interventions that examine a number of relevant issues including (a) barriers and facilitators for clients successfully engaging in integrated substance abuse treatment using buprenorphine while also being treated for HIV, (b) how delivery of care is impacted by an integrated approach, and (c) how continuity of both HIV primary care and substance abuse (buprenorphine) treatment will be affected. The Center will work with SPNS and demonstration sites to develop an overall multi-site evaluation of the initiative. Subsequently, the Center will assist grantees on program development and evaluation issues. The Center will be responsible for describing the methods, theoretical framework, and principles of the evaluation design. The Center must also develop a technical assistance plan for grantees. Throughout the initiative, the SPNS Program expects the Center to describe the roles and characteristics of the clients, providers, and practitioners who participate in the projects, and the interventions used by grantees. In addition, the Center will gather information that will describe the effect of integrating buprenorphine treatment into primary care structures and health care systems.

Eligible Applicants: The statute, Section 2691(a) of the Public Health Service Act specifies that grants may be awarded to public and non-profit private entities to fund special programs for the care and treatment of people with HIV disease. Eligible applicants may include, but are not limited to, State, local, or tribal public health, mental health, housing, or substance abuse departments; public or non-profit hospitals and medical facilities; faith-based and community-based organizations, institutions of higher education, and national service provider and/or policy development associations and organizations. With regard to this initiative, all applicants must have significant experience evaluating substance abuse treatment programs, HIV primary care and treatment, and the integration of these endeavors.

Funding Priorities: This SPNS Initiative is designed to demonstrate and evaluate innovative and replicable models with regard to HIV treatment and care in various settings. The authorizing legislation specifies three SPNS program objectives: (1) To support the development of innovative models of HIV care; (2) to evaluate the effectiveness of innovative program designs; and (3) to promote replication of effective models.

Authorizing Legislation: The SPNS Program is authorized by section 2691 of the Public Health Service (PHS) Act, (42 U.S.C. 390ff–101).

Availability of Funds: The program has $3.5 million dollars available for this initiative. The Health Resources and Services Administration (HRSA) expects to make up to ten (10) awards for demonstration projects (Category A) and one award for an Evaluation and Program Support Center (Category B). It is anticipated that each Category A project site will be awarded up to $300,000 per year for 5 years. The Category B Evaluation and Support Center will be awarded up to $500,000 per year for 5 years. The budget and project periods for approved and funded projects will begin on or about September 1, 2004. Funds must be requested for all 5 years of the initiative.

Cost Sharing/Matching: There are no cost sharing/matching requirements under this grant initiative.

Application Deadline: Applications must be received in the HRSA GAC by the close of business April 15, 2004, to be considered for competition. Applications will meet the deadline if they are either (1) received on or before the deadline date or (2) postmarked or E-marked on or before the deadline date, and received in time for submission to the objective review panel. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted instead of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing.

Late Applications: Applications which do not meet the criteria above are considered late applications. HRSA shall notify each late applicant that its

application will not be considered in the current competition.

The Chief Grants Management Officer (CGMO) or a higher level designee may authorize an extension of published deadlines when justified by such circumstances as acts of God (*e.g.* floods or hurricanes), widespread disruptions of mail service, or other disruptions of services such as a prolonged blackout. The authorizing official will determine the affected geographical area(s).

Electronic Submission: HRSA encourages applicants to submit applications on-line. To register and/or log-in to prepare your application, go to *https://grants.hrsa.gov/webexternal/login.asp.* For assistance in using the on-line application system, call 877–GO4–HRSA (877–464–4772) between 8:30 am to 5:30 pm ET or e-mail *callcenter@hrsa.gov.* Application narratives and spreadsheets will need to be created separately and submitted as attachments to the application. You will be prompted to ''upload'' your attachments at strategic points within the application interface. The following document types will be accepted as attachments: WordPerfect (.wpd), Microsoft Word (.doc), Microsoft Excel (.xls), Rich Text Format (.rtf), Portable Document Format (.pdf). If there are tables that are not supported as data entry forms from within the application, they should be downloaded to your hard drive, filled in, and then uploaded as attachments with your application. Applications submitted electronically will be time/date stamped electronically, which will serve as receipt of submission. To look for funding opportunities, go to *http://www.hrsa.gov/grants* and follow the links.

DUNS Number: Beginning October 1, 2003, applicants were required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please include DUNS number on application face page. Additionally, the applicant organization will be required to register with the Federal Government's Central Contractor Registry (CCR) in order to do business with the Federal Government, including electronically applying for HRSA grants. Information about registering with the CCR can be found at *http://www.hrsa.gov/grants/ccr.htm.*

Where to Request and Send an Application: To prepare and submit an application, organizations must obtain: (1) The SPNS Buprenophine Substance Abuse Treatment Guidance and (2) the official Federal grant application kit. To obtain the official grant application kit (PHS 5161–1) and program guidance materials for this announcement call the HRSA Grant Application Center at 877–477–2123 and request the OMB Catalogue of Federal Domestic Assistance (CFDA) number 93.928, FY 2004 Integrating Buprenorphine/Substance Abuse Treatment in HIV Primary Care Settings. These forms may also be downloaded from the Health Resources and Services Administration's Web site at: *http://www.hrsa.gov/grants/forms.htm.* The Guidance can be found at *http://www.hrsa.gov/grants/.* HRSA encourages applicants to submit applications on-line. To register and/or log-in to prepare your application, go to *https://grants.hrsa.gov/webexternal/login.asp.* For assistance in using the on-line application system, call 877–GO4–HRSA (877–464–4772) between 8:30 am to 5:30 pm ET or e-mail *callcenter@hrsa.gov.*

Notification of Intent to Apply: To allow HRSA to plan for the Objective Review Process, letters of intent are requested from all applicants. Such letters should be sent to: Division of Independent Review, Director, *Attention:* FY 2004 Integrating Buprenorphine/Substance Abuse Treatment in HIV Primary Care Settings, HRSA Grants Application Center (GAC), The Legin Group, Inc., 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879, fax number: 877–477–2345. Letters should be received by March 30, 2004. Receipt of these notices of intent will not be acknowledged. An applicant is eligible to apply even if no letter of intent is submitted.

ADDRESSES: Please mail one (1) original (ink-signed) and two (2) unbound photocopies of completed applications to the HRSA Grant Application Center, c/o The Legin Group, Inc., 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879, *Attention:* FY 2004 Integrating Buprenorphine/Substance Abuse Treatment in HIV Primary Care Settings, HRSA–04–078. Grant applications sent to any other address will be returned. Applicants are strongly advised to obtain the Guidance before preparing applications.

FOR FURTHER INFORMATION CONTACT: Additional information regarding this funding announcement may be requested from Lois Eldred, Dr PH, Chief, Demonstration Project Development and Evaluation Branch, Office of Science and Epidemiology, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7C–07, Rockville, MD 20857; telephone 301–443–3327; fax 301–443–4965; e-mail address *LEldred@hrsa.gov.* For assistance related to technical and program issues regarding the overall SPNS Program, please contact Pamela Belton, Program Analyst, Demonstration Project Development and Evaluation Branch, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 7C–07, Rockville, MD 20857; telephone: 301–443–9976; fax 301–443–4965 or e-mail address *PBelton@hrsa.gov.* For information regarding business, administration, and fiscal issues related to the awarding of grants under this notice, contact Ms. Pamela Baker, Grants Management Specialist, Division of Grants Management Operations, Health Resources and Services Administration, 5600 Fishers Lane, Room 11A–16, Rockville, MD 20857; telephone 310–443–0197, fax 301–594–6096 or e-mail address *pbaker@hrsa.gov.*

SUPPLEMENTARY INFORMATION: All applications submitted to the SPNS Program will be reviewed and rated by an objective review panel. All applicants funded should recognize that this initiative is not designed to provide continuous support once the initiative is complete and evaluated. Applicants are strongly encouraged to secure non-SPNS funding support during their initiative if the evaluation suggests that the program/intervention is effective and merits continuation.

Healthy People 2010 Objectives: The PHS encourages applicants to address at least one of the Healthy People 2010 objectives related to HIV and AIDS in their work plans. Potential applicants may obtain a copy of Healthy People 2010 (Full Report) or Healthy People 2010 (Summary Report) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Web site: *http://www.access.gpo.gov;* telephone: 202–512–1800).

Reporting and Other Requirements: In addition to deliverables described in guidance materials, the successful applicant under this notice must submit two semi-annual activity summary reports, in accordance with provisions of the general regulations which apply under 45 CFR 74.51 ''Monitoring and reporting of program performance'' (with the exception of State and local governments to which 45 CFR part 92 reporting requirements apply), and comply with audit requirements of OMB Circular A–133. Further, the PHS also strongly encourages all award recipients to provide a smoke-free workplace and

to promote the non-use of all tobacco products. In particular, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Reporting Requirements: This program is also subject to the PHS Reporting Requirements which have been approved by the OMB under No. 0937–0195. Under these requirements, any community-based, non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to keep State and local health officials appraised of proposed health services grant applications submitted from within their jurisdictions. Instructions on this matter are contained in the Guidance for this initiative, available from the GAC.

Paperwork Reduction Act: Should there be any data collection activities associated with this funding that fall under the purview of the Paperwork Reduction Act, OMB clearance will be sought.

Executive Order 12372: The SPNS Grant Program is subject to the provisions of Executive Order 12372, concerning intergovernmental review of Federal Programs, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and will provide a State Single Point of Contact (SPOC) for the review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations under E.O. 12372 is 60 days after the application due date. HRSA does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (*See* ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and 45 CFR part 100, for a description of the review process and requirements. For additional information go to: *http://www.whitehouse.gov/omb/grants/spoc.html*.)

Review Process: Applications submitted in response to the NOAF will be reviewed for threshold criteria and merit by an Objective Review Committee. Applicants should carefully review the criteria, in relation to the Program Requirements, to ensure that their applications address each criterion. Reviewers will use only the information you include in your application. Therefore, it is important that you write clearly and be specific. You should assume that the reviewers know nothing about your organization or the work you do. The threshold criteria for Category A demonstration project sites and Category B Evaluation and Support Center are: (1) Need (15 points), (2) Response (25 points), (3) Evaluative Measures (20 points), (4) Impact (15 points), (5) Resources/Capabilities (15 points) and (6) Support Requested (10 points). These criteria are more completely defined in the Application Kit.

Dated: February 26, 2004.

Elizabeth M. Duke,

Administrator.

[FR Doc. 04–5866 Filed 3–15–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS NO. 2313–04]

Information Regarding the H–2B Numerical Limitation for Fiscal Year 2004

AGENCY: Bureau of Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice advises the public that the Department of Homeland Security (DHS), Bureau of Citizenship and Immigration Services (CIS) will no longer accept H–2B petitions for temporary nonimmigrant workers for the remainder of Fiscal Year (FY) 2004 now that it is clear that the demand for H–2B workers will exceed the statutory numerical limit (the cap) for H–2B petitions for FY 2004. This notice is published so that the public will understand the procedures for processing of H–2B petitions now that CIS has received enough H–2B petitions to reach the cap. These procedures are intended to minimize confusion and burden to employers who use the H–2B program.

DATES: This notice is effective March 16, 2004.

FOR FURTHER INFORMATION CONTACT: Kevin J. Cummings, Business and Trade Services Branch/Program and Regulation Development, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 I Street, NW., ULLB 3rd Floor, Washington, DC 20536, telephone (202) 305–3175.

SUPPLEMENTARY INFORMATION:

Who Is an H–2B Nonimmigrant?

Section 101(a)(15)(h)(ii)(b) of the Immigration and Nationality Act (Act) describes an H–2B alien as an alien coming temporarily to the United States to perform temporary nonagricultural labor or services. This definition is reflected at 8 CFR 214.2(h)(1)(ii)(D) and (h)(6)(i).

What Is the Cap or Numerical Limitation on the H–2B Nonimmigrant Classification?

Section 214(g)(1)(B) of the Act provides that the total number of aliens who may be issued H–2B visas or otherwise granted H–2B status during any fiscal year may not exceed 66,000.

What Is the Effect of This Notice?

This notice advises the public that as of March 10, 2004, CIS will no longer accept H–2B petitions for temporary nonimmigrant workers for the remainder of FY 2004. However, CIS will adjudicate petitions received on or before March 9, 2004 in the order in which they are received.

Does This Notice Apply to All H–2B Petitions Filed During FY 2004?

No. The procedures described in this notice relate only to H–2B petitions filed for beneficiaries subject to the numerical limitations and who will be engaged in temporary work to commence on or before September 30, 2004.

Amendments to previously approved petitions and petitions for extension of stay are not affected by this procedure. Likewise, petitions for aliens who already hold H–2B status, *i.e.* petitions filed on behalf of an H–2B alien by a new or additional employer are also not affected by this procedure. This procedure also does not relate to petitions filed before October 1, 2004, for employment to commence on or after October 1, 2004.

What Is the CIS Procedure for Processing H–2B Petitions During the Remainder of FY 2004?

This notice informs the public that CIS has received a sufficient number of

H–2B petitions to reach the cap of 66,000 for FY 2004. As of March 10, 2004, the CIS will not accept for adjudication any H–2B petition containing a request for a work start date prior to October 1, 2004. CIS will return any petitions requesting an employment start date prior to October 1, 2004 (along with the filing fee and, if applicable, the premium processing fee) to the petitioner according to 8 CFR 214.2(h)(8)(ii)(E). In accordance with existing regulations, such petitioners may refile those petitions with a new starting date of October 1, 2004, or later.

CIS will adjudicate all H–2B petitions received on or before March 9, 2004. CIS will adjudicate these cases in the order in which they are received. CIS is not suspending premium processing and normal rules applicable to cases subject to premium processing will still apply.

Does This Process Apply to H–2B Petitions Filed for Employment To Commence on or After October 1, 2004?

No. Those petitions are not affected by the procedures described in this notice and will be adjudicated in the normal fashion. Petitioners are reminded that petitions for H–2B classification may not be filed without an approved temporary labor certification issued by the Department of Labor. H–2B petitions filed for employment to commence on or after October 1, 2004, will be counted, if otherwise chargeable against the annual H–2B cap, against the FY 2005 numerical cap.

Dated: March 8, 2004.

Eduardo Aguirre,

Director, Bureau of Citizenship and Immigration Services.

[FR Doc. 04–5940 Filed 3–11–04; 4:23 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–17319]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boats and associated equipment, aftermarket marine equipment, and prevention through people will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Saturday, April 24, 2004, from 1 p.m. to 5 p.m., on Monday, April 26, 2004, from 1:30 p.m. to 4:30 p.m. and on Tuesday, April 27, 2004, from 8:30 a.m. to 12 noon. The Prevention Through People Subcommittee will meet on Sunday, April 25, 2004, from 8:30 a.m. to 12 noon. The Boats and Associated Equipment Subcommittee will meet on Sunday, April 25, 2004, from 1:30 p.m. to 5 p.m. The Aftermarket Marine Equipment Subcommittee will meet on Monday, April 26, 2004, from 8:30 a.m. to 12 noon. These meetings may close early if all business is finished. On Sunday, April 25, a Subcommittee meeting may start earlier if the preceding Subcommittee meeting has closed early. Written material and requests to make oral presentations should reach the Coast Guard on or before Tuesday, April 6, 2004. Requests to have a copy of your material distributed to each member of the committee or subcommittees in advance of the meeting should reach the Coast Guard on or before Friday, April 2, 2004.

ADDRESSES: NBSAC will meet at the Norfolk Waterside Marriott, 235 East Main Street, Norfolk, VA 23510. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Jeff Hoedt, Executive Director of NBSAC, Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov* or at the Web Site for the Office of Boating Safety at URL address *www.uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: Jeff Hoedt, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285. You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Tentative Agendas of Meetings

National Boating Safety Advisory Council (NBSAC). The agenda includes the following:

(1) Remarks—Rear Admiral Jeffrey J. Hathaway, Director of Operations Policy and Council Sponsor.

(2) Chief, Office of Boating Safety Update on NBSAC Resolutions and Recreational Boating Safety Program report.

(3) Executive Director's report.

(4) Regulatory Process description and Regulatory Project Status update.

(5) Chairman's session.

(6) Report on Joint TSAC/NBSAC Workgroup and TSAC Liaison.

(7) Report from NAVSAC Liaison.

(8) Coast Guard Auxiliary report.

(9) National Association of State Boating Law Administrators Report.

(10) Wallop Breaux reauthorization update.

(11) National Boating Survey report.

(12) Prevention Through People Subcommittee report.

(13) Boats and Associated Equipment Subcommittee report.

(14) Aftermarket Marine Equipment Subcommittee report.

Boats and Associated Equipment Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting boats and associated equipment.

Aftermarket Marine Equipment Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting aftermarket marine equipment.

Prevention Through People Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting prevention through people.

Procedural

All meetings are open to the public. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director of your request no later than Tuesday, April 6, 2004. Written material for distribution at a meeting should reach the Coast Guard no later than Tuesday, April 6, 2004. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than Friday, April 2, 2004.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: March 10, 2004.

Jeffrey J. Hathaway,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 04–5915 Filed 3–15–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Drawback Process Regulations

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security 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: Drawback Process Regulations. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 70283) on December 17, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before April 15, 2004.

ADDRESSES: 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 Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one 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/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections 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, *e.g.,* permitting electronic submission of responses.

Title: Drawback Process Regulations.

OMB Number: 1651–0075.

Form Number: Forms CBP–7551, 7552, 7553.

Abstract: The information is to be used by CBP officers to expedite the filing and processing of drawback claims, while maintaining necessary enforcement information to maintain effective administrative oversight over the drawback program.

Current Actions: This submission is being submitted to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 8,150.

Estimated Time Per Respondent: 11 hours.

Estimated Total Annual Burden Hours: 90,000.

Estimated Total Annualized Cost on the Public: $3,098,405.86.

FOR FURTHER INFORMATION CONTACT: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: March 9, 2004.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 04–5856 Filed 3–15–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–49]

Delegation of Authority Under Section 550 of the Federal Property and Administrative Services Act of 1949

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: In this notice, the Secretary of Housing and Urban Development delegates to the Assistant Secretary for Housing-Federal Housing Commissioner certain authority provided to the Secretary under the Federal Property and Administrative Services Act of 1949.

EFFECTIVE DATE: March 9, 2004.

FOR FURTHER INFORMATION CONTACT: Janet Golrick, Office of Housing, Room 6112, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 708–2495 (this is not a toll-free number). Persons with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: The Federal Property and Administrative Services Act of 1949 (40 U.S.C. chapter 10) (the Act) authorizes the Secretary of Housing and Urban Development, in consultation with the Administrator of General Services to dispose of surplus federal property to states, their political subdivisions or instrumentalities, and nonprofit organizations for the purpose of providing self-help housing to low-income individuals. The Act also authorizes the Secretary to enforce and revise instruments that provide for the transfer of the property. These responsibilities are being delegated by the Secretary to the Assistant Secretary for Housing-Federal Housing Commissioner.

Accordingly, the Secretary delegates the authority as follows:

Section A. Authority Delegated

The Secretary delegates to the Assistant Secretary for Housing-Federal Housing Commissioner the Secretary's authority under section 550 of the Act (40 U.S.C. 484) to (1) recommend surplus federal real property to the Administrator of General Services as needed for providing housing or housing assistance for low-income persons, (2) take all steps reasonably necessary to sell and lease surplus federal property for that purpose, including fixing sale or lease value, and (3) develop, enforce, and revise instruments transferring such property.

Section B. Authority to Redelegate

The Assistant Secretary for Housing-Federal Housing Commissioner is authorized to redelegate to employees of the Department the authority delegated under Section A.

Authority: Section 550 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484), and section 7(d) of the

Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 9, 2004.

Alphonso Jackson,

Acting Secretary.

[FR Doc. 04–5829 Filed 3–15–04; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; OMB Control Number 1018–0092, Applications for Permits/Licenses

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) will submit the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. If you wish to obtain copies of the information collection requirements, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address or telephone number listed below.

DATES: We will accept comments until May 17, 2004.

ADDRESSES: Mail your comments on this information collection renewal request to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203; or e-mail *Anissa_Craghead@fws.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirements, related forms, or explanatory material, contact Anissa Craghead at telephone number (703) 358–2445, or electronically at *Anissa_Craghead@fws.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require 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)).

We will submit a request to OMB to renew its approval of the collection of information included in Form 3–200–1, the general permit application form; Form 3–200–2, Designated Port Exception permit application form; and Form 3–200–3, Import/Export license application form. The current OMB control number for all three of these forms is 1018–0092, and the OMB approval for this collection of information expires on July 31, 2004. We are requesting a three year term of approval for this information collection activity. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Endangered Species Act (16 U.S.C. 1531 *et seq.*) makes it unlawful to import or export fish, wildlife, or plants without obtaining prior permission as deemed necessary for enforcing the Act or upholding the Convention on International Trade in Endangered Species (CITES) (see 16 U.S.C. 1538(e)).

The U.S. Fish and Wildlife Service's Form 3–200–1, Permit Application Form, is the general application form for all permitted activities authorized by the Service. In the interest of making the application process simpler for the public, we have previously modified the format of the first page of Form 3–200, creating a sequence of forms such as Form 3–200–1, 3–200–2, 3–200–3, *etc.* This enables the public to use a specific application form when requesting permission to conduct a certain otherwise unauthorized activity. Each specific application form contains questions that are specific to the requested activity. This makes the application process easier for the public by eliminating the need to use one application form, with standard questions, to apply for any number of otherwise unauthorized activities, many of which are distinctly different from one another and could not be adequately or fairly evaluated using standard questions. In the above mentioned sequence of forms, the general Permit Application Form is designated as Form 3–200–1. Since this form has been modified for applications for specific activities as described above, it is rarely, if ever used by itself. Therefore, the annual responses and the annual burden hours resulting from the use of this form are essentially zero. Though this form is rarely, if ever, used by itself, we intend to maintain this form in the event that a general permit application form is needed at some point in the future for an unanticipated activity, one that was not provided for in the development of the sequence of forms described above.

The Service's Form 3–200–2, Designated Port Exception permit application form is the application form to request an import or export of wildlife or wildlife products at a port other than a port designated in 50 CFR 14.12. Title 50, of the Code of Federal Regulations, part 14.11 (50 CFR 14.11) makes it unlawful to import or export wildlife or wildlife products at a port other than a designated port listed in 50 CFR 14.12, unless you qualify for one of the exceptions that allow you to import or export your wildlife or wildlife products at a different port. These exceptions allow you to import or export wildlife or wildlife products at a non designated port for the following reasons: (1) For use as scientific specimens; (2) to minimize deterioration or loss; and (3) to relive economic hardship. We recognize the limitations that the requirement to use a designated port may place on certain individuals, businesses or scientific organizations. The issuance of a Designated Port Exception permit can relieve these limitations for certain qualified individuals, businesses or scientific organizations.

The Service's Form 3–200–3, Import/Export license application form, is the application form to request an import/export license. Title 50, of the Code of Federal Regulations, part 14.11 (50 CFR 14.91) makes it unlawful to import or export wildlife or wildlife products for commercial purposes without first having obtained an import/export license. We use the information obtained from Form 3–200–3 as an enforcement tool and management aid in monitoring the international wildlife market and detecting trends and changes in the commercial trade of wildlife and wildlife products. Import/export licensees are required to maintain detailed records of each importation or exportation of wildlife or wildlife products made under the import/export license, and the ultimate destination of these wildlife or wildlife products. In addition, licensees are required to make these records and the corresponding inventory of wildlife or wildlife products available for our inspection at reasonable times, subject to applicable limitations of law. This authority allows us to ensure that protected species are not being used in commercial trade.

Title: Permit application form.

Approval Number: 1018–0092.

Service Form Number: 3–200–1.

Frequency of Collection: Rarely, if ever used, for reasons described above.

Description of Respondents: Scientific institutions, businesses or individuals that request permission to conduct any number of otherwise unauthorized activities.

Total Annual Responses: 0.

Total Annual Burden Hours: 0.

Title: Designated Port Exception permit application form.

Approval Number: 1018–0092.

Service Form Number: 3–200–2.

Frequency of Collection: On occasion, whenever permission is requested to import wildlife or wildlife products at a non designated port for use as scientific specimens, to minimize deterioration or loss, or to relieve economic hardship.

Description of Respondents: Scientific institutions, businesses or individuals that import or export scientific specimens, wildlife, or wildlife products.

Total Annual Responses: Approximately 607.

Total Annual Burden Hours: The total annual burden is approximately 607 hours. We estimate the reporting burden to average one hour per response.

Title: Import/Export license application form.

Approval Number: 1018–0092.

Service Form Number: 3–200–3.

Frequency of Collection: On occasion, whenever permission is requested to import or export wildlife or wildlife products for commercial purposes.

Description of Respondents: Businesses or individuals that import or export wildlife or wildlife products for commercial purposes.

Total Annual Responses: Approximately 2,675.

Total Annual Burden Hours: The total annual burden is approximately 2,675 hours. We estimate the reporting burden to average one hour per response.

We invite comments concerning this renewal on: (1) Whether the collection of information is useful and necessary for us to do our job, (2) the accuracy of our estimate of the burden on the public to complete the form; (3) ways to enhance the quality and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. This information collection is part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There may also be limited circumstances in which we would withhold a respondent's identity from the rulemaking record, as allowable by law. If you wish us to withhold your name and/or address, you must state this clearly at the beginning of your comment. We will not consider anonymous comments. We generally make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: March 1, 2004.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 04–5830 Filed 3–15–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment for D'Arbonne National Wildlife Refuge Located in Union and Ouachita Parishes, Louisiana

AGENCY: Fish and Wildlife Service, Interior

SUMMARY: The Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental assessment pursuant to the National Environmental Policy Act and its implementing regulations. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et. seq.*), to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issued to include in the environmental document.

Special mailings, newspaper articles, and other media announcements will be used to inform the public and state and local government agencies of the opportunities for input throughout the planning process. An open house style meeting will be held during the scoping phase of the comprehensive conservation plan development process.

DATES: To ensure consideration, we must receive written comments on or before April 30, 2004.

ADDRESSES: Address comments, questions, and requests for more information to Lindy Garner, Planning Biologist, North Louisiana National Wildlife Refuge Complex, 11372 Highway 143, Farmerville, Louisiana 71241.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. This plan guides management decisions and identifies the goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elmenets, including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input into this planning process is essential.

D'Arbonne National Wildlife Refuge, established in 1975, is located within the Lower Mississippi River Valley floodplain in north Louisiana. The refuge is located approximately 6 miles north of West Monroe Louisiana. The refuge's 17,421 acres include deep overflow swamp, bottomland hardwood forests, and upland mixed pine/hardwoods. D'Arbonne Refuge provides habitat for thousands of wintering waterfowl, wading birds, waterbirds, and year-round habitat for nesting wood ducks, squirrels, deer, river otters, and raccoons. The refuge is open year-round for wildlife observation, nature photography, and hiking. Hunting and fishing opportunities are permitted on most areas of the refuge.

FOR FURTHER INFORMATION CONTACT: Planning Biologist, North Louisiana National Wildlife Refuge Complex, telephone: 318/726–4222; fax 318/726–4667; e-mail: *lindy_garner@fws.gov;* or mail (write to the Planning Biologist at address in the **ADDRESSES** Section).

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: February 27, 2004.

J. Mitch King,

Acting Regional Director.

[FR Doc. 04–5854 Filed 3–15–04; 8:45 am]

BILLING CODE 4310–55–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.

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
040035	Michelle L. Sauther, University of Colorado.	68 FR 70521; December 18, 2003	February 10, 2004
076689	Triple S Game Farm	69 FR 2155; January 14, 2004	February 10, 2004

Dated: February 20, 2004.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–5835 Filed 3–15–04; 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.

DATES: Written data, comments or requests must be received by April 15, 2004.

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: Stephen P. Baughman, Friendswood, TX, PRT–082555.

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: Kay Rosaire, Sarasota, FL, PRT–083145–083156.

The applicant requests permits to export captive-born tigers (*Panthera tigris*) to world wide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: [083145, Czar; 083146, Sandy; 083147, Tyler; 083148, Samson; 083149, Nakita; 083150, Noelle; 083151, Blue; 083152, Niobu; 083153, Goliath; 083154, Menilick; 083155, Conan; 083156, Kira]. 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.

Applicant: Oklahoma Museum of Natural History, University of Oklahoma, Norman, OK, PRT–075249.

The applicant requests a permit to export and re-import non-living museum specimens of endangered and threatened species of animals (excluding bald eagles) previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Dated: February 20, 2004.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 04–5836 Filed 3–15–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Scientific Committee; Announcement of Plenary Session

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The OCS Scientific Committee will meet at the Hyatt Regency New Orleans at Louisiana Superdome in New Orleans, Louisiana.

DATES: Wednesday, April 21, 2004, from 8:30 a.m. to 5 p.m.; Thursday, April 22, from 8 a.m. to 5 p.m.; and Friday, April 23, from 8 a.m. to 12 p.m.

ADDRESSES: Hyatt Regency New Orleans at Louisiana Superdome, 500 Poydras Avenue, New Orleans, Louisiana 70113–1805, telephone (504) 561–1234.

FOR FURTHER INFORMATION CONTACT: A copy of the agenda may be requested from MMS by calling Ms. Carolyn Beamer at (703) 787–1211. Other inquiries concerning the OCS Scientific Committee meeting should be addressed to Dr. James Kendall, Executive Secretary to the OCS Scientific Committee, Minerals Management Service, 381 Elden Street, Mail Stop 4043, Herndon, Virginia 20170–4817 or by calling (703) 787–1656.

SUPPLEMENTARY INFORMATION: The OCS Scientific Committee is an outside group of non-Federal scientists which advises the Director, MMS, on the feasibility, appropriateness, and

scientific merit of the MMS OCS Environmental Studies Program as it relates to information needed for informed OCS decisionmaking.

The Committee will meet in plenary session on Wednesday morning, April 21. Presentations will be made by the Deputy Associate Director for Offshore Minerals Management, the MMS Gulf of Mexico Regional Director, and the MMS Chief Scientist. For the remainder of the day, and through Thursday, April 22, the Committee will meet in discipline breakout sessions (*i.e.*, physical oceanography, biology, and socioeconomics) to review the specific research plans of the regional offices for Fiscal Years 2005 and 2006 in the context of regional decisionmaking.

On Friday morning, April 23, the Committee will meet in plenary session for reports of the discipline breakout sessions of the previous day and to continue with Committee Business.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

Authority: Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget's Circular A–63, Revised.

Dated: March 1, 2004.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 04–5885 Filed 3–15–04; 8:45 am]

BILLING CODE 4043–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG), Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub.L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a Federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

Date and Location: The TWG will conduct the following public meeting:

Phoenix, Arizona—March 30–31, 2004. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and begin at 8 a.m. and conclude at noon on the second day. The meeting will be held at the Arizona Department of Water Resources, 500 N. 3rd Street, 3rd Floor, Conference Room A, Phoenix, Arizona.

Agenda: The purpose of the meeting will be to review development of the Grand Canyon Monitoring and Research Center's draft core monitoring plan, strategic plan, and monitoring and research plan; review TWG Operating Procedures; discuss assignments from the AMWG Meeting held on March 3–4, 2004, as well as other administrative and resource issues pertaining to the AMP. To view a copy of the draft agenda, please visit the Reclamation Web site at: *http://www.usbr.gov/uc/envprog/amp/amwg/mtgs/04mar31/mtga4_00.html.*

To allow full consideration of information by the AMWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at *dkubly@uc.usbr.gov* (5) days prior to the meeting. Any written comments received will be provided to the AMWG and TWG members prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, telephone (801) 524–3715; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov.*

Dated: February 24, 2004.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. 04–5852 Filed 3–15–04; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–505]

Certain Gun Barrels Used in Firearms Training Systems; 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 February 11, 2004 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Beamhit, LLC of Columbia, Maryland, SafeShot, LLC of Columbia, Maryland, and SafeShot, Inc. of New York, New York. An amended complaint was filed on February 27, 2004. The amended complaint 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 gun barrels used in firearms training systems by reason of infringement of claims 1–2, 4–5, 8, 15, 21–22 and 26 of U.S. Patent No. 5,829,180 and claims 1–3, 7, 9, 14–18, 20, 24, 27, 32–33, 37–40, 44–45, 49–51, and 54 of U.S. Patent No. 6,322,365 B1. The amended complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The amended 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: Kevin Baer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2221.

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 amended complaint, the U.S. International Trade Commission, on March 9, 2004, *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 gun barrels used in firearms training systems by reason of infringement of claims 1–2, 4–5, 8, 15, 21–22 or 26 of U.S. Patent No. 5,829,180 or claims 1–3, 7, 9, 14–18, 20, 24, 27, 32–33, 37–40, 44–45, 49–51, or 54 of U.S. Patent No. 6,322,365 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 complainants are—Beamhit, LLC, 10220 Old Columbia Road, Suite A & B, Columbia, Maryland 21046; SafeShot, LLC, 10220 Old Columbia Road, Suite A & B, Columbia, Maryland 21046; SafeShot, Inc., 10 West 37th Street, New York, New York 10018.

(b) The respondents are the following companies alleged to be in violation of section 337, and are parties upon which the complaint is to be served:

Widec S.A. Décolletage, CP 1054, Rue Industrielle 16, CH–2740 Moutier, Switzerland; AMI Corporation SA, CP 1054, Rue Industrielle 16, CH–2740 Moutier, Switzerland;

Crown AirMunition Holding, Vaartweg 200, P.O. Box 2139, NL–1200 CC Hilversum, The Netherlands;

AirMunition International Corporation, Vaartweg 200, P.O. Box 2139, NL–1200 CC Hilversum, The Netherlands;

AirMunition Industries S.A., Près-des-Nants 71, CH–2744 Belprahon-Moutier, Switzerland;

AirMunition North America, Inc., 7001 Peachtree Industrial Blvd., Suite 116, Norcross, Georgia 30092.

(c) Kevin Baer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

A response 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 the 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 cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: March 10, 2004.

Marilyn R. Abbott,

Secretary.

[FR Doc. 04–5838 Filed 3–15–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–438 (Preliminary) and 731–TA–1076 (Preliminary)]

Live Swine From Canada

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty and antidumping investigations Nos. 701–TA–438 (Preliminary) and 731–TA–1076 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of live swine,[1] provided for in subheading 0103.91.00 and 0103.92.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by federal and provincial governments in Canada and sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in this case by April 19, 2004. The Commission's views are due at Commerce within five business days thereafter, or by April 26, 2004.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: March 5, 2004.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on March 5, 2004, by the National Pork Producers Council, the Arizona Pork Council, Georgia Pork Producers Association, Idaho Pork Producers Association, Illinois Pork Producers Association, Indiana Pork Producers Council, Iowa Pork Producers Association, Kentucky Pork Producers Association, Michigan Pork Producers Association, Minnesota Pork Producers Association, Missouri Pork Association, Montana Pork Producers Council, Nebraska Pork Producers Association,

[1] Excluded from the scope of the investigations is U.S. Department of Agriculture certified purebred breeding swine.

New York Pork Producers Inc., North Carolina Pork Council, Ohio Pork Producers Council, Pennsylvania Pork Producers Council, South Dakota Pork Producers Council, Tennessee Pork Producers Association, Texas Pork Producers Association, and the Wisconsin Pork Association, as well as a substantial number of individual producers.

Participation in the investigations and public service list. Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 26, 2004, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Elizabeth Haines (202–205–3200) not later than March 22, 2004, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 31, 2004, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: March 10, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–5837 Filed 3–15–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 4, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Ventilation Plans, Tests, and Examinations in Underground Coal Mines.

OMB Number: 1219–0088.

Frequency: On occasion; Monthly; Weekly; or Daily.

Affected Public: Business or other for-profit.

Number of Respondents: 711.

Number of Annual Responses: 2,144,014.

Estimated Time Per Response: Varies from 3 minutes for countersigning activities to 16 hours to update a ventilation plan.

Total Burden Hours: 2,068,839 hours.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $190.492.

Description: An underground mine is a maze of tunnels that must be adequately ventilated with fresh air to provide a safe environment for miners. Methane is liberated from the strata, and noxious gases and dusts from blasting and other mining activities may be

present. The explosive and noxious gases and dusts must be diluted, rendered harmless, and carried to the surface by the ventilating currents. Sufficient air must be provided to maintain the level of respirable dust at or below 2 milligrams per cubic meter of air and air quality must be maintained in accordance with MSHA standards. Mechanical ventilation equipment of sufficient capacity must operate at all times while miners are in the mine. Ground conditions are subject to frequent changes, thus sufficient tests and examinations are necessary to ensure the integrity of the ventilation system and to detect any changes that may require adjustments in the system. Records of tests and examinations are necessary to ensure that the ventilation system is being maintained and that changes which could adversely affect the integrity of the system or the safety of the miners are not occurring. These examination requirements of 30 CFR 75.310, 75.312, 75.342, 75.351, 75.360 through 75.364, 75.370, 75.371, and 75.382 also incorporate examinations of other critical aspects of the underground work environment such as roof conditions and electrical equipment which have historically cased numerous fatalities if not properly maintained and operated.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–5861 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,066]

Auburn Foundry, Auburn, IN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 23, 2004 in response to a worker petition filed by a company official on behalf of workers at Auburn Foundry, Auburn, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 2nd day of March, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–591 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,275]

Cordis Corporation, Including Leased Workers of Kelly Services Miami Lakes, Florida; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 2003, applicable to workers of Cordis Corporation, Miami Lakes, Florida. The notice was published in the **Federal Register** on September 2, 2003 (68 FR 52228).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of Kelly Services were employed at Cordis Corporation, at the Miami Lakes, Florida location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Kelly Services working at Cordis Corporation, Miami Lakes, Florida.

The intent of the Department's certification is to include all workers of Cordis Corporation who were adversely affected by increased imports of medical devices.

The amended notice applicable to TA–W–52,275 is hereby issued as follows:

All workers of Cordis Corporation, and leased workers of Kelly Services, Miami Lakes, Florida, who became totally or partially separated from employment on or after June 20, 2002, through August 7, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of March, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–589 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,293]

Dexter Shoe Company Dexter Plant, Dexter ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 18, 2004 in response to a worker petition which was filed by a State agency representative on behalf of workers at Dexter Shoe Company, Dexter Plant, Dexter, Maine (TA–W–54,293).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 2nd day of March, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–587 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–54,152]

Kwikset, a Division of Black and Decker, Bristow, OK; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 29, 2004 in response to a petition filed by a company official on behalf of workers at Kwikset, a Division of Black and Decker, Bristow, Oklahoma.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–579 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–54,303]

Duraw Manufacturing of Mississippi, Inc., McComb, MS; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 19, 2004, in response to a worker petition filed by a company official on behalf of workers of Duraw Manufacturing of Mississippi, Inc., McComb, Mississippi.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently, the investigation has been terminated.

Signed in Washington, DC, this 1st day of March, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–586 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–54,319]

Eighth Floor Promotions, Bloomington, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 20, 2004 in response to a petition filed on behalf of workers at Eighth Floor Promotions, Bloomington, Minnesota.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–582 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administraton

[TA–W–53,617]

Fleetguard, Inc., Neillsville West Plant a Subsidiary of Cummins, Inc. Neillsville, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

On January 26, 2004, the Department received the petitioner's request for administrative reconsideration of the Department's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The determination was signed on January 6, 2004. The Notice was published in the **Federal Register** on February 6, 2004 (69 FR 5866).

The Department reviewed the request and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 5th day of March, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–594 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W 54,292]

The Hamilton Collection, Jacksonville, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 18, 2004 in response to a petition filed by a company official on behalf of workers at The Hamilton Collection, Jacksonville, Florida.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 25th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–575 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–54,328]

Lucent Technologies, Inc., Charlotte, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 23, 2004, in response to a petition filed by a State agency representative on behalf of workers at Lucent Technologies, Inc., Charlotte, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 27th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–584 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,004]

Medline Industries, dba Maxxim Medical, Inc., Including Leased Workers of Kelly Services, Columbus, Mississippi; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 19, 2004, applicable to workers of Medline Industries, dba Maxxim Medical, Inc., Maxxim Boundary, including leased workers of Kelly Services, Columbus, Mississippi. The notice will be published soon in the **Federal Register.**

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce disposable surgical

drapes and are not separately identifiable by product line.

New findings show that there was a previous certification, TA–W–38,779, issued on May 21, 2001, for workers of Maxxim Medical, Inc., Columbus, Mississippi who were engaged in employment related to the production of disposable surgical drapes. That certification expired May 21, 2003. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from December 18, 2002 to May 22, 2003, for workers of the subject firm.

The amended notice applicable to TA–W–54,004 is hereby issued as follows:

All workers of Medline Industries, dba Maxxim Medical, Inc., Maxxim Boundary, Columbus, Mississippi, who became totally or partially separated from employment on or after May 22, 2003, through February 19, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Furthermore, after careful review, I determine that all leased workers from Kelly Services, Columbus, Mississippi are denied eligibility to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of March, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–592 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–54,368]

Multi-Form, Inc., DBA Dack Industries, Bristol, CT; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 26, 2004, in response to a petition filed by a company official on behalf of workers of Multi-Form, Inc., dba Dack Industries, Bristol, Connecticut. The petition was filed more than one year after the subject firm was closed. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 27th day of February, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–583 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,132]

National Textiles, Eden, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 2, 2004 in response to a petition filed on behalf of workers at National Textiles, Eden, North Carolina.

On December 15, 2003, the workers of the subject firm were denied eligibility to apply for worker adjustment assistance, under petition number TA–W–53,487. The Department has received a request for reconsideration of that denial. The Department will provide a copy of this petition to be included in the review of the request for reconsideration of TA–W–53,487.

Further investigation of TA–W–54,132 would duplicate investigation efforts, and this investigation is terminated.

Signed at Washington, DC, this 25th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–573 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,735]

Phillips Plastics Corporation Multi Shot Facility, Eau Claire, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of February 6, 2004, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The determination was signed on January 16, 2004. The Notice of determination was published in the **Federal Register** on February 6, 2004 (69 FR 5866).

The Department reviewed the request and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 5th day of March, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–593 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,232]

R & R Hosiery Partner, Rainsville, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 11, 2004 in response to a worker petition which was filed by a company official on behalf of workers at R & R Hosiery Partner, Rainsville, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 2nd day of March, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–590 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,196]

Shape Global Technology, Sanford, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February

6, 2004, in response to a petition filed by the company on behalf of workers at Shape Global Technology, Sanford, Maine.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 2nd day of March, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–585 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,247]

Stitches Manufacturing, Inc., Huntington Valley, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 12, 2004, in response to a worker petition filed by a company official on behalf of workers of Stitches Manufacturing, Inc., Huntington Valley, Pennsylvania.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers, or five percent of the workers in a firm with a workforce of more than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the petition has been terminated.

Signed at Washington, DC, this 2nd day of March, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–588 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–54,341]

Textron Fastening Systems, LDR Division, Rockford, Illinois; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 24, 2004, in response to a petition filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) on behalf of workers at Textron Fastening Systems, LDR Division, Rockford, Illinois.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 27th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–581 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–54,212]

The Timken Company, Pulaski, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 9, 2004 in response to a petition filed by a company official on behalf of workers at The Timken Company, Pulaski, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division ofTrade Adjustment Assistance.

[FR Doc. E4–577 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53, 994]

Union Tools, Inc., a Subsidiary of Acorn Products, Frankfort, NY; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 23, 2004, applicable to workers of Union Tools, Inc., a subsidiary of Acorn Products, Frankfort, New York. The notice will be published soon in the **Federal Register.**

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of lawn and garden tools.

New information from the State shows that the International Brotherhood of Boiler Makers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, requested Alternative Trade Adjustment Assistance (ATAA) on behalf of the workers of the subject firm but that request was not addressed in the decision document.

Information obtained from the company indicates that a significant number of workers of the subject firm are age 50 or over, workers have skills that are not easily transferable, and conditions in the industry are adverse. Review of this information shows that all eligibility criteria under Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, have been met.

Accordingly, the Department is amending the certification to reflect its finding.

The amended notice applicable to TA–W–53,994 is hereby issued as follows:

''All workers of Union Tools, Inc., a subsidiary of Acorn Products, Frankfort, New York, who became totally or partially separated from employment on or after January 12, 2003, through January 23, 2006, are eligible to apply for adjustment assistance under Secton 223 of the Trade Act of 1974 and are also eligible to apply for Alternative Trade Adjustment Assistance under section 246 of the Trade Act of 1974.''

Signed at Washingotn, DC., this 8th day of March, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–5927 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–54,144]

Universal Aerospace Company, Inc., Arlington, Washington; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 2, 2004, in response to a petition filed by a company official on behalf of workers at Universal Aerospace Company, Inc., Arlington, Washington.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 25th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–572 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0172(2004)]

Student Data Form; Extension of the Office of Management and Budget's Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirements contained in its Student Data Form.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by May 17, 2004.

Facsimile and electronic transmission: Your comments must be received by May 17, 2004.

ADDRESSES:

I. *Submission of Comments. Regular mail, express delivery, hand delivery, and messenger service:* Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR 1218–0172(2004), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: When your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number, ICR 1218–0172(2004), in your comments.

Electronic: You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov/.*

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA webpage. Please note you cannot attach materials such as studies or journal articles to electronic comments. When you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems, a significant delay may occur in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

II. *Obtaining Copies of the Supporting Statement for the Information Collection Request.* The Supporting Statement for the Information Collection Request is available for downloading from OSHA's Web site at *www.osha.gov.* The Supporting Statement is available for inspection and copying in the OSHA Docket Office at the address listed above. A printed copy of the Supporting Statement can be obtained by contacting Todd Owen at (202) 693–1941.

FOR FURTHER INFORMATION CONTACT: Gail Butler, Division of Administration and Training Information, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, IL 60018; telephone (847) 297–4810.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimized, collection instruments are understandable, and OSHA's estimate of the information collection burden is correct.

Section 21 of the Occupational Safety and Health Act of 1970 (the ''OSH Act'') (29 U.S.C. 670) authorizes the Occupational Safety and Health Administration (''OSHA'' or the ''Agency'') to conduct education and training courses. These courses must ensure an adequate number of qualified personnel to fulfill the purposes of the Act, provide them with short-term training, inform them of the importance and proper use of safety and health equipment, and train employers and employees to recognize, avoid, and prevent unsafe and unhealthful working conditions, occupational education and training courses.

Under Section 21 of the Act, the OSHA Training Institute (the ''Institute'') provides basic, intermediate, and advanced training and education in occupational safety and health for Federal and State compliance officers, Agency professionals and technical-support personnel, employers, employees, organizations representing employees and employers, educators who develop curricula and teach occupational safety and health courses, and representatives of professional safety and health groups. The Institute provides courses on occupational safety and health at its national training facility in Des Plaines, Illinois.

Students attending Institute courses complete the one-page Student Data Form (OSHA Form 182, 5/98 edition) on the first day of class. The form provides information under five major categories titled ''Course Information,'' ''Personal Data,'' ''Employer Data,'' ''Emergency Contacts,'' and ''Students Groups.'' The OSHA Office of Training and Education (the ''Office'') compiles, for each fiscal year, the following information from the ''Course Information'' and ''Student Groups'' categories: Total student attendance at the Institute; the number of students attending each training course offered by the Institute; and the types of students attending these courses (for example, students from Federal or State occupational safety and health agencies). The Office uses this information to demonstrate, in an accurate and timely manner, that the Agency is providing the training and

employee education mandated by Section 21 of the Act. OSHA also uses this information to evaluate training output, and to make decisions regarding program/course revisions, budget support, and tuition costs.

The Agency uses the information collected under the ''Course Information,'' ''Personal Data,'' and ''Employer Data'' to identify private-sector students so that it can collect tuition costs from them or their employers as authorized by 31 U.S.C. 9701 (''Fees and Charges for Government Services and Things of Value''); Office of Management and Budget Circular A–25 (''User Charges''); and 29 CFR part 1949 (''Office of Training and Education, Occupational Safety and Health Administration''). The information in the ''Personal Data'' and ''Emergency Contacts'' categories permits OSHA to contact students who are residing in local hotels/motels if an emergency arises at their home or place of employment, and to alert supervisors/alternate contacts of a trainee's injury or illness.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection of information requirements contained in Student Data Form. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information collection requirements.

Type of Review: Extension of a currently approved information collection requirement.

Title: Student Data Form.

OMB Number: 1218–0172.

Affected Public: Individuals; business or other for-profit organizations; Federal government; State, Local, or Tribal governments.

Number of Respondents: 5,000.

Frequency: On occasion.

Total Responses: 5,000.

Average Time Per Response: 5 minutes.

Estimated Total Burden Hours: 417 hours.

Estimated Cost (Operation and Maintenance): $–0–.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on March 11th, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–5895 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0237(2004)]

Standard on Additional Requirements for Special Dipping and Coating Operations; Extension of the Office of Management and Budget's Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comments concerning its proposed extension of the information-collection requirements specified by the standard on Additional Requirements for Special Dipping and Coating Operations (29 CFR 1910.126(g)(4)). The provision is to ensure that employers make employees aware of the minimum distance between goods being electrostatically deteared.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by May 17, 2004.

Facsimile and electronic transmissions. Your comments must be received by May 17, 2004.

ADDRESSES:

I. *Submission of Comments.*

Regular mail, express delivery, hand-delivery, and messenger service: Submit your written comments and attachments to the OSHA Docket Office, Docket No. ICR–1218–0237 (2004), U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number, ICR 1218–0237(2004), in your comments.

Electronic: You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov.*

II. *Obtaining Copies of the Support Statement for the Information Collection Request.* The Supporting Statement for the Information Collection Request is available for downloading from OSHA's Web site at *http://www.osha.gov.* The supporting statement is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the supporting statement can be obtained by contacting Theda Kenney at (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments in This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA webpage. Please note you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials,you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of material by express delivery, hand delivery and messenger service.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork

and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of 1970 (the ''Act'') authorizes information collection by employers regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The standard on Additional Requirements for Special Dipping and Coating Operations, 29 CFR 1910.126(g)(4)), requires employers to post a conspicuous sign near each piece of electrostatic-detearing equipment that notifies employees of the minimum safe distance they must maintain between goods undergoing electrostatic detearing and the electrodes or conductors of the equipment used in the process. Doing so reduces the likelihood of igniting the explosive chemicals used in electrostatic-detearing operations.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information-collection (paperwork) requirement specified in the standard on Additional Requirements for Special Dipping and Coating Operations (29 CFR 1910.126(g)(4)). OSHA will summarize the comments submitted in response to this notice, and will include this summary, along with the comments, in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: Standard on Additional Requirements for Special Dipping and Coating Operations (29 CFR 1910.126(g)(4)).

OMB Number: 1218–0237.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; state, local or tribal governments.

Number of Respondents: 0.

Frequency: Continuous.

Total Responses: 0.

Average Time Per Response: 0.

Estimated Total Burden Hours: 0.

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on March 11, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–5896 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0229 (2004)

Standard on Mechanical Power Presses (29 CFR 1910.217(e)(1)(i) and (e)(1)(ii)); Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Standard on Mechanical Power Presses (29 CFR 1910.217(e)(1)(i) and (e)(1)(ii)). The purpose of these requirements is to reduce employees' risk of death or serious injury by ensuring that employers maintain the mechanical power presses used by the employees in safe operating condition.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by May 17, 2004.

Facsimile and electronic transmission: Your comments must be received by May 17, 2004.

ADDRESSES: I. *Submission of Comments.*

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR 1218–0229 (2004), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number, ICR 1218–0229 (2004), in your comments.

Electronic: You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov/.*

II. *Obtaining Copies of the Supporting Statement for the Information Collection Request.* The Supporting Statement for the Information Collection Request (ICR) is available for downloading from OSHA's Web site at *http://www.osha.gov.* The complete ICR, containing the OMB Form 83–I, Supporting Statement, and attachments, is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the ICR can be obtained by contacting Theda Kenney at (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA webpage. Please note you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your receipt comments. Because of security related problems there may be

a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorized information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The Standard specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it.

Paragraph (e)(1)(i) of § 1910.217 requires employers to establish and follow a program of periodic and regular inspections of power presses to ensure that all their parts, auxiliary equipment, and safeguards are in safe operating condition and adjustment. Employers must maintain a certification record of inspections that includes the date of inspection, the signature of the person who performed the inspection, and the serial number, or other identifier, of the power press that was inspected.

Paragraph (e)(1)(ii) of § 1910.217 requires employers to inspect and test each press no less than weekly to determine the condition of the clutch/brake mechanism, antirepeat feature, and single-stroke mechanism. Employers must perform and completer necessary maintenance or repair or both before the press is operated. In addition, employers must maintain a record of inspections, tests, and maintenance work. The record must include the date of the inspection, test, or maintenance; the signature of the person who performed the inspection, test, or maintenance; and the serial number, or other identifier, of the press that was inspected, tested, or maintained.

The certification records required in 29 CFR 1910.217(e)(1)(i) and (e)(1)(ii) are necessary to ensure compliance with the requirement to inspect mechanical power presses. The inspection of mechanical power presses is critical to ensuring that employers maintain the presses in safe operating condition for employees. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information collections requirements in the Standard on Mechanical Power Presses (29 CFR 1910.217(e)(1)(i) and (e)(1)(ii)). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information collection requirements.

Type of Review: Extension of currently approved information collection requirements.

Title: Standard on Mechanical Power Presses (29 CFR 1910.217(e)(1)(i) and (e)(1)(ii)).

OMB Number: 1218–0229.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 295,000.

Frequency of Recordkeeping: Monthly, Weekly.

Average Time per Response: Varies from 2 minutes (.03 hour) to disclose certification records to 20 minutes (.33 hour) to inspect the parts, auxiliary equipment, and safeguards of each mechanical power press.

Total Annual Hours Requested: 1,373,178.

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on March 10, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–5897 Filed 3–15–04; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation; National Science Board and its Subdivisions.

DATE AND TIME: March 24, 25, 2004.

March 24, 2004: 9:15 a.m.–5 p.m.

Concurrent Sessions:
9:15 a.m.–10:15 a.m. Open Session
10:30 a.m.–12 noon Open Session
12 noon–12:30 p.m. Closed Session
12:30 p.m.–1 p.m. Open Session
1 p.m.–1:30 p.m. Closed Session
1:45 p.m.–2:30 p.m. Open Session
2:45 p.m.–5:00 p.m. Open Session

March 25: 8 a.m.–3:30 p.m.

Concurrent Sessions:
8 a.m.–8:15 a.m. Open Session
8:15 a.m.–9 a.m. Closed Session
9 a.m.–11:30 a.m. Open Session
11:45 a.m.–12:15 p.m. Closed Session
12:45 p.m.–3:30 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, March 24, 2004

Open

Committee on Strategy and Budget (9:15 a.m.–10:15 a.m.)

Room 1235

- Approval of Minutes
- Discussion of NSF Response to CSB Inquiries from February, 2004 CSB Meeting
- Discussion of a Process for NSB Review and Approval of the NSF FY 2006 Budget Request

Committee on Audit and Oversight (10:30 a.m.–12 noon)

Room 1235
- Approval of Minutes
- National Academy of Public Administration's Review of NSF—Update
- CFO Update—Grants Monitoring
- NSB Sunshine Act Audit

Executive Committee (12:30 p.m.–1 p.m.)

Room 1295
- Approval of Minutes
- Discussion of OIG Sunshine Act Audit of NSB

Subcommittee on Polar Issues (1:45 p.m.–2:30 p.m.)

Room 1235
- Introduction
- Approval of Minutes
- OPP Director's Report
- Arctic Science: Eddies in the Arctic Ocean
- Antarctic Environmental Stewardship

Committee on Programs and Plans (2:45 p.m.–5 p.m.)

Room 1235
- Approval of Minutes
- Information Item: Status of Planning for NSF's Role in the Renewal of the National Academic Research Fleet
- Status Report: Long-Lived Data Collections
- High Risk Research
- Report from the Polar Issues Subcommittee
- Discussion of NAS Report on Setting Priorities for Large Research Facilities Supported by NSF

Closed

Committee on Audit and Oversight (12 noon–12:30 p.m.)

Room 1235
- Presentation of Ongoing OIG Investigation

Executive Committee (1–1:30)

Room 1295
- NSB Member Proposals
- Director's Items, Including
  - — Specific Personnel Matters
  - — Future Budgets

Thursday, March 24, 2004

Open

Ad Hoc Committee on 2004 Vannevar Bush Award (8 a.m.–8:15 a.m.)

(Room 1240)
- Review Selection Criteria
- Review Solicitation Process

Committee on Education and Human Resources (9 a.m.–11:30 a.m.)

(Room 1235)
- Approval of Minutes
- Comments from the Chair
- Report from the Subcommittee on S&E Indicators
- Broadening Participation Workshop
- Presentation on EHR Priorities and 2005 Budget

Plenary session of the Board (12:45 p.m.–3:30 p.m.)

Room 1235
- Approval of Open Minutes from February, 2004
- Resolution to Close Portions of May, 2004
- Chairman's Report, including
  - — Report on Senate Appropriation Hearings
  - — Update on Smithsonian Institution Funding
- Director's Report
- Committee Reports

Closed

Ad Hoc Committee on the 2004 Vannevar Bush Awards (8:15 a.m.–9 a.m.)

Room 1240
- Discussion of Candidates
- Balloting

Plenary session of the Board (11:45 a.m.–12:15 p.m.)

Room 1235

In Executive Closed Session:
- Nominating Committee Election
- Approval of Honorary Awards

In Closed Session:
- Approval of Minutes from February, 2004
- NSB Member Proposals
- Closed Committee Reports, if Any

Michael P. Crosby,

Executive Officer, NSB.

[FR Doc. 04–5984 Filed 3–12–04; 11:29 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346; License No. NPF–3EA–03–214]

In the Matter of FirstEnergy Nuclear Operating Company, (Davis-Besse Nuclear Power Station, Unit 1); Confirmatory Order Modifying License (Effective Immediately)

I.

FirstEnergy Nuclear Operating Company (FENOC, or the Licensee) is the holder of Facility Operating License No. NPF–3 issued on April 22, 1977, by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The license authorizes the operation of Davis-Besse Nuclear Power Station, Unit 1 (Davis-Besse), in accordance with conditions specified therein. The facility is located on the Licensee's site in Ottawa County, Ohio.

II.

The discovery of circumferential cracking in some of the control rod drive mechanism (CRDM) nozzles that penetrate the reactor pressure vessel (RPV) head at Oconee Nuclear Station, Unit 3, in February 2001, and Oconee Nuclear Station, Unit 2, in April 2001, raised concerns about the potential safety implications and prevalence of cracking in RPV head penetration nozzles in pressurized-water reactors (PWRs). In response to these concerns, the NRC issued NRC Bulletin 2001–01 on August 3, 2001. The bulletin required all PWR operators to report to the NRC on the structural integrity of the CRDM nozzles, including their plans to ensure that future inspections would verify structural integrity of the reactor vessel boundary. Davis-Besse was shut down on February 16, 2002, when it began its 13th refueling outage, which included an inspection of CRDM nozzles. On March 6, 2002, FENOC employees discovered a cavity in the RPV head. The cavity was the result of corrosion caused by long-term leakage of reactor coolant, which contains boric acid, from small cracks in one of the CRDM nozzles.

The NRC staff subsequently determined that FENOC's failure to properly implement its boric acid corrosion control and corrective action programs was a performance deficiency that allowed reactor coolant system pressure boundary leakage to occur undetected for a prolonged time, resulting in RPV upper head degradation. The NRC determined that the Licensee's performance deficiency had high safety significance, in the Red range, as documented in a letter to the Licensee dated May 29, 2003 (ADAMS Accession No. ML031490778).

The NRC took a series of actions in response to the discovery of the cavity in the Davis-Besse RPV head. An Augmented Inspection Team was sent to Davis-Besse on March 12, 2002, to collect facts regarding the conditions that led to the head degradation. Additionally, the NRC issued a Confirmatory Action Letter (CAL) to the Licensee on March 13, 2002 (ML020730225), confirming the Licensee's agreement that NRC approval is required for restart of Davis-Besse. The CAL also documented a number of

actions that the Licensee must implement before restart. By letter dated April 29, 2002 (ML021190661), the NRC informed FENOC that its corrective actions at Davis-Besse would receive enhanced NRC oversight, as described in NRC Inspection Manual Chapter 0350, ''Oversight of Operating Reactor Facilities in a Shutdown Condition With Performance Problems.'' That enhanced monitoring began on May 3, 2002, and included the creation of a panel to provide the required oversight during the plant shutdown and during and after any future restart until a determination is made that the plant is ready for return to the NRC's normal reactor oversight process.

By letter dated April 18, 2002 (ML021130029), ''Confirmatory Action Letter Response—Root Cause Analysis Report,'' the Licensee submitted to the NRC its technical root cause analysis report for the RPV head degradation, as revised by letter dated September 23, 2002 (ML022750125), ''Revision 1 to Root Cause Analysis Report Regarding Reactor Pressure Vessel Head Degradation.'' The Licensee concluded that the probable cause of the degradation was primary water stress corrosion cracking of the nozzle. The physical factors that caused corrosion of the RPV head were the CRDM nozzle leakage associated with through-wall cracking, followed by boric acid corrosion of the RPV low-alloy steel. The Licensee further concluded that the large-scale corrosion occurred as a result of a failure to detect and arrest the leakage until advanced symptoms had appeared.

The Licensee submitted to the NRC its nontechnical root cause analysis by letter dated August 21, 2002 (ML022750405), ''Management and Human Performance Root Cause Analysis Report on Failure to Identify Reactor Pressure Vessel Head Degradation.'' In this analysis, the Licensee concluded that ''there was a lack of sensitivity to nuclear safety and the focus was to justify existing conditions. The overall conclusion is that Management ineffectively implemented processes and thus failed to detect and address plant problems as opportunities arose.'' The Licensee identified a number of root causes for the failure to identify boric acid corrosion of the RPV head, including:

1. Less-than-adequate nuclear safety focus—A production focus established by management, combined with minimum action to meet regulatory requirements, resulted in acceptance of degraded conditions on the RPV head and other components affected by boric acid.

2. Less-than-adequate implementation of the corrective action program, as indicated by the following:

a. Addressing symptoms rather than causes

b. Low categorization of conditions

c. Less-than-adequate cause determinations

d. Less-than-adequate corrective actions

e. Less-than-adequate trending

3. Less-than-adequate analyses of safety implications—Failure to integrate and apply key industry information and site knowledge/experience, effectively use vendor expertise, and compare new information to baseline knowledge led to less-than-adequate analyses and decisionmaking with respect to the nuclear safety implications of boric acid on the reactor vessel head and in the containment.

4. Less-than-adequate compliance with the boric acid corrosion control and inservice test programs—Contrary to these programs, boric acid was not completely removed from the RPV head. The affected areas were not inspected for corrosion and leakage from nozzles and the sources of the leakage were not determined.

As documented in NRC Inspection Report No. 50–346/02–15 (ML030380037), dated February 6, 2003, the NRC concluded that the Licensee's management and human performance initial root cause analyses were not sufficiently broad to identify potential contributors in the engineering and corporate support areas and were not developed in an integrated manner to identify potentially systemic issues. Additional analyses were performed by the Licensee, including assessments in the areas of operations, engineering, oversight, and corporate support, and were evaluated by the NRC, as documented in NRC Inspection Report No. 50–346/02–18 (ML032050528), dated July 24, 2003. Following review of the additional FENOC analyses, the NRC concluded that the Licensee's overall nontechnical root cause assessment was of appropriate depth and breadth to develop actions to correct and prevent recurrence of the management and human performance deficiencies associated with the RPV head degradation.

Corrective actions taken by the Licensee included the development of a Return-to-Service Plan, which described FENOC's actions for Davis-Besse's safe and reliable return to service. The Return-to-Service Plan was initially submitted to the NRC on May 21, 2002 (ML021430429), and has been revised several times, most recently on April 6, 2003 (ML031000739).

The NRC Davis-Besse Oversight Panel established a Restart Checklist, which lists the essential issues requiring disposition prior to restart. The Restart Checklist was originally issued on August 16, 2002 (ML022310034), and has been revised as necessary by the Oversight Panel based on the results of NRC inspections and the Licensee's assessments. The Restart Checklist addresses those issues necessary to resolve the causes of the RPV head degradation so that the Licensee can safely restart and operate the plant. For example, issues requiring resolution before the Oversight Panel can consider a recommendation for restart include (1) the adequacy of safety-significant structures, systems, and components inside containment, (2) the adequacy of safety-significant programs, such as the corrective action program, self-assessment programs, and the boric acid corrosion management program, and (3) the adequacy of organizational effectiveness and human performance, including the effectiveness of corrective actions.

While the Restart Checklist establishes those essential actions necessary for safe restart and operation, a key element in preventing recurrence of a safety-significant event such as the RPV head degradation is effective Licensee self-assessment. Given the magnitude, scope, and duration of problems found at Davis-Besse, and that the Licensee's own self-assessments were not effective in preventing risk-significant performance deficiencies, additional assurance that the Licensee's self-assessment programs remain effective is essential.

III.

To address the issues identified above and ensure sustained safe performance in plant operation, the Licensee developed the Davis-Besse Nuclear Power Station Operational Improvement Plan—Operating Cycle 14, which was submitted to the NRC by letter dated November 23, 2003, ''Integrated Report to Support Restart of the Davis-Besse Nuclear Power Station and Request for Restart Approval'' (ML033360251) and most recently revised on January 27, 2004 (ML040280597). The Operational Improvement Plan provides for a managed transition from the Return-to-Service Plan to normal plant operations and refueling outages. The purpose of the Operational Improvement Plan is to ensure that improvements realized during the extended outage remain in place and are further built upon to improve performance in the future.

On November 12, December 3, and December 10, 2003, the Licensee met

with the NRC staff regarding the Davis-Besse Nuclear Power Station Operational Improvement Plan for Operating Cycle 14. Among other long-term corrective actions, the Operational Improvement Plan focuses on Licensee initiatives to measure and sustain achievements in the areas of management and human performance at Davis-Besse. The Operational Improvement Plan contains a number of key improvement initiatives, including continuing actions in the areas of operations, engineering, safety culture, and corrective actions.

As assurance that the Operational Improvement Plan initiatives are sufficient to ensure the continued integrity of the reactor coolant system and correction of the underlying management and organizational problems which led to the RPV head degradation, the Licensee also committed to the following actions. By letters dated March 31 (ML030930451) and November 14, 2003 (ML033220323), FENOC committed to conduct certain inspections every refueling outage for leakage from the RPV upper head and from pressure-retaining components above the RPV head. These include the CRDM flanges. In addition, by letter dated July 30, 2003 (ML032160384), FENOC committed to conduct similar inspections of the reactor vessel underside incore monitoring instrumentation nozzles, including during the Cycle 14 midcycle outage. As noted in the NRC staff assessment (ML032510339), the midcycle inspection will help to assure prompt identification of any significant reactor coolant system pressure boundary leakage should it develop. The midcycle outage activities will provide additional confirmation of the material status of the reactor coolant system.

Notwithstanding the corrective actions completed to address the CAL and Restart Checklist and planned by the Licensee in the Operational Improvement Plan, the NRC requires additional measures with respect to independent assessments and midcycle inspections to provide reasonable assurance that the long-term corrective actions remain effective for those conditions that resulted in risk-significant performance deficiencies. During the course of the extended shutdown of Davis-Besse beginning in February 2002, FENOC conducted a number of thorough evaluations and self-assessments. Examples include the evaluation of system design, the assessment of the completeness and accuracy of docketed information, the evaluation of operational performance deficiencies during the normal operating pressure test, and the evaluation of the failure to comply with technical specification requirements during testing of the steam and feedwater rupture control system. However, Licensee assessments of operational performance prior to both the normal operating pressure test and the NRC's Restart Readiness Assessment Team Inspection in December 2003 failed to identify a number of deficiencies. NRC inspections also discovered problems that were not originally found by the Licensee, most notably in safety culture, in the corrective action program, and in the quality of engineering calculations and analyses. These issues indicated weaknesses in the Licensee's ability to assess, find, and correct conditions adverse to quality. In addition, on November 23, 2003, the Licensee concluded that the plant, programs, and personnel were ready to support safe operation, subject to completion of a few, well-defined work activities prior to restart, and requested the NRC schedule a meeting as stated in the CAL, and then provide approval for restart. A meeting was originally scheduled for December 18, 2003, to discuss restart. However, due to self-revealing equipment and operational problems and issues from the NRC Restart Readiness Assessment and the Management and Human Performance inspection teams, the meeting was delayed. Given the Licensee's previous conclusion that it was ready to support safe operation, these problems were additional evidence of inadequate self-assessment. Since then, the NRC recognizes that FENOC has implemented significant corrective actions resulting in improved performance and self-assessment capability. Nevertheless, considering the problems noted above and going forward, the NRC requires independent outside assessments to ensure continued effective Licensee self-assessments and sustained safe performance in the areas of operations, engineering and corrective actions at Davis-Besse.

On February 26, 2004, the Licensee executed a consent form in which it committed to implement the conditions in Section IV below with respect to future independent assessments of operations, safety culture, corrective actions, and engineering at Davis-Besse, and inspections of the reactor coolant system pressure boundary during a midcycle outage. The independent assessments will provide important confirmation of the effectiveness of the Licensee's self-assessments and long-term improvement actions. The reactor coolant system pressure boundary inspections will assure prompt identification of any leakage should it develop. The Licensee further agreed that this Order would be effective upon issuance and waived its right to a hearing.

I find that the Licensee's commitments, as set forth in Section IV, are acceptable and necessary and conclude that with these commitments, plant safety is reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above, this Order is immediately effective upon issuance.

IV.

Accordingly, pursuant to Sections 103, 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 Part 50, it is hereby ordered, effective immediately, that License No. NPF–3 is modified as follows:

1. FENOC shall contract with independent outside organizations to conduct comprehensive assessments of the Davis-Besse operations performance, organizational safety culture, including safety conscious work environment, the corrective action program implementation, and the engineering program effectiveness. Ninety days prior to the assessments, FENOC shall inform the Regional Administrator, NRC Region III, in writing, of the identity of its outside assessment organizations, including the qualifications of the assessors, and the scope and depth of the assessment plans. These outside independent assessments at Davis-Besse shall be completed before the end of the 4th calendar quarter of 2004 and annually thereafter for 5 years. Within 45 days of completion of the assessments, the Licensee shall submit by letter to the Regional Administrator, NRC Region III, all assessment results and any action plans necessary to address issues raised by the assessment results.

2. FENOC shall conduct a visual examination of the reactor pressure vessel upper head bare metal surface, including the head-to-penetration interfaces; the reactor pressure vessel lower head bare metal surface, including the head-to-penetration interfaces; and the control rod drive mechanism flanges, using VT–2 qualified personnel and procedures during the Cycle 14 midcycle outage. The results and evaluation of the inspections will be reported by letter to the Regional Administrator, NRC Region

III, prior to restart from the midcycle outage, and any evidence of reactor coolant leakage found during the inspections will be reported by telephone within 24 hours of discovery to the Regional Administrator, NRC Region III, or designee.

If the Licensee determines that submittals made in accordance with these conditions contain proprietary information as defined by 10 CFR 2.390, the Licensee shall also provide a nonproprietary version in accordance with 10 CFR 2.390(b)(1)(ii). The Regional Administrator, NRC Region III, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

V.

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its issuance. 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 request a hearing must be made in writing to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and must include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Rulemakings and Adjudications Staff, Washington, DC 20555. Copies of the hearing request shall also be sent to the Director, Office of Nuclear Reactor Regulation, 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 III, 801 Warrenville Road, Lisle, Illinois 60532–4351, and to the Licensee. If a person 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 2.309(d).

If a hearing is requested by 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 hearing shall be whether this Confirmatory Order should be sustained. An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

For the Nuclear Regulatory Commission.

Dated this 8th day of March, 2004.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 04–5849 Filed 3–15–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Number 030–04381]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Pfizer Inc., Terre Haute, IN

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Lee, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351; telephone (630) 829–9870; or by e-mail at *pjl2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment Material License No. 13–10179–01 issued to Pfizer Inc. (the licensee), to terminate its license and authorize release of its Terra Haute, Indiana, facility for unrestricted use.

The NRC staff has prepared an Environmental Assessment (EA) in support of this licensing action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed action is to terminate Pfizer Inc.'s license and release its Terra Haute, Indiana, facility for unrestricted use. The NRC authorized Pfizer Inc. to utilize labeled compounds of H–3 and C–14 for research and development on July 17, 1964. On September 25, 2003, Pfizer Inc. submitted a license amendment request to terminate its license and release its Terra Haute facility for unrestricted use. Pfizer Inc. has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in subpart E of 10 CFR part 20 for unrestricted release. The staff has examined Pfizer Inc.'s request and the information that the licensee has provided in support of its request, including the surveys performed by Pfizer Inc. to demonstrate compliance with 10 CFR 20.1402, ''Radiological Criteria for Unrestricted Use,'' in order to ensure that the NRC's decision is protective of the public health and safety and the environment.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of Pfizer Inc.'s proposed license amendment to terminate its license and release the Terre Haute facility for unrestricted use. Based on its review, the staff has determined that the affected environment and the environmental impacts associated with the decommissioning of Pfizer Inc.'s facility are bound by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496). Additionally, no non-radiological impacts were identified. The staff also finds that the proposed release for unrestricted use of the Pfizer Inc. facility is in compliance with the 10 CFR 20.1402, and finds no other activities in the area that could result in cumulative impacts. On the basis of the EA, the staff has concluded that the environmental impacts from the proposed action would not be significant. Accordingly, the staff has determined that a FONSI is appropriate, and has determined that the preparation of an Environmental Impact Statement is not warranted.

IV. Further Information

In accordance with 10 CFR 2.790 of the NRC's ''Rules of Practice,'' Pfizer Inc.'s request, the EA summarized above, and the documents related to this proposed action are available electronically for public inspection and copying 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.* These documents include Pfizer Inc.'s letter dated September 25, 2003, with enclosures (Accession No. ML040090414); and the EA summarized above (Accession No. ML040560303). These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville,

MD 20852. The PDR reproduction contractor will copy documents for a fee. 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 Lisle, Illinois, this 25th day of February, 2004.

Christopher G. Miller,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc. 04–5857 Filed 3–15–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

AGENCY: Nuclear Regulatory Commission.

DATES: Weeks of March 15, 22, 29, April 5, 12, 19, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 15, 2004

There are no meetings scheduled for the Week of March 15, 2004.

Week of March 22, 2004—Tentative

Tuesday, March 23, 2004

1:30 p.m. Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Public Meeting) (Contact: Jack Davis, 301–415–7256).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

2:30 p.m. Discussion of Security Issues (Closed—Ex. 1).

Wednesday, March 24, 2004

9:30 a.m. Briefing on Status of Office of Nuclear Reactor Regulation (NRR) Programs, Performance, and Plans (Public Meeting) (Contact: Mike Case, 301–415–1275).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of March 29, 2004—Tentative

There are no meetings scheduled for the Week of March 29, 2004.

Week of April 5, 2004—Tentative

There are no meetings scheduled for the Week of April 5, 2004.

Week of April 12, 2004—Tentative

Tuesday, April 13, 2004

9:30 a.m. Briefing on Status of Office of Nuclear Regulatory Research (RES) Programs, Performance, and Plans (Public Meeting) (Contact: Alan Levin, 301–415–6656).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of April 19, 2004—Tentative

There are no meetings scheduled for the Week of April 19, 2004.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (201–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: March 11, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–5969 Filed 3–12–04; 9:42 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, January 20, 2004, through March 4, 2004. The last biweekly notice was published on March 2, 2004 (69 FR 9857).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the

Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by email to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the

NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: November 11, 2003.

Description of amendment request: The proposed amendment would amend Appendix A, Technical Specifications (TS), of Facility Operating License No. NPF–62 for Clinton Power Station (CPS). The proposed changes would revise several CPS TS instrument channel trip setpoint Allowable Values.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment implements revised Allowable Values for the following instrument functions.

- Main Steam Isolation Valve—Closure
- Anticipated Transient Without Scram Recirculation Pump Trip Reactor Steam Dome Pressure—High
- Reactor Vessel Pressure—Low (Injection Permissive)
- Reactor Vessel Water Level—Low Low Low, Level 1
- Reactor Vessel Water Level—Low Low, Level 2
- High Pressure Core Spray (HPCS) System Reactor Vessel Water Level—High, Level 8
- Reactor Core Isolation Cooling (RCIC) Storage Tank Level—Low
- HPCS System Suppression Pool Water Level—High (Pump Suction Transfer)
- Automatic Depressurization System (ADS) Initiation Permissive, Low Pressure Core Spray (LPCS) Pump Discharge Pressure—High
- ADS Initiation Permissive, Low Pressure Coolant Injection (LPCI) Pumps Discharge Pressure—High
- RCIC System Suppression Pool Water Level—High (Pump Suction Transfer)
- Main Steam Line Pressure—Low, and
- Safety Relief Valve (SRV) Relief and Low-Low Set (LLS) functions channel calibration surveillance requirement

The proposed changes do not require modification to the facility. There is no impact on the accident analysis as a result of the proposed changes to the Allowable Values. The analytical limit, which is used as input to the accident analysis, does not change. The proposed changes will be implemented through revision of the associated surveillance test procedures, where the revised Allowable Value will replace the existing value.

Derivation of the Allowable Value in accordance with Regulatory Guide 1.105, ''Instrument Setpoints,'' uses the analytical limit as a fixed starting point from which instrument uncertainties are added or subtracted, as appropriate. Calculation of the Allowable Value to plant-specific parameters provides additional confidence that protective instrumentation that passes the surveillance testing criteria will perform its design function without exceeding the associated safety analysis limit.

The revised Allowable Values for the affected equipment are not considered an initiator to any previously analyzed accident and therefore, cannot increase the probability of any previously evaluated accident. Implementation of the revised Allowable Values will ensure that the instrumentation will perform its required function to meet the accident analysis assumptions. The proposed Allowable Values will ensure that the fuel is adequately cooled, containment and drywell are isolated as required, primary containment temperature and pressure design limits are met, and overpressurization of the nuclear steam supply system is prevented following an accident or transient. The proposed changes do not increase the probability of any accident previously evaluated.

Since the proposed changes ensure the same level of protection as assumed in the accident analyses, the conclusions of the accident scenarios remain valid. As a result, no changes to radiological release parameters are involved. Therefore, the proposed changes do not increase the consequences of an accident previously evaluated.

In summary, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not affect the design, functional performance or operation of the facility. Similarly, they do not affect the design or operation of any structures, systems, or components involved in the mitigation of any accidents, nor do they affect the design or operation of any component in the facility such that new equipment failure modes are created. Setpoints remain the same and therefore, there is no impact on the operation of any of the associated systems.

As such the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed changes do not involve a change to the plant design or operation. The proposed changes will be implemented through revisions to the associated surveillance test procedures where the revised Allowable Value replaces the existing Allowable Value. No changes to the instrument setpoints are involved. Since the availability of the systems will be maintained and since the system designs are unaffected, the proposed changes ensure the instrumentation is capable of performing their intended functions. The proposed changes do not affect the accident analyses that assume the operability of the instrumentation associated with these Allowable Values. The margins associated with the analytical limits are not impacted by the proposed Allowable Values since the analytical limits remain unchanged.

Therefore, operation of CPS in accordance with the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Deputy General Counsel Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of amendment request: August 6, 2003, as supplemented on February 13, 2004.

Description of amendment request: This amendment would revise the Technical Specifications (TSs) to incorporate reference to the 10 CFR 50.55a, Codes and Standards, in lieu of the existing criteria of Regulatory Guide 1.35.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed revision to Technical Specification 4.4.2.1 and associated Bases Section incorporates reference to the criteria of 10 CFR 50.55a, ''Codes and standards,'' in lieu of the existing criteria of Regulatory Guide 1.35. This change provides consistency between the Technical Specification tendon surveillance program criteria and the regulatory requirements specified in 10 CFR 50.55a(b)(2)(vi). These regulatory requirements and the associated surveillance program ensure that the reactor building tendon prestressing system is capable of maintaining the structural integrity of the containment during operating

and accident conditions. The reactor building prestressing system is not an initiator of any accident. Therefore, this change is not related to the probability of any accident previously evaluated. This change ensures that the containment tendon surveillance program addresses the appropriate regulatory criteria. This change does not result in any reduction in the effectiveness of the existing surveillance program. The tendon surveillance program will continue to ensure that the containment structure is capable of performing its intended safety function in the event of a design basis accident. Therefore, this change has no affect on the consequences of an accident previously evaluated.

The proposed changes to Technical Specification Definition 1.22, Technical Specification 3.1.6.6 and associated Bases, and Technical Specification 3.24 Bases are only administrative changes or corrections and have no affect on plant design or operations.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed revision to Technical Specification 4.4.2.1 and associated Bases Section incorporates reference to the criteria of 10 CFR 50.55a, ''Codes and standards,'' in lieu of the existing criteria of Regulatory Guide 1.35. This change provides consistency between the Technical Specification tendon surveillance program criteria and the regulatory requirement specified in 10 CFR 50.55a(b)(2)(vi). The proposed Technical Specification change does not result in any reduction in effectiveness of the existing tendon surveillance program. The tendon surveillance program will continue to satisfy the applicable Technical Specification and regulatory required criteria, thus ensuring that the containment structure will perform its design safety function. This change has no affect on the design and operation of plant structures, systems, and components. This change does not introduce any new accident precursors and does not involve any alterations to plant configurations, which could initiate a new or different kind of accident.

The proposed changes to Technical Specification Definition 1.22, Technical Specification 3.1.6.6 and associated Bases, and Technical Specification 3.24 Bases are only administrative changes or corrections and have no affect on plant design or operations.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed revision to Technical Specification 4.4.2.1 and associated Bases Section incorporates reference to the criteria of 10 CFR 50.55a, ''Codes and standards,'' in lieu of the existing criteria of Regulatory Guide 1.35. The change provides consistency between the Technical Specification tendon surveillance program criteria and the regulatory requirement specified in 10 CFR 50.55a(b)(2)(vi). The containment examination and inspection requirements specified in 10 CFR 50.55a(b)(2)(vi) meet the same standards as the criteria specified in Regulatory Guide 1.35. The proposed Technical Specification change does not result in any reduction in effectiveness of the existing tendon surveillance program. The tendon surveillance program will continue to satisfy the applicable Technical Specification and regulatory required criteria, thus ensuring that the containment structure will perform its design safety function in accordance with existing margins of safety for containment integrity.

The proposed changes to Technical Specification Definition 1.22, Technical Specification 3.1.6.6 and associated Bases, and Technical Specification 3.24 Bases are only administrative changes or corrections and have no affect on plant design or operations.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Richard J. Laufer.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: December 15, 2003.

Description of amendments request: The proposed amendment would revise Technical Specification 3.1.8, ''Scram Discharge Volume (SDV) Vent and Drain Valves,'' to allow a vent or drain line with one inoperable valve to be isolated instead of requiring the valve to be restored to Operable status within 7 days.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on February 24, 2003 (68 FR 8637), on possible amendments to revise the action for one or more SDV vent or drain lines with an inoperable valve, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 15, 2003 (68 FR 18294). The licensee affirmed the applicability of the model NSHC determination in its application dated December 15, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A change is proposed to allow the affected SDV vent and drain line to be isolated when there are one or more SDV vent or drain lines with one valve inoperable instead of requiring the valve to be restored to operable status within 7 days. With one SDV vent or drain valve inoperable in one or more lines, the isolation function would be maintained since the redundant valve in the affected line would perform its safety function of isolating the SDV. Following the completion of the required action, the isolation function is fulfilled since the associated line is isolated. The ability to vent and drain the SDVs is maintained and controlled through administrative controls. This requirement assures the reactor protection system is not adversely affected by the inoperable valves. With the safety functions of the valves being maintained, the probability or consequences of an accident previously evaluated are not significantly increased.

Criterion 2—The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in the margin of safety.

The proposed change ensures that the safety functions of the SDV vent and drain valves are fulfilled. The isolation function is maintained by redundant valves and by the required action to isolate the affected line. The ability to vent and drain the SDVs is maintained through administrative controls. In addition, the reactor protection system will prevent filling of an SDV to the point that it has insufficient volume to accept a full scram. Maintaining the safety functions related to isolation of the SDV and insertion of control rods ensures that the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: William Burton, Acting.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: February 4, 2004.

Description of amendment request: The proposed amendment would revise the Technical Specifications Index and Technical Specifications (TS) 4.4.1.3.2, ''Reactor Coolant System Hot Shutdown Surveillance Requirements,'' and 3.4.1.4.1.b, ''Reactor Coolant System Cold Shutdown—Loops Filled Limiting Condition For Operation.'' The proposed change to the Index is an administrative update to restore consistency with other sections of the TS. The proposed change to TS 4.4.1.3.2 and TS 3.4.1.4.1.b eliminates a requirement that the wide-range instrumentation be inoperable before the narrow-range instrumentation can be used for confirmation of the minimum steam generator secondary side water level. The primary reason for this proposed change to TS 4.4.1.3.2 and TS 3.4.1.4.1.b is to provide the operational flexibility needed for a smooth transition through the applicable range of operating conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

There is no impact on previously evaluated accidents because the proposed amendment does not affect the capability of any structure, system, or component to perform its design function. The functional capability of the narrow range instrumentation is not impacted by the operability status of the wide range instrumentation. The existing minimum values specified by Technical Specifications for the wide range and the narrow range instrumentation conservatively incorporate the applicable uncertainties necessary to make either instrument suitable for use over the expected range of operating conditions. As a result, the proposed amendment does not affect the operating procedures and administrative controls that have the function of preventing or mitigating any [previously] evaluated accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment does not change the design function or operation of any structure, system, or component. The proposed amendment does not involve any physical change to plant equipment. Use of the narrow range instrumentation while the wide range instrumentation is operable does not create any new or different failure mechanisms, malfunctions, or accident initiators than those already considered in the design and licensing bases.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment does not affect the margin of safety because the existing minimum values specified by Technical Specifications for the wide range and the narrow range instrumentation are not changed. Those minimum values conservatively incorporate the applicable uncertainties necessary to make either instrument suitable for use over the expected range of operating conditions. The calculation of those uncertainties for use of the narrow range instrumentation is unaffected by the operating status of the wide range instrumentation.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, [Carolina Power & Light Company] concludes that the proposed amendment involves no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Allen Howe.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: June 3, 2003.

Description of amendment request: Pursuant to Title 10 of the Code of Federal Regulations, Section 50.90, Duke Energy Corporation requested an amendment to the McGuire Nuclear Station Facility Operating Licenses and Technical Specifications. The proposed change would add a note to Limiting Condition of Operation 3.7.11, ''Auxiliary Building Filtered Ventilation Exhaust System (ABFVES)'', that would allow the Auxiliary Building pressure boundary to be opened intermittently under administrative control. Changes to the corresponding Bases would also be made to establish the administrative controls that are required to minimize the consequences of the open pressure boundary.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No, the Auxiliary Building Filtered Ventilation Exhaust System (ABFVES) is not assumed to be an initiator of any analyzed accident. Therefore, the proposed change contained in this license amendment request has no significant impact on the probability of occurrence of any previously analyzed accident.

The ABFVES provides a means of filtering air from the area of the active emergency core cooling system (ECCS) components, thereby providing environmental control for temperature and humidity in the ECCS pump room area and the Auxiliary Building. During emergency operations, the ABFVES exhausts air from the mechanical penetration area and the ECCS pump room area and discharges it through the system filters. For cases where the Auxiliary Building pressure boundary is opened intermittently under administrative controls, appropriate compensatory measures would be required by the proposed Technical Specification to ensure the pressure boundary can be rapidly restored. Based on the compensatory measures available to the plant operators and the administrative controls required to rapidly restore an opened pressure boundary, the accident consequences do not cause a significant increase in dose above the applicable General Design Criter[i]a, Standard Review Plan, or 10 CFR [Part] 100 limits.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No, there are no changes being made to actual plant hardware which will result in

any new accident causal mechanisms. Also, no changes are being made to the way in which the plant is being operated. Therefore, no new accident causal mechanisms will be generated.

3. Does this change involve a significant reduction in a margin of safety?

No, margin of safety is related to the ability of the fission product barriers to perform their design functions during and following accident conditions. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these barriers will not be significantly degraded by the proposed changes. When the Auxiliary Building pressure boundary is open on an intermittent basis, as permitted by the changes proposed in this license amendment request, administrative controls would be in place to ensure that the integrity of the pressure boundary could be rapidly restored. Therefore, it is expected that the plant, and the operating personnel, would maintain the ability to mitigate design basis events, and that none of the fission product barriers would be significantly affected by this change. Therefore, the proposed change is not considered to result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: October 15, 2003.

Description of amendment request: The amendments would add a new Technical Specification (TS) 3.9.7, ''Unborated Water Source isolation Valves,'' and would revise TS 3.9.2, ''Nuclear Instrumentation,'' to delete the requirement for Boron Dilution Mitigation System automatic valve actuations and makeup water pump trip during Mode 6 and to agree with the wording of NUREG–1431, ''Standard Technical Specifications Westinghouse Plants,'' Revision 2. The licensee proposed these changes to provide configuration control of the dilution valves during Mode 6 to preclude the possibility of a boron dilution event and to provide an opportunity to conduct maintenance on the volume control tank valves, refueling water storage tank valves, and their respective power supplies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation of the facilities in accordance with this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The BDMS [Boron Dilution Mitigation System] system is designed to mitigate the consequences of an inadvertent boron dilution event. The probability of the dilution accident will be reduced by administratively isolating potential dilution flow paths. Thus, with the proposed changes, boron dilution is not considered a credible accident during refueling.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation of the facilities in accordance with this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of this proposed amendment. No changes are being made to any structure, system, or component which will introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators and does not impact any safety analysis.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Operation of the facilities in accordance with this amendment would not involve a significant reduction in a margin of safety. The design criterion and margin of safety for the current BDMS is that the dilution event is terminated prior to the loss of all shutdown margin. The same criterion will be met following the isolation of dilution valves. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: February 18, 2004.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications (TS) to maintain hydrogen recombiners and hydrogen and oxygen monitors. Licensees were generally required to implement upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island Nuclear Station] Action Plan Requirements,'' and Regulatory Guide (RG) 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated February 18, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was

postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen and oxygen monitors are no longer required to mitigate design-basis accidents and, therefore, the monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen and oxygen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. Also, as part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 2, as defined in RG 1.97, is an appropriate categorization for the oxygen monitors, because the monitors are required to verify the status of the inert containment.

The regulatory requirements for the hydrogen and oxygen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, classification of the oxygen monitors as Category 2, and removal of the hydrogen and oxygen monitors from TS will not prevent an accident management strategy through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen and oxygen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen and oxygen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Category 2 oxygen monitors are adequate to verify the status of an inerted containment.

Therefore, this change does not involve a significant reduction in the margin of safety. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related oxygen monitors. Removal of hydrogen and oxygen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: January 15, 2004.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) Section 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' to reflect a one-time deferral of the primary containment Type A test to no later than February 27, 2011, for Unit 2, and no later than July 13, 2009, for Unit 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change will revise Dresden Nuclear Power Station (DNPS) Units 2 and 3 Technical Specifications (TS) Section 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' to reflect a one-time deferral of the primary containment Type A test to no later than February 27, 2011, for Unit 2, and no later than July 13, 2009, for Unit 3. The current Type A test interval of 10 years, based on past performance, would be extended on a one-time basis to 15 years from the last Type A test.

The function of the primary containment is to isolate and contain fission products released from the reactor coolant system (RCS) following a design basis loss-of-coolant accident (LOCA) and to confine the postulated release of radioactive material to within limits. The test interval associated with Type A testing is not a precursor of any accident previously evaluated. Therefore, extending this test interval on a one-time basis from 10 years to 15 years does not result in an increase in the probability of occurrence of an accident. The successful performance history of Type A testing provides assurance that the DNPS primary containments will not exceed allowable leakage rate values specified in the TS and will continue to perform their design function following an accident. The risk assessment of the proposed change has concluded that there is an insignificant increase in total population dose rate and an insignificant increase in the conditional containment failure probability.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change for a one-time extension of the Type A tests for DNPS Units 2 and 3 will not affect the control parameters

governing unit operation or the response of plant equipment to transient and accident conditions. The proposed change does not introduce any new equipment or modes of system operation. No installed equipment will be operated in a new or different manner. As such, no new failure mechanisms are introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

DNPS Units 2 and 3 are General Electric BWR/3 plants with Mark I primary containments. The Mark I primary containment consists of a drywell, which encloses the reactor vessel, reactor coolant recirculation system, and branch lines of the RCS; a toroidal-shaped pressure suppression chamber containing a large volume of water; and a vent system connecting the drywell to the water space of the suppression chamber. The primary containment is penetrated by access, piping, and electrical penetrations.

The integrity of the primary containment penetrations and isolation valves is verified through Type B and Type C local leak rate tests (LLRTs) and the overall leak-tight integrity of the primary containment is verified by a Type A integrated leak rate test (ILRT) as required by 10 CFR 50, Appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors.'' The tests are performed to verify the essentially leak-tight characteristics of the primary containment at the design basis accident pressure. The proposed change for a one-time extension of the Type A tests do not affect the method for Type A, B, or C testing, or the test acceptance criteria. In addition, based on previous Type A testing results, EGC does not expect additional degradation, during the extended period between Type A tests, which would result in a significant reduction in a margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: January 15, 2004.

Description of amendment request: Modify Technical Specification Surveillance Requirement 3.4.3.2, SR 3.5.1.10, and SR 3.6.1.6.1 to provide an alternative means for testing the main steam Electromatic relief valves and the dual function Target Rock safety/relief valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes modify Technical Specifications (TS) Surveillance Requirement (SR) 3.4.3.2, SR 3.5.1.10, and SR 3.6.1.6.1 to provide an alternative means for testing the main steam line relief valves, automatic depressurization system valves, and low set relief valves. Accidents are initiated by the malfunction of plant equipment, or the catastrophic failure of plant structures, systems or components. The performance of relief valve testing is not a precursor to any accident previously evaluated and does not change the manner in which the valves are operated. The proposed testing requirements will not contribute to the failure of the relief valves nor any plant structure, system or component. Exelon Generation Company, LLC has determined that the proposed change in testing methodology provides an equivalent level of assurance that the relief valves are capable of performing their intended safety functions. Thus, the proposed changes do not affect the probability of an accident previously evaluated.

The performance of relief valve testing provides confidence that the relief valves are capable of depressurizing the reactor pressure vessel (RPV). This will protect the reactor vessel from overpressurization and allow the combination of the Low Pressure Coolant Injection and Core Spray systems to inject into the RPV as designed. The low set relief logic causes two low set relief valves to be opened at a lower pressure than the relief mode pressure setpoints and causes the low set relief valves to stay open longer, such that reopening of more than one valve is prevented on subsequent actuations. Thus, the low set relief function prevents excessive short duration relief valve cycles with valve actuation at the relief setpoint, which limits induced thrust loads on the relief valve discharge line for subsequent actuations of the relief valve. The proposed changes do not affect any function related to the safety mode of the duel function safety/relief valves. The proposed changes involve the manner in which the subject valves are tested, and have no effect on the types or amounts of radiation released or the predicted offsite does in the events of an accident. The proposed testing requirements are sufficient to provide confidence that the relief valves are capable of performing their intended safety functions. In addition, a stuck open relief valve accident is analyzed in the Updated Final Safety Analysis Report. Since the proposed testing requirements do not alter the assumptions for the stuck open relief valve accident, the radiological consequences of any accident previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not affect the assumed accident performance of the main steam relief valves, nor any plant structure, system, or component previously evaluated. The proposed changes do not install any new equipment, and installed equipment is not being operated in a new or different manner. The proposed change in test methodology will ensure that the valves remain capable of preforming their safety functions due to meeting the testing requirements of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, with the exception of opening the valve following installation or maintenance for which a relief request has been submitted, proposing an acceptable alternative. No setpoints are being changed which would alter the dynamic response of plant equipment. Accordingly, no new failure modes are introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed changes will allow testing of the valve actuation electrical circuitry, including the solenoid, and mechanical actuation components, without causing the relief valve to open. The relief valves will be manually actuated prior to installation in the plant. Therefore, all modes of relief valve operation will be tested prior to entering the mode of operation requiring the valve to perform their safety functions. The proposed changes do not affect the valve setpoint or the operational criteria that directs the relief valves to be manually opened during plants transients. There are no changes proposed which alter the setpoints at which protective actions are initiated, and there is no change to the operability requirements for equipment assumed to operate for accident mitigation.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Beaver County, Pennsylvania

Date of amendment request: January 27, 2004.

Description of amendment request: The proposed change would revise Technical Specification 3.4.5 to allow repair of steam generator tubes by installation of leak limiting Alloy 800 sleeves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The leak limiting Alloy 800 sleeves are designed using the applicable American Society for Mechanical Engineers (ASME) Boiler and Pressure Vessel Code [ASME Code] and, therefore, meet the design objectives of the original steam generator (SG) tubing. The applied stresses and fatigue usage for the sleeves are bounded by the limits established in the ASME Code. Mechanical testing has shown that the structural strength of sleeves under normal, upset, emergency, and faulted conditions provides margin to the acceptance limits. These acceptance limits bound the most limiting (three times normal operating pressure differential) burst margin recommended by NRC Regulatory Guide 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes.'' Burst testing of sleeve-tube assemblies has confirmed the analytical results and demonstrated that no unacceptable levels of primary-to-secondary leakage are expected during any plant condition.

The leak limiting Alloy 800 sleeve depth-based structural limit is determined using NRC guidance and the pressure stress equation of ASME Code, Section III with additional margin added to account for the configuration of long axial cracks. An Alloy 800 sleeved tube will be plugged on detection of an imperfection in the sleeve or in the pressure boundary portion of the original tube wall in the leak limiting sleeve/tube assembly.

Evaluation of the repaired SG tube testing and analysis indicates no detrimental effects on the leak limiting Alloy 800 sleeve or sleeved tube assembly from reactor system flow, primary or secondary coolant chemistries, thermal conditions or transients, or pressure conditions as may be experienced at Beaver Valley Power Station (BVPS) Unit [No.] 1. Corrosion testing and historical performance of sleeve-tube assemblies indicates no evidence of sleeve or tube corrosion considered detrimental under anticipated service conditions.

The implementation of the proposed change has no significant effect on either the configuration of the plant or the manner in which it is operated. The consequences of a hypothetical failure of the leak limiting Alloy 800 sleeve-tube assembly is bounded by the current SG tube rupture (SGTR) analysis described in the BVPS Unit No. 1 Updated Final Safety Analysis Report. Due to the slight reduction in the inside diameter caused by the sleeve wall thickness, primary coolant release rates through the parent tube would be slightly less than assumed for the SGTR analysis and therefore, would result in lower total primary fluid mass release to the secondary system. A main steam line break or feedwater line break will not cause a SGTR since the sleeves are analyzed for a maximum accident differential pressure greater than that predicted in the BVPS Unit No. 1 safety analysis. The sleeve-tube assembly leakage during plant operation would be minimal and is well within the allowable Technical Specification leakage limits.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The leak limiting Alloy 800 sleeves are designed using the applicable ASME Code as guidance, and therefore meet the objectives of the original SG tubing. As a result, the functions of the SG will not be significantly affected by the installation of the proposed sleeve. The proposed sleeves do not interact with any other plant systems. Any accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing SGTR accident analysis. The continued integrity of the installed sleeve-tube assembly is periodically verified by Technical Specification requirements and a sleeved tube will be plugged on detection of an imperfection in the sleeve or in the pressure boundary portion of the tube wall in the leak limiting sleeve/tube assembly.

Implementation of the proposed change has no significant effect on either the configuration of the plant, or the manner in which it is operated.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The repair of degraded SG tubes with leak limiting Alloy 800 sleeves restores the structural integrity of the degraded tube under normal operating and postulated accident conditions. The reduction in core cooling margin due to the addition of Alloy 800 sleeves is not significant because the cumulative effect of all repaired (sleeved) and plugged tubes will continue to be less than the currently allowed core cooling margin threshold established by the total steam generator tube plugging level. The design safety factors utilized for the sleeves are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in the original SG design. The sleeve and portions of the installed sleeve-tube assembly that represent the reactor coolant pressure boundary will be monitored and a sleeved tube will be plugged on detection of an imperfection in the sleeve or in the pressure boundary portion of the original tube wall in the leak limiting sleeve/tube assembly. Use of the previously identified design criteria and design verification testing assures that the margin to safety is not significantly different from the original SG tubes.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

FirstEnergy Nuclear Operating Company (FENOC), et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of amendment request: January 26, 2004.

Description of amendment request: The proposed change would revise the BVPS–1 and 2 Updated Final Safety Analysis Report (UFSAR) description of the design-basis bounding limitations for the ultimate heat sink design. The proposed change would allow the design descriptions in the BVPS–1 and 2 UFSARs to credit the current Technical Specification (TS) 3.7.5.1 requirement at each unit to shut down when the Ohio River level reaches a low level below 654 feet mean sea level (msl). This UFSAR revision would preclude design consideration for design-basis accidents associated with power operation from occurring when the Ohio River level is below 654 feet msl since the units would be required to be shut down.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change will revise the BVPS Unit No. 1 and Unit No. 2 UFSAR

description of the design basis bounding limitations for the ultimate heat sink design. FENOC's proposed change will allow the design description in each BVPS Unit's UFSAR to credit the current [TS] 3.7.5.1 requirement at each BVPS Unit to shutdown when the Ohio River level reaches a low level below 654 feet Mean Sea Level (msl). This UFSAR revision will, therefore, preclude design consideration for design bases accidents associated with power operation from occurring when the Ohio River level is below 654' msl since the plant will already be shutdown. This LAR [license amendment request] does not propose any Technical Specification changes nor any physical plant changes.

Since no physical plant changes nor any instrument setpoint changes are being requested, it [the proposed change] would not result in an increase in [the] probability of an accident previously evaluated. Since the proposed change only clarifies the limiting design basis ultimate heat sink scenario, consistent with both Units' original licensing bases, it would not result in a significant increase in the consequences of an accident previously evaluated.

In conclusion, the request to amend the UFSARs for BVPS Unit Nos. 1 and 2 to clarify the limiting design basis ultimate heat sink scenario, consistent with both Units' original licensing bases, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

No. The proposed changes only clarif[y] the limiting design basis ultimate heat sink scenario, consistent with both Units' original licensing bases. Since this is not a change to [the] original licensing bases and the design for the River Water System, Service Water System, Intake Structure, and [the] ultimate heat sink will remain valid for all credible plant conditions, this does not induce a new mechanism that would result in a different kind of accident from those previously analyzed.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed changes [sic] only clarif[y] the limiting design basis ultimate heat sink scenario, consistent with both Units' original licensing bases. The proposed bounding conditions bound the credible BVPS Unit 1 and Unit 2 operating conditions. The design for the River Water System, Service Water System, Intake Structure, and ultimate heat sink continue to meet General Design Criteria 2 and 44 and the recommendations of Regulatory Guide 1.27, Revision 2.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of amendment request: January 28, 2004.

Description of amendment request: The proposed amendment would delete requirements from the Technical Specifications (TSs) to maintain hydrogen recombiners and hydrogen monitors. Licensees were generally required to implement upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide (RG) 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated January 28, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3 and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements,

including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from the TSs will not result in a significant reduction in their functionality, reliability, and availability.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: February 3, 2004

Description of amendment request: This amendment request proposes to revise a footnote to clarify a surveillance requirement and associated bases for emergency diesel generator testing.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

FPL Energy Seabrook, LLC (FPLE Seabrook) proposes to revise footnote (* * *) of Technical Specification (TS) Surveillance Requirement (SR) 4.8.1.1.2a.5 to remove the link created between actions b. and c. of TS 3.8.1.1 and the loaded surveillance testing requirements of SR 4.8.1.1.2a.6. This revision to footnote (* * *) is a change to the Technical Specifications that does not modify the physical design or operation of the plant and will not create a possibility of an accident. Strict compliance with the footnote requires paralleling the only operable EDG [emergency diesel generator] unit with the off-site grid upon entry into action statement[s] b. or c. of TS 3.8.1.1. Operation of the only operable EDG unit in this manner may increase its vulnerability for failure if power from the off-site grid is disturbed or lost. EDG unit availability for subsequent emergency demands may also be adversely affected.

The proposed change will eliminate the undesirable link that presently exists between action statement[s] b. and c. of TS 3.8.1.1 and SR 4.8.1.1.2a.6 but will maintain the primary purpose of the SR, which is to ensure that the EDG unit is capable of starting from standby conditions and attaining rated voltage and frequency. Additionally, the proposed change is consistent with the methodology used in NRC [Nuclear Regulatory Commission] NUREG–1431, Revision 3, ''Standard Technical Specifications Westinghouse Plants.'' Therefore, the proposed change does not involve a significant increase [in] the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not affect any plant structures, systems, or components. The operation of plant systems and equipment will not be affected by this proposed change. The proposed change to footnote (* * *) does not have the capability to initiate accidents. The proposed change will eliminate the undesirable link that presently exists between action statement[s] b. and c. of TS 3.8.1.1 and SR 4.8.1.1.2a.6. However, the proposed change will maintain the primary purpose of the SR and supporting footnote, which is to ensure that the EDG unit is capable of starting from standby conditions and attaining rated voltage and frequency. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes do not involve a change in the operational limits or physical design of the plant. The proposed changes do not change the function or operation of plant equipment or affect the response of that equipment if it is called on to operate. The performance capability of the EDG units will not be affected. The proposed change will maintain the primary purpose of the SR and supporting footnote, which is to ensure that the EDG unit is capable of starting from standby conditions and attaining rated voltage and frequency. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

Acting NRC Section Chief: Darrell J. Roberts.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: January 29, 2004.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.4.9 Pressure Temperature (P/T) Curve figures 3.4.9–1, 3.4.9–2, and 3.4.9–3 for Heatup/Cooldown-Core not Critical, Pressure Test and Heatup/Cooldown-Core Critical conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed revisions to the Cooper Nuclear Station (CNS) P/T curves are based on the recommendations in Regulatory Guide (RG) 1.99, Revision 2, and are therefore in accordance with the latest Nuclear Regulatory Commission (NRC) guidance. The evaluation for the P/T curves for 32 EFPY [Effective Full Power Years] was performed using the approved methodologies of 10 CFR [Part] 50, Appendix G. The curves generated from these methods provide guidance to ensure that the P/T limits will not be exceeded during any phase of reactor operation. Accordingly, the proposed revision to the CNS P/T curves is based on

an NRC accepted means of ensuring protection against brittle reactor vessel fracture, and compliance with 10 CFR [Part] 50 Appendix G. Therefore, this proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Based on the above, NPPD [Nebraska Public Power District] concludes that the proposed TS change to TS 3.4.9 P/T curves, figures 3.4.9–1, 3.4.9–2, and 3.4.9–3 does not significantly increase the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change updates existing P/T operating limits to correspond to the current NRC guidance. The proposed TS change provides more operating flexibility in the P/T curves for in-service leakage and hydrostatic pressure testing, non-nuclear heatup and cooldown, and criticality, with the benefits primarily in the area of pressure test being performed at a lower temperature. The proposed change does not involve a physical change to the plant, add any new equipment or any new mode of operation. These changes demonstrate compliance with the brittle fracture requirements of 10 CFR [Part] 50 Appendix G, and therefore do not create the possibility for a new or different kind of accident from any accident previously evaluated.

Based on the above, NPPD concludes that the proposed TS change to TS 3.4.9 P/T curves, figures 3.4.9–1, 3.4.9–2, and 3.4.9–3 does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in the margin of safety?

The proposed change to the CNS P/T curves does not create a significant reduction in the margin of safety. The proposed change revises the existing CNS P/T curves to be consistent with recommendations of RG 1.99, Revision 2, the current NRC guidance given to ensure compliance with 10 CFR [Part] 50 Appendix G.

For P/T curve development ASME [American Society of Mechanical Engineers] Section Xl Code [Boiler and Pressure Vessel Code] Case N–640 uses the Kic fracture toughness curve as the lower bound for fracture toughness. P/T curves based on the Kic fracture toughness limits enhance industrial safety by expanding the P/T window in the low-temperature operating region. The potential benefits are a reduction in the duration of the pressure test and, associated increase in personnel safety, while conducting inspections in primary containment. Therefore, operational flexibility is gained while maintaining an adequate margin of safety to Reactor Pressure Vessel brittle fracture. As stated above, the development of the P/T curves to 32 EFPY was performed per the guidelines of 10 CFR [Part] 50 Appendix G, and thus, the margin of safety is not significantly reduced as the result of the proposed TS change.

Based on the above, NPPD concludes that the proposed TS change to TS 3.4.9 P/T curves, figures 3.4.9–1, 3.4.9–2, and 3.4.9–3 does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: February 2, 2004.

Description of amendment request: The proposed amendment would revise Technical Specification 3.1.8, ''Scram Discharge Volume (SDV) Vent and Drain Valves,'' to allow a vent or drain line with one inoperable valve to be isolated instead of requiring the valve to be restored to Operable status within 7 days.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on February 24, 2003 (68 FR 8637), on possible amendments to revise the action for one or more SDV vent or drain lines with an inoperable valve, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 15, 2003 (68 FR 18294). The licensee affirmed the applicability of the model NSHC determination in its application dated February 2, 2004

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A change is proposed to allow the affected SDV vent and drain line to be isolated when there are one or more SDV vent or drain lines with one valve inoperable instead of requiring the valve to be restored to operable status within 7 days. With one SDV vent or drain valve inoperable in one or more lines, the isolation function would be maintained since the redundant valve in the affected line would perform its safety function of isolating the SDV. Following the completion of the required action, the isolation function is fulfilled since the associated line is isolated. The ability to vent and drain the SDVs is maintained and controlled through administrative controls. This requirement assures the reactor protection system is not adversely affected by the inoperable valves. With the safety functions of the valves being maintained, the probability or consequences of an accident previously evaluated are not significantly increased.

Criterion 2—The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in the margin of safety.

The proposed change ensures that the safety functions of the SDV vent and drain valves are fulfilled. The isolation function is maintained by redundant valves and by the required action to isolate the affected line. The ability to vent and drain the SDVs is maintained through administrative controls. In addition, the reactor protection system will prevent filling of an SDV to the point that it has insufficient volume to accept a full scram. Maintaining the safety functions related to isolation of the SDV and insertion of control rods ensures that the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: John A. Nakoski.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 9, 2004

Description of amendment request: The proposed change allows entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of

Federal Regulations (10 CFR), Part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TSs would be eliminated, several notes or specific exceptions are revised to reflect the related changes to LCO 3.0.4, and Surveillance Requirement (SR) 4.0.4 is revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated February 9, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 9, 2004.

Description of amendment request: The proposed amendment revises TS 5.5.7, ''Reactor Coolant Pump Flywheel Inspection Program,'' to extend the allowable inspection interval to 20 years.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 24, 2003 (68 FR 37590), on possible amendments to extend the inspection interval for reactor coolant pump (RCP) flywheels, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 22, 2003 (68 FR 60422). The licensee affirmed the applicability of the model NSHC determination in its application dated February 9, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the RCP flywheel examination frequency does not change the response of the plant to any accidents. The RCP will remain highly reliable and the proposed change will not result in a significant increase in the risk of plant operation. Given the extremely low failure probabilities for the RCP motor flywheel during normal and accident conditions, the extremely low probability of a loss-of-coolant accident (LOCA) with loss of offsite power (LOOP), and assuming a conditional core damage probability (CCDP) of 1.0 (complete failure of safety systems), the core damage frequency (CDF) and change in risk would still not exceed the NRC's acceptance guidelines contained in Regulatory Guide (RG) 1.174 (<1.0E–6 per year). Moreover, considering the uncertainties involved in this evaluation, the risk associated with the postulated failure of an RCP motor flywheel is significantly low. Even if all four RCP motor flywheels are considered in the bounding plant configuration case, the risk is still acceptably low.

The proposed change does not adversely affect accident initiators or precursors, nor alter the design assumptions, conditions, or configuration of the facility, or the manner in which the plant is operated and maintained; alter or prevent the ability of structures, systems, components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits; or affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the type or amount of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposure. The proposed change is consistent with the safety analysis assumptions and resultant consequences. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The proposed change does not create the possibility of a new or different

kind of accident from any accident previously evaluated.

The proposed change in flywheel inspection frequency does not involve any change in the design or operation of the RCP. Nor does the change to examination frequency affect any existing accident scenarios, or create any new or different accident scenarios. Further, the change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or alter the methods governing normal plant operation. In addition, the change does not impose any new or different requirements or eliminate any existing requirements, and does not alter any assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current plant operating practice. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by this change. The proposed change will not result in plant operation in a configuration outside of the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in RG 1.174. There are no significant mechanisms for inservice degradation of the RCP flywheel. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible 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.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: March 28, 2003, as supplemented December 5, 2003.

Brief description of amendments: These amendments revise the Technical Specifications by eliminating the requirements associated with hydrogen recombiners and hydrogen monitors.

Date of issuance: March 2, 2004.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 262 and 239.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register****:* May 13, 2003 (68 FR 25651)

The December 5, 2003, supplemental letter provided clarifying information that did not enlarge the scope of the amendment as noticed in the original **Federal Register** notice or change the no significant hazards consideration.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated March 2, 2004.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: July 21, 2003, as supplemented February 5, 2004.

Brief Description of amendments: The amendment revised the Updated Final Safety Analysis Report (UFSAR) to describe temporary operation of the turbine building ventilation system in a once-through versus recirculation configuration during outages.

Date of issuance: February 26, 2004.

Effective date: Effective as of the date of issuance shall be implemented in accordance with 10 CFR 50.71(e).

Amendment Nos.: 230 and 258.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments approved changes to the UFSAR.

Date of initial notice in ***Federal Register****:* August 5, 2003 (68 FR 46241). The February 5, 2004, supplemental letter provided clarifying information only and did not change the initial proposed no significant hazards consideration or expand the scope of the initial application. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 26, 2004.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 20, 2003, as supplemented by letters dated June 10, September 30, and October 22, 2003

Brief description of amendments: The amendments revised the Technical Specifications (TSs) to update the heatup, cooldown, criticality, and inservice test pressure and temperature limits for the reactor coolant system of each unit to a maximum of 34 Effective Full Power Years. Additionally, the amendments revise the Low Temperature Overpressure (LTOP) System TSs in order to reflect the revised pressure-temperature limits and the revised LTOP enable temperature.

Date of issuance: March 4, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 212 and 206.

Renewed Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register**: December 23, 2003 (68 FR 74264).*

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 4, 2004.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: June 30, 2003, as supplemented by letter dated December 16, 2003.

Brief description of amendment: The amendment revises the control room emergency ventilation system surveillance requirements (SRs) by modifying an existing SR related to the makeup flow rate to show that it is applicable to the VSF–9 train and by adding a new makeup flow rate SR that is applicable to the 2VSF–9 train.

Date of issuance: March 2, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 221.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* July 22, 2003 (68 FR 43384).

The December 16, 2003, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 2004.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: March 28, 2003, as supplemented by letters dated October 23 and December 5, 2003.

Brief description of amendments: The amendments revise the technical specifications to reduce the main steam line low pressure primary containment isolation allowable value.

Date of issuance: February 18, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 206/198, 219/213.

Facility Operating License Nos. DPR–19, DPR–25, DPR–29 and DPR–30: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* December 23, 2003 (68 FR 74265). The October 23 and December 5, 2003, submittals provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 18, 2004.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: March 31, 2003, as supplemented June 26, 2003.

Brief description of amendments: The amendments revise Appendix A, Technical Specifications (TS), of Facility Operating License Nos. NPF–11 and NPF–18. Specifically, the change increases the upper limit associated with TS Table 3.3.5.1–1, ''Emergency Core Cooling System Instrumentation,'' Function 3.e, ''HPCS System Flow Rate—Low (Bypass),'' Allowable Value from less than or equal to (≤) 1704 gallons per minute (gpm) to ≤ 2194 gpm.

The change increases the Allowable Value band to account for instrumentation deadband, as-left setting tolerances and setpoint drift and to resolve historical difficulties during calibration. The current Allowable Value was initially provided in the LaSalle County Station TS during conversion to Improved Technical Specifications (ITS) format. This value was based on vendor supplied data and believed at the time to adequately account for these parameters. The upper Allowable Value limit is being increased based on historical performance data for the High Pressure Core Spray (HPCS) system flow switches. The increase in the allowed bypass flow rate does not affect the capability of the HPCS system in performing its intended safety function.

Date of issuance: March 4, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 165 and 151.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* May 13, 2003 (68 FR 25654). The supplement dated June 26, 2003, provided clarifying information that did not change the scope of the March 31, 2003, application nor the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 4, 2004.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: December 16, 2003 as supplemented January 29 and February 13, 2004.

Brief description of amendment: This amendment revised the Technical Specifications to allow a one-time extension of the steam generator tube inservice inspection interval from March 9, 2004, to March 31, 2005.

Date of issuance: February 26, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 262.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* January 6, 2004 (69 FR 695).

The supplements dated January 29 and February 13, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 26, 2004.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: November 20, 2003, as supplemented by letter dated February 5, 2004.

Brief description of amendment: The amendment revised Section 2.1.1.2 of the Technical Specifications to reflect the results of cycle-specific calculations performed for the upcoming Operating Cycle 10, which would employ a mixed core consisting of predominantly GE11 fuel bundles with some new GE14 fuel bundles.

Date of issuance: February 25, 2004.

Effective date: As of the date of issuance, to be implemented prior to startup from Refueling Outage 9.

Amendment No.: 112.

Facility Operating License No. NPF–69: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* December 23, 2003 (68 FR 74267).

The supplemental letter of February 5, 2004, provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The staff's related evaluation of the amendment is contained in a Safety Evaluation dated February 25, 2004.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 22, 2003, as supplemented July 9, November 5, December 15, 2003, and January 30, February 9, and February 20, 2004.

Brief description of amendment: The amendment revised the Kewaunee Nuclear Power Plant operating license and technical specifications to increase the licensed rated power by 6.0 percent from 1673 megawatts thermal to 1772 megawatts thermal.

Date of issuance: February 27, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 172.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* June 10, 2003 (68 FR 34670).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 27, 2004.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: April 2, 2003, as supplemented by letters dated August 8 and November 13, 2003.

Brief description of amendments: The amendments revise certain operational requirements of the Diablo Canyon Nuclear Plant Technical Specifications for the ventilation filter testing program, the control room ventilation system, the auxiliary building ventilation system, and the fuel handling building ventilation system. The amendments also incorporate a selective implementation of the alternative source term.

Date of issuance: February 27, 2004.

Effective date: February 27, 2004, and shall be implemented within 180 days from the date of issuance.

Amendment Nos.: Unit 1—163; Unit 2—165.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register**:* June 24, 2003 (68 FR 37579).

The August 8 and November 13, 2003, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 27, 2004.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: July 29, 2003, as supplemented January 12, 2004.

Brief description of amendment: This amendment revises the Technical Specifications (TSs) references in the Surveillance Requirement (SR) 4.0.5 and associated Basis, and Bases 3/4.4.2, 3/4.4.6, and 3/4.4.10. In the current plant TSs, the reference for inservice testing (IST) and inservice inspection (ISI) activities is the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME BPV Code), Section XI. The licensee proposed to reference the ASME Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code) and the ASME BPV Code, Section XI for IST activities and ISI activities respectively. These changes reflect the fact that the pump and valve testing requirements previously contained in Subsections IWP and IWV of the ASME BPV Code, Section XI, have been replaced by the requirements in the 1998 Edition of the ASME OM Code, 2000 Addenda, for the licensee's third 120-month IST interval. These TS changes are required to implement the IST program update in accordance with the requirements of 10 CFR.55a(f)(5)(ii). The licensee also proposed certain other language changes.

Date of issuance: February 18, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 166.

Facility Operating License No. NPF–12: Amendment revised the TSs.

*Date of initial notice in **Federal Register**:* October 14, 2003 (68 FR 59219). The supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 18, 2004.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–296, Browns Ferry Nuclear Plant, Unit 3, Limestone County, Alabama

Date of application for amendments: October 1, 2003, as supplemented December 19, 2003.

Description of amendment request: The amendment revised the safety limit minimum critical power ratio values in Technical Specification (TS) 2.1.1.2.

Date of issuance: February 24, 2004.

Effective date: February 24, 2004.

Amendment No.: 246.

Facility Operating License No. DPR–68: Amendment revised the TSs.

*Date of initial notice in **Federal Register**:* October 28, 2003 (68 FR 61481). The December 19, 2003, letter provided clarifying information that did not change the scope of the original request or the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 2004.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 8th day of March 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–5596 Filed 3–15–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49382; File No. SR–OPRA–2004–01]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan Regarding Device-Based and Enterprise Rate Professional Subscriber Fees Charged by OPRA in Respect of Its Basic Service and Its FCO Service

March 9, 2004.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on February 25, 2004, the Options Price Reporting Authority (''OPRA'')[3] submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). The proposed OPRA Plan amendment would revise device-based and Enterprise Rate professional subscriber fees charged by OPRA in respect of its Basic Service and FCO Service. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

I. Description and Purpose of the Amendment

The purpose of the proposed amendment to OPRA's national market system plan is to make incremental changes to the device-based and Enterprise Rate professional subscriber fees charged by OPRA in respect of its Basic Service and FCO Service over a four-year period commencing in 2004. By January 1, 2007, every professional subscriber would be subject to the same Basic Service device-based fee and the same FCO Service device-based fee, or elect to pay the Basic Service Enterprise Rate fee as an alternative to the Basic Service device-based fee at a rate per registered representative that is more closely aligned to the uniform device-based rate. OPRA's Basic Service consists of market data and related information pertaining to equity and index options. OPRA's FCO Service consists of this same information pertaining to foreign currency options. As a result of these changes, by the beginning of 2007, OPRA would have eliminated all distinctions in the device fees paid by professional subscribers based on the subscriber's status as a member or nonmember of an exchange that is a party to the OPRA Plan, as well as distinctions in the per-device fee based on the total number of OPRA-enabled devices of each professional subscriber.

The annual incremental changes to OPRA's professional subscriber fees proposed to be made over a four year period, including the changes to be made at the beginning of the fourth year when all device-based fees would be the same for all professional subscribers, are estimated by OPRA to increase total OPRA revenues derived from these fees by approximately 5% each year. This would be at or below the rate at which OPRA has increased professional subscriber fees in the past. Since Professional Subscribers currently pay device-based fees at different rates depending on their status as members or nonmembers of exchanges and on the number of devices through which they access OPRA information, in one or more of the four years during which these distinctions are being phased out, some Professional Subscribers would see their fees increase by more than the 5% average, although a greater number of Professional Subscribers would actually see their OPRA fees decrease. Professional subscribers are persons who subscribe to OPRA Information and do not qualify for the reduced fees charged to nonprofessional subscribers.

The elimination from OPRA's device-based professional subscriber fees of both the member and nonmember distinction and the volume discount is intended to make OPRA's rate structure simpler and fairer in light of continuing changes in communications and computer technology as well as in the structure of exchanges and in the nature of exchange membership. All of these combine to make these distinctions no longer useful. OPRA proposes to phase in the elimination of these fee distinctions over a four-year period in order to avoid making too great a change to the fees paid by any one professional subscriber in a single year.

The 5% annual increase in OPRA revenues estimated to result from these proposed fee changes is needed to defray the ever-increasing costs incurred by OPRA in collecting, processing, and disseminating options market data. These costs have increased over the past several years on account of the expansion of options trading and the introduction of new services, such as OPRA's BBO service that was introduced in 2003. OPRA's costs are expected to continue to increase over the next four years in light of anticipated continued growth in the number of messages that OPRA would be required to handle as a result of the entry of new options exchanges and the expansion of trading on existing exchanges, and changes in the trading and quoting methodologies used by OPRA's exchanges that are expected to increase significantly the number of individual quotes generated by each exchange.

The text of the proposed Professional Subscriber Fee Schedule is set forth below.

* * * * *

OPTIONS PRICE REPORTING AUTHORITY

Professional Subscriber Fee Schedule

(Effective April 1, 2004)

Basic Service

Subscriber shall pay a monthly fee based upon the number of electronic display or interrogation devices maintained by Subscriber that are capable of displaying or reporting OPRA Information. OPRA's device-based professional subscriber fees are subject to written policies. These policies are available at *www.opradata.com*. Copies of these policies have been furnished to all professional subscribers, and additional copies will be mailed to subscribers upon request. The monthly fee per device shall be as follows:

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

Number of Devices	Basic Service							
	2004		2005		2006		2007	
	Member	Non-Member	Member	Non-Member	Member	Non-Member	Member	Non-Member
1–9	$20.50	$32.25	$20.50	$32.25	$20.50	$32.25	$20.00	$20.00
10–29	20.50	27.50	20.50	27.50	20.50	27.50	20.00	20.00
30–99	18.00	27.50	19.00	27.50	20.00	27.50	20.00	20.00
100–749	18.00	20.00	19.00	20.00	20.00	20.00	20.00	20.00
750+	14.00	20.00	15.75	20.00	17.75	20.00	20.00	20.00

Enterprise Rate Professional Subscriber Fee

As an alternative to the Device-based Professional Subscriber Fee, OPRA's Enterprise Rate Professional Subscriber Fee is available to those Subscribers that are members or associate members in good standing of one or more of the exchanges that are parties to the OPRA Plan, and that elect to pay Subscriber Fees at the Enterprise Rate by signing the Enterprise Rate Amendment to the Subscriber Agreement. The Enterprise Rate Subscriber Fee in effect commencing April 1, 2004 is a monthly fee of $12.00 times the number of a Subscriber's registered representatives based in the United States, its territories and possessions as reported by the NASD, subject to a minimum monthly fee of $2,400 per subscriber and subject to adjustment in accordance with the Enterprise Rate Amendment to the Subscriber Agreement. Effective January 1, 2005, the Enterprise Rate Subscriber Fee will be $14.00 per registered representative subject to a minimum monthly fee of $2,800, effective January 1, 2006, the Enterprise Rate Subscriber Fee will be $16 per registered representative subject to a minimum monthly fee of $3,200, and effective January 1, 2007, the Enterprise Rate Subscriber Fee will be $20 per registered representative subject to a minimum monthly fee of $4,000. Payment of the Enterprise Rate Professional Subscriber Fee entitles Subscriber to access OPRA's Basic Service at any of its locations in the United States, its territories and possessions, except that Subscribers who pay the Enterprise Rate Professional Subscriber Fee on the basis of more than 7,000 registered representatives (*i.e.*, a monthly fee in excess of $84,000 in 2004, $98,000 in 2005, $112,000 in 2006, and $140,000 in 2007) are entitled to access OPRA's Basic Service at any of their locations worldwide. In addition, payment of the Enterprise Rate Professional Subscriber Fee by a Subscriber allows OPRA's Basic Service to be made available to independent investment advisers who are under contract with the Subscriber to provide investment advisory services to the Subscriber's customers. All such investment advisers will be deemed to be registered representatives of the Subscriber for purposes of calculating the Subscriber's Enterprise Rate Professional Subscriber Fee.

* * * * *

FCO Service

Subscriber shall pay a monthly fee based upon the number of electronic display or interrogation devices maintained by Subscriber that are capable of displaying or reporting OPRA's FCO Service. The monthly fee per device shall be as follows:

Number of devices	2004	2005	2006	2007
1	$3.75	$4.25	$4.75	$5.00
2–9	3.25	3.75	4.25	5.00
10–749	3.00	3.50	4.25	5.00
750+	2.25	3.00	4.00	5.00

* * * * *

II. Implementation of the OPRA Plan Amendment

Pursuant to paragraph (c)(3)(i) of Rule 11Aa3–2 under the Act,[4] OPRA designates this amendment as establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, thereby qualifying for effectiveness upon filing. In order to provide persons subject to these fees advance notice of the changes, OPRA proposes that the revised fees go into effect on April 1, 2004. The Commission may summarily abrogate the amendment within sixty days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2) under the Act,[5] if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a national market system; or otherwise in furtherance of the purposes of the Act.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–OPRA–2004–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any

[4] 17 CFR 240.11Aa3–2(c)(3)(i).

[5] 17 CFR 240.11Aa3–2(c)(2).

person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–2004–01 and should be submitted by April 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–5841 Filed 3–15–04; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27812]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 10, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 31, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 31, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

AGL Resources Inc. (70–10175)

AGL Resources Inc. (''AGL Resources''), a registered public utility holding company, Ten Peachtree Place, Suite 1000, Atlanta, Georgia 30309, AGL Resources' electric and gas public utility subsidiaries, Atlanta Gas Light Company (''AGLC''), Ten Peachtree Place, Suite 1000, Atlanta, Georgia 30309; Chattanooga Gas Company (''CGC'') 2207 Olan Mills Drive, Chattanooga, Tennessee 37421; Virginia Natural Gas, Inc. (''VNG''), 5100 East Virginia Beach Boulevard, Norfolk, Virginia 23502, (AGLC, CGC, and VNG collectively ''Utility Subsidiaries''); and AGL Resources'' direct and indirect nonutility subsidiaries (''Nonutility Subsidiaries'' and collectively with the Utility Subsidiaries, ''Subsidiaries'') Georgia Natural Gas Company (''GNG''); AGL Investments, Inc. (''AGLI''); AGL Services Company (''AGL Services''); AGL Capital Corporation (''AGL Capital''); Global Energy Resource Insurance Corporation (''GERIC''); Pivotal Energy Services, Inc. (''Pivotal Energy Services''); AGL Rome Holdings, Inc.; Pivotal Propane of Virginia, Inc.; Southeastern LNG, Inc. (''Southeastern LNG''); AGL Capital Trust I; AGL Capital Trust II; AGL Capital Trust III; Trustees Investments, Inc.; Customer Care Services, Inc. (''Customer Care Services''); AGL Networks, LLC (''AGL Networks''); AGL Energy Corporation (''AGL Energy''); and AGL Propane Services, Inc. (''AGL Propane''); Ten Peachtree Place, Suite 1000, Atlanta, Georgia 30309, SouthStar Energy Services, LLC (''SouthStar''), 817 West Peachtree Street, Atlanta, Georgia 30308, Sequent Energy Management, LP; Sequent Holdings, LLC; Sequent, LLC; Sequent Energy Marketing, LP, 1200 Smith Street Suite 900, Houston, Texas 77002 (collectively, ''Applicants'') have filed an application (''Application'') under to sections 6(a), 7, 9(a), 10, and 12 of the Act and rules 43, 45, 46, and 54 under the Act.

I. Background

By order dated October 5, 2000 (HCAR No. 27243) (''Merger Order''), AGL Resources was authorized to acquire all of the issued and outstanding common stock of VNG. AGL Resources registered as a holding company under the Act on October 10, 2000. AGL Resources owns directly all of the issued and outstanding common stock of three public utility companies, AGLC, CGC, and VNG.

II. Description of the Parties

A. AGL Resources

AGL Resources directly owns AGLC, CGC, VNG, GNG, AGL Services, AGL Capital, GERIC, AGLI. AGL Resources' common stock has a five-dollar ($5.00) par value and is listed and traded on the New York Stock Exchange under the symbol ''ATG.'' As of June 30, 2003 AGL Resources had 63,731,156 shares of common stock issued and outstanding. As of and for the six months ended June 30, 2003, AGL Resources had total assets of $3.66 billion, net utility plant assets of $2.07 billion, total operating revenues of $539.1 million, operating margin [1] of $345.1 million and net income of $70.7 million. As of and for the twelve months ended December 31, 2002, AGL Resources had total assets of $3.74 billion, net utility plant assets of $2.06 billion, total operating revenues of $877.2 million, operating margin of $609.0 million and net income of $103.0 million.

Utility Subsidiaries

B. Utility Subsidiaries

1. Atlanta Gas Light Company

Applicants state that AGLC is a natural gas local distribution utility with distribution systems and related facilities serving 237 cities throughout Georgia, including Atlanta, Athens, Augusta, Brunswick, Macon, Rome, Savannah, and Valdosta. AGLC also has approximately 6.0 billion cubic feet, or Bcf, of liquefied natural gas (''LNG'') storage capacity in three LNG plants to supplement the supply of natural gas during peak usage periods. As of and for the six months ended June 30, 2003, AGLC had total assets of $2.34 billion, total operating revenues of $249.9 million and net income of $40.1 million. As of and for the twelve months ended December 31, 2002, AGLC had total assets of $2.37 billion, total operating revenues of $538.9 million and net income of $80.0 million. AGLC owns all of the outstanding stock of AGL Rome Holdings, Inc. AGL Rome Holdings, Inc. owns property associated with a former manufactured gas plant in Rome, Georgia.

2. Chattanooga Gas Company

CGC is a natural gas local distribution utility with distribution systems and related facilities serving 12 cities and surrounding areas, including the Chattanooga and Cleveland areas of Tennessee. CGC also has approximately 1.2 Bcf of LNG storage capacity in its

[1] Applicants state that operating margin represents operating revenues less cost of sales.

LNG plant. As of and for the six months ended June 30, 2003, CGC had total assets of $140.8 million, total operating revenues of $51.4 million and net income of $3.8 million. As of and for the twelve months ended December 31, 2002, CGC had total assets of $142.7 million, total operating revenues of $75.3 million and net income of $7.0 million.

3. Virginia Natural Gas, Inc.

VNG is a natural gas local distribution utility with distribution systems and related facilities serving eight cities in the Hampton Roads region of southeastern Virginia. VNG owns and operates approximately 155 miles of a separate high-pressure pipeline that provides delivery of gas to customers under firm transportation agreements within the state of Virginia. VNG also has approximately 5.0 million gallons of propane storage capacity in its two propane facilities to supplement the supply of natural gas during peak usage periods. As of and for the six months ended June 30, 2003, VNG had total assets of $648.3 million, total operating revenues of $201.0 million and net income of $17.7 million. As of and for the twelve months ended December 31, 2002, VNG had total assets of $637.5 million, total operating revenues of $283.2 million and net income of $19.5 million.

C. Nonutility Subsidiaries

1. Georgia Natural Gas Company

GNG, a wholly owned subsidiary of AGL Resources, owns a non-controlling 70% financial interest in SouthStar. SouthStar, a joint venture formed in 1998, markets retail natural gas and related services to industrial, commercial and residential customers, principally in Georgia. SouthStar is the largest marketer in Georgia with a market share of 38% and operates under the trade name Georgia Natural Gas. At the formation of SouthStar, GNG owned a 50% interest; however, in March 2003, AGL Resources, through GNG, purchased an additional 20% ownership interest in SouthStar. Upon closing, GNG owned a non-controlling 70% financial interest in SouthStar and a subsidiary of Piedmont Natural Gas Company owned the remaining 30%. Although GNG owns 70% of SouthStar, GNG states that it does not have a controlling interest, as matters of significance require the unanimous vote of SouthStar's governing board. GNG and SouthStar are ''gas-related companies'' under rule 58 of the Act.

2. AGL Investments, Inc.

AGLI is an intermediate holding company for AGL Resources' investments in Sequent Energy Management, LP, AGL Networks, AGL Propane Services, AGL Energy, and other Nonutility Subsidiaries.

(i) Sequent, LLC is an intermediate holding company for Sequent Energy Management, LP; Sequent Energy Marketing, LP; and Sequent Holdings, LLC; collectively referred to as ''Sequent.'' Sequent provides asset optimization, gas supply services, and wholesale marketing and risk management services for third parties and the Utility Subsidiaries. Asset optimization activities focus on capturing the value from idle or underutilized natural gas assets, typically by participating in transactions that balance the needs of varying markets and time horizons. These assets include rights to pipeline capacity, underground storage, and natural gas peaking services and facilities. Sequent related activities also include the aggregation of gas from other marketers and producers and its resale to third parties and the Utility Subsidiaries. In addition, Sequent may bundle this commodity with transportation and storage service and sell short-term and long-term gas supply on a delivered basis. The Sequent organization is a ''gas-related company'' under rule 58 of the Act.

(ii) AGL Networks is a carrier-neutral provider of last-mile infrastructure and dark fiber solutions to a variety of customers in Atlanta, Georgia, and Phoenix, Arizona. AGL Networks is an exempt telecommunications company under section 34 of the Act.

(iii) AGL Propane holds a 22.36% membership interest in US Propane L.P.; and AGL Energy Corporation holds a membership interest in US Propane, LLC, the general partner of US Propane L.P. US Propane L.P. owns all of the general partnership interests and approximately 25% of the limited partnership interests, in Heritage Propane Partners, L.P. (''Heritage''). Heritage, a publicly traded company, is a marketer of propane through a nationwide retail distribution network and is the fourth largest retail marketer of propane in the United States.

(iv) AGL Investments is also the sole shareholder of the following active companies: Trustees Investments, Inc., which owns a residential and retail development in Savannah, Georgia, located on or adjacent to manufactured gas plant sites; Customer Care Services; Pivotal Energy Services, and Southeastern LNG.

3. AGL Services Company

AGL Services Company is a service company established in accordance with section 13 of the Act. AGL Services Company provides business services to AGL Resources and its various Subsidiaries.

4. AGL Capital Corporation

AGL Capital is a financing subsidiary that provides for the ongoing financing needs of AGL Resources through a commercial paper program, the issuance of various debt and hybrid securities and other financing arrangements.

5. AGL Capital Trust I, AGL Capital Trust II, and AGL Capital Trust III

AGL Capital Trust I, AGL Capital Trust II and AGL Capital Trust III are Delaware statutory business trusts established for the purpose of issuing trust preferred securities. AGL Resources owns 100% of AGL Capital Trust I common stock and AGL Capital Trust I owns AGL Resources' 8.17% junior subordinated deferrable interest debentures. AGL Capital owns 100% of AGL Capital Trust II's common stock and AGL Capital Trust II owns AGL Capital's 8% junior subordinated deferrable interest debentures. AGL Capital Trust III exists for the exclusive purposes of issuing and selling its trust preferred securities and common securities, using the proceeds from the sale of these securities to acquire unsecured debt obligations of AGL Capital, and making distributions to the holders of trust securities. As of the date hereof, no securities have been issued by AGL Capital Trust III.

6. Global Energy Resource Insurance Corporation

By order dated April 13, 2001(HCAR No. 27378), the Commission authorized GERIC, a captive insurance company, to underwrite certain insurance for AGL Resources and its Subsidiaries.

III. Overview of the Requests

Applicants request authorization to engage in the following financing transactions during the period from the effective date of the order granted in this Application through March 31, 2007 (''Authorization Period'').

Applicants state that the proceeds from the sale of securities in external financing transactions will be used for general corporate purposes, including the financing, in part, of the capital expenditures and working capital requirements of AGL Resources and its Subsidiaries, for the acquisition, retirement or redemption of securities previously issued by AGL Resources or the Subsidiaries, and for authorized

investments in companies organized in accordance with rule 58 under the Act (''Rule 58 Companies''), exempt wholesale generators (''EWGs''), as defined in section 32 of the Act, foreign utility companies (''FUCOs''), as defined in section 33 of the Act, exempt telecommunications companies (''ETCs''), as defined in section 34 of the Act, and for other lawful purposes.

Applicants request authorization for the following transactions through the Authorization Period:

(i) issuances and sales of securities or borrowings during the Authorization Period by AGL Resources of up to $5 billion at any time outstanding (''AGL Resources External Limit'');

(ii) issuances by AGL Resources of guarantees and other forms of credit support in an aggregate amount of $1 billion at any time outstanding (''AGL Resources Guarantee Limit'');

(iii) issuances by AGLC, CGC, and VNG of guarantees and other forms of credit support with respect to the obligations of their respective subsidiaries in an amount not to exceed and $300 million, $75 million, and $150 million, respectively (''Utility Guarantees'');

(iv) short-term borrowings by AGLC of $750 million and CGC of $250 million in short-term debt;

(v) hedging transactions by AGL Resources and the Utility Subsidiaries with respect to their indebtedness;

(vi) reorganization of the current combined system money pool into separate utility and non-utility money pools, and borrowings by the Subsidiaries under the new money pools;

(vii) changes in the terms of any wholly owned Subsidiary's authorized capital stock capitalization;

(viii) payment of dividends out of capital or unearned surplus by Nonutility Subsidiaries;

(ix) acquisition by AGL Resources and the Subsidiaries of the equity securities of one or more special purpose subsidiaries (''Financing Subsidiaries'') organized solely to facilitate a financing transaction and to guarantee the securities issued by Financing Subsidiaries;

(x) restructuring of AGL Resources' nonutility interests from time to time, including the establishment of one or more intermediate subsidiaries (''Intermediate Subsidiaries'') organized exclusively for the purpose of acquiring, financing, and holding the securities of one or more existing or future Nonutility Subsidiaries; and

(xi) issuance of up to 22 million shares of common stock under dividend reinvestment and stock-based management incentive and employee benefit plans (''Common Stock Plan Limit'').

IV. Financing Authorization

A. Parameters for Financing Transactions

Applicants state that financings will be subject to the following limitations (''Financing Limitations''):

(i) the cost of money on debt financings and the dividend rate on preferred stock or other types of preferred or equity-linked securities under the authorizations requested will be consistent with those of similar securities of comparable credit quality and maturities issued by other companies;

(ii) the maturity of long-term indebtedness will not exceed fifty years and short-term debt will mature within one year;

(iii) the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities will not exceed the greater of (a) 5% of the principal or total amount of the securities being issued or (b) issuance expenses that are generally paid at the time of the pricing for sales of the particular issuance, having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality;

(iv) AGL Resources will maintain common stock equity [2] as a percentage of total capitalization,[3] as shown in its most recent quarterly consolidated balance sheet, of at least 30% or above. Applicants state that each Utility Subsidiary on an individual basis will maintain common stock equity of at least 30% of total capitalization as shown in its most recent quarterly balance sheet; and

(v) Applicants further represent that, except for securities issued for the purpose of funding money pool (''Money Pool'') operations, no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization granted by the Commission under this Application, unless (a) the security to be issued, if rated, is rated investment grade; (b) all outstanding securities of the issuer that are rated, are rated investment grade; and (c) all outstanding securities of AGL Resources that are rated, are rated investment grade. For purposes of this provision, a security will be deemed to be rated ''investment grade'' if it is rated investment grade by at least one nationally recognized statistical rating organization (''NRSRO''), as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the Securities Exchange Act of 1934, as amended (''1934 Act''). Applicants request that the Commission reserve jurisdiction over the issuance of any securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities in reliance upon the authorization granted by the Commission under this Application at any time that the conditions set forth in clauses (a) through (c) above are not satisfied.

B. Financial Condition

1. *Capital Structure:* AGL Resources' capital structure as of June 30, 2003, is shown in the following table:

	($ millions)	% of total capitalization
Short-term debt	$306.4	13.4
Current portion of long-term debt	77.0	3.3
Senior and Medium-Term Notes (net of interest rate swaps of $2.3 million)	730.8	32.0
Trust Preferred Securities (net of interest rate swaps of $6.9 million)	225.3	9.9
Total debt	1,339.5	58.6
Common shareholders' equity (net of interest rate swaps of $6.9)	945.3	41.4
Total capitalization	$2,284.8	100.0

[2] Applicants state that common stock equity (''Common Stock Equity'') includes common stock (*i.e.*, amounts received equal to the par or stated value of the common stock), additional paid in capital, retained earnings and minority interests.

[3] Applicants would calculate the Common Stock Equity to total capitalization ratio as follows: common stock equity (common stock equity + preferred stock + gross debt). Gross debt is the sum of long-term debt, short-term debt and current maturities.

2. Current Debt Ratings: The debt ratings of AGL Resources and certain of its Subsidiaries are set forth below:

Company/Type of facility	Moody's	S&P	Fitch
AGL Resources/AGL Capital Corporation Commercial Paper*	P–2	A–2	F–2
AGL Resources/AGL Capital Corporation Senior Notes*	Baa1	BBB+	A–
AGL Resources/AGL Capital Trust I Trust Preferred Securities*	Baa2	BBB	BBB+
AGL Resources/AGL Capital Trust II Trust Preferred Securities*	Baa2	BBB	BBB+
Atlanta Gas Light Company Medium-Term Notes**	A3	A–	A

*AGL Resources guarantees payment of these securities subject to the terms and conditions of various Guarantee Agreements.
**CGC and VNG currently have no externally held securities and therefore are not rated by any NRSRO.

V. Description of Specific Types of Financing

A. AGL Resources External Financing

AGL Resources seeks authorization to issue equity and debt securities aggregating not more than the AGL Resources External Limit at any one time outstanding during the Authorization Period. These securities could include, but would not necessarily be limited to, common stock, preferred stock, preferred stock equivalent securities, options, warrants, purchase contracts, units (consisting of one or more purchase contracts, warrants, debt securities, shares of preferred stock, shares of common stock or any combination of such securities), long- and short-term debt (including commercial paper), convertible securities, subordinated debt, bank borrowings and securities with call or put options. In addition, AGL Resources also seeks authorization to issue shares of common stock or options to purchase shares under stock purchase/dividend reinvestment plans and stock-based management incentive and employee benefit plans up to the Common Stock Plan Limit. Securities issued under the Common Stock Plan Limit would not reduce the AGL Resources' capacity to issue securities under the AGL Resources External Limit.

B. Common Stock

AGL Resources seeks authority to issue common stock in an aggregate amount outstanding not to exceed the AGL Resources External Limit at any time during the Authorization Period. Specifically, AGL Resources proposes to issue and sell common stock, options, warrants, purchase contracts, units, other stock purchase rights exercisable for common stock and securities with some of the characteristics of AGL Resources common stock. AGL Resources may perform common stock financings through underwriting agreements of a type generally standard in the industry. Public distributions may be made by private negotiation with underwriters, dealers or agents as discussed below or through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All common stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets. Underwriters may resell common stock from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. AGL Resources also may grant underwriters a ''green shoe'' option permitting common stock to be offered solely for the purpose of covering over-allotments.

AGL Resources also seeks authorization to issue common stock or options, warrants or other stock purchase rights exercisable for common stock in public or privately negotiated transactions as consideration for the equity securities or assets of other companies, provided that the acquisition of any equity securities or assets has been authorized by the Commission or is exempt under the Act or rules under the Act. The ability to offer stock as consideration may make a transaction more economical for AGL Resources as well as for the seller of the business. For purposes of calculating compliance with the AGL Resources External Limit, AGL Resources' common stock would be valued based upon the negotiated agreement between the buyer and the seller.

C. Equity Compensation Plans

AGL Resources proposes, from time to time, during the Authorization Period to issue and/or acquire in open market transactions or by some other method that complies with applicable law and Commission interpretations then in effect, up to 22 million shares of AGL Resources common stock under AGL Resources' dividend reinvestment plan, certain incentive compensation plans and other employee benefit plans currently existing or that may be adopted in the future.

D. Preferred Stock

AGL Resources may issue preferred stock from time to time during the Authorization Period. Preferred stock or other types of preferred or equity-linked securities may be issued in one or more series with rights, preferences, and priorities as may be designated in the instrument creating each series, as determined by AGL Resources' board of directors. Dividends or distributions on preferred stock or other preferred securities will be made periodically and to the extent funds are legally available for that purpose, but may be made subject to terms that allow the issuer to defer dividend payments for specified periods. Preferred stock or other preferred securities may be convertible or exchangeable into shares of AGL Resources' common stock or unsecured indebtedness.

E. Long-Term Debt

AGL Resources proposes to issue long-term debt in accordance with the conditions described in Financing Limitations. Any long-term debt security would have the maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms and other terms and conditions as AGL Resources may determine at the time of issuance. Any long-term debt (i) may be convertible into any other authorized securities of AGL Resources; (ii) will have maturities ranging from one to fifty years; (iii) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount; (iv) may be entitled to mandatory or optional sinking-fund provisions; (v) may provide for reset of the coupon pursuant to a remarketing arrangement; (vi) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event; (vii) may be called from existing

investors by a third party; or (viii) may be entitled to the benefit of financial or other covenants.

F. Short-Term Debt

AGL Resources requests authorization to issue directly, or indirectly through Financing Subsidiaries existing or to be formed under the authorization requested herein, short-term debt including, but not limited to, institutional borrowings, commercial paper and bid notes. Issuance of short-term debt will be under terms determined by AGL Resources at the time of issuance and in accordance with the Financing Limitations. Short-term debt issued by AGL Resources will be unsecured. Proceeds of any short-term debt issuance may be used to refund short-term debt, to refund maturing long-term debt, and to provide financing for general corporate purposes, working capital requirements and Subsidiary capital expenditures until long-term financing can be obtained.

Applicants state that AGL Resources maintains committed lines of bank credit for $500 million with various banks. Sequent maintains an unsecured line of credit in the current amount of $15 million for the posting of margin deposits, which is guaranteed by AGL Resources.

AGL Resources may sell commercial paper, from time to time, in established domestic or European commercial paper markets. Commercial paper would be sold to dealers at the discount rate or the coupon rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from AGL Resources will reoffer this paper at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities and finance companies.

AGL Resources proposes to engage in other types of short-term financing generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance. Applicants state that any additional short-term financing would be conducted in accordance with the Financing Limitations.

To the extent credit is extended under either commercial paper or short-term debt facilities during the Authorization Period, these amounts would be included within the AGL Resources External Limit and would be subject to the Financing Limitations.

G. Hedges and Interest Rate Risk Management

AGL Resources requests authority to enter into, perform, purchase and sell financial instruments intended to manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements (''Hedging Instruments''). Hedging Instruments, in addition to the foregoing sentence, may also include the issuance of structured notes (*i.e.,* a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury or agency (*e.g,* Federal National Mortgage Association) obligations or London Inter-Bank Offer Rate-based swap instruments. AGL Resources would employ Hedging Instruments as a means of prudently managing the risk associated with any of its outstanding debt by, in effect, synthetically (i) converting variable-rate debt to fixed-rate debt; (ii) converting fixed rate debt to variable rate debt; (iii) limiting the impact of changes in interest rates resulting from variable-rate debt; and (iv) providing an option to enter into interest rate swap transactions in future periods for planned issuances of debt securities. In no case will the notional principal amount of any Hedging Instrument exceed that of the underlying debt instrument and related interest rate exposure. Thus, AGL Resources will not engage in ''leveraged'' or ''speculative'' transactions. The underlying interest rate indices of such Hedging Instrument will closely correspond to the underlying interest rate indices of AGL Resources' debt to which such Hedging Instrument relates. Off-exchange Hedging Instruments would be entered into only with counterparties whose senior debt ratings are investment grade as determined by any one of Standard & Poor's, Moody's Investors Service, Inc. or Fitch IBCA, Inc. (''Approved Counterparties'').

In addition, AGL Resources requests authorization to enter into Hedging Instruments with respect to anticipated debt offerings (''Anticipatory Hedges''), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be used to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded Hedging Instruments (''Forward Sale''); (ii) the purchase of put options on Hedging Instruments (''Put Options Purchase''); (iii) a Put Options Purchase in combination with the sale of call options on Hedging Instruments (''Zero Cost Collar''); (iv) transactions involving the purchase or sale, including short sales, of Hedging Instruments; or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges.

Hedging Instruments may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. AGL Resources will determine the optimal structure of each Hedging Instrument transaction at the time of execution.

H. Guarantees

AGL Resources requests authorization to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support (''Guarantees'') with respect to the obligations of its Subsidiaries as may be appropriate or necessary to enable the Subsidiaries to carry on in the ordinary course of their respective businesses in an aggregate principal amount not to exceed the $1 billion AGL Resources Guarantee Limit outstanding at any one time. In addition, Applicants request authority for AGLC, CGC, and VNG to issue Guarantees in an amount not to exceed $300 million, $75 million, and $150 million, respectively with respect to the obligations of their Subsidiaries.[4] All debt guaranteed will comply with the Financing Parameters. Applicants state that included in this amount are Guarantees entered into by AGL Resources that were previously issued in favor of its Subsidiaries to the extent that they remain outstanding during the Authorization Period. Applicants request that the limit on Guarantees be separate from the AGL Resources External Limit. Currently, AGL Resources guarantees credit exposures in Sequent's energy marketing and risk management business and certain obligations with respect to SouthStar.

[4] Applicants state that AGL Capital is a financing subsidiary that relies on an AGL Resources Guarantee for its credit. Borrowings by AGL Capital are considered to be securities issued by AGL Resources. AGL Resources' guarantee of AGL Capital's liabilities is not included in the AGL Resources Guarantee Limit.

As of December 31, 2003, AGL Resources had issued and had outstanding Guarantees on behalf of Subsidiaries in an aggregate amount of approximately $228.5 million; however, AGL Resources' issued and outstanding Guarantees on behalf of Subsidiaries for the 2003/2004 winter was in excess of $425 million.

Applicants state that Guarantees may take the form of, among others, direct guarantees, reimbursement undertakings under letters of credit, ''keep well'' undertakings, agreements to indemnify, expense reimbursement agreements, and credit support with respect to the obligations of the subsidiary companies as may be appropriate to enable the system companies to carry on their respective authorized or permitted businesses. Any Guarantee that is outstanding at the end of the Authorization Period shall remain in force until it expires or terminates in accordance with its terms.

Applicants state that certain Guarantees may be in support of obligations that are not capable of exact quantification. In these cases, AGL Resources and the Utility Subsidiaries will determine the exposure under a Guarantee for purposes of measuring compliance with the appropriate Guarantee limit by appropriate means, including estimation of exposure based on potential payment amounts. Applicants request authority for each Subsidiary to be charged a fee for any Guarantee provided on its behalf that is not greater than the cost, if any, incurred by the guarantor in obtaining the liquidity necessary to perform the Guarantee for the period of time the Guarantee remains outstanding.

VI. Utility Subsidiary Short-Term Debt

The Utility Subsidiaries request authority to enter into, perform, purchase and sell Hedging Instruments in the same manner as requested by AGL Resources above.

AGLC and CGC propose to issue up to $750 million and $250 million, respectively, of short-term debt consisting of commercial paper, secured or unsecured bank loans and borrowings under the utility money pool (''Utility Money Pool''), at any one time outstanding during the Authorization Period (''Utility Short-Term Debt Limit''). These issuances of securities will comply with the Financing Limitations.

If a Utility Subsidiary elects to issue commercial paper, either under rule 52 of the Act or under an applicable Commission order, each Utility Subsidiary requests that it be authorized to be made party to any AGL Resources' credit facility as back-up to the commercial paper.

VII. Authorization and Operation of the Money Pools

Applicants request authority for AGL Resources and the Utility Subsidiaries to operate a Utility Money Pool, and for the Utility Subsidiaries to make unsecured short-term borrowings from the Utility Money Pool, to contribute surplus funds to the Utility Money Pool, and to lend and extend credit to (and acquire promissory notes from) one another through the Utility Money Pool.

In addition, to the extent not exempt under rule 52(b), Applicants request authority for AGL Resources and the Nonutility Subsidiaries to operate a nonutility money pool (''Nonutility Money Pool''), and the Nonutility Subsidiaries to make unsecured short-term borrowings from the Nonutility Money Pool, to contribute surplus funds to the Nonutility Money Pool, and to lend and extend credit to (and acquire promissory notes from) one another through the Nonutility Money Pool.

AGL Resources requests authorization to contribute surplus funds and to lend and extend credit to (i) the Utility Subsidiaries through the Utility Money Pool and (ii) the Nonutility Subsidiaries through the Nonutility Money Pool. AGL Resources will not borrow from either the Utility Money Pool or the Nonutility Money Pool. AGL Services will serve as administrator for both the Utility Money Pool and the Nonutility Money Pool. Applicants request that the Commission reserve jurisdiction over the participation of any AGL Resources system company in either money pool as a borrower until the record in this matter has been supplemented with additional information regarding the proposed participant.

Applicants state that Utility Money Pool funds are available from the following sources for short-term loans to the participating companies from time to time (i) surplus funds in the treasuries of participants and (ii) proceeds received by the participants from the sale of commercial paper and borrowings from banks (''External Funds''). Funds are made available from sources in the order that AGL Services, as the administrator under the Utility Money Pool Agreement, determines would result in a lower cost of borrowing compared to the cost that would be incurred by the borrowing participants individually in connection with external short-term borrowings, consistent with the individual borrowing needs and financial standing of Utility Money Pool participants that invest funds in the Utility Money Pool.

Each company that is authorized to borrow from the Utility Money Pool (''Eligible Borrower'') will borrow pro rata from each Utility Money Pool participant that invests surplus funds, in the proportion that the total amount invested by the investing participant bears to the total amount then invested in the Utility Money Pool. The interest rate charged to Eligible Borrowers on borrowings under the Utility Money Pool will be equal to AGL Resources' actual cost of external short-term borrowings and the interest rate paid on loans to the Utility Money Pool would be a weighted average of the interest rate earned on loans made by the Utility Money Pool and the return on excess funds earned from the investments described below. The interest income and investment income earned on loans and investments of surplus funds would be allocated among those Utility Money Pool participants that have invested funds in accordance with the proportion each participant's investment of funds bears to the total amount of funds invested in the Utility Money Pool.

Funds not required by the Utility Money Pool to make loans (with the exception of funds required to satisfy the Utility Money Pool's liquidity requirements) would ordinarily be invested in one or more short-term investments, including (i) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities; (ii) commercial paper; (iii) certificates of deposit; (iv) bankers' acceptances; (v) repurchase agreements; (vi) tax exempt notes; (vii) tax exempt bonds; (viii) tax exempt preferred stock; and (ix) other investments that are permitted by section 9(c) of the Act and rule 40 thereunder.

Each Eligible Borrower receiving a loan through the Utility Money Pool would be required to repay the principal amount of the loan, together with all interest accrued thereon, on demand and in any event within one year after the date of the loan. All loans made through the Utility Money Pool may be prepaid by the borrower without premium or penalty and without prior notice. Applicants state that the Nonutility Money Pool would be operated on the same terms as the Utility Money Pool.

VIII. Changes in Capital Stock of Wholly-Owned Subsidiaries

Applicants request authority to change the terms of any wholly owned subsidiary's authorized capital stock capitalization by an amount deemed appropriate by AGL Resources or other intermediate parent company. Applicants state that the portion of an

individual Subsidiary's aggregate financing to be effected through the sale of stock to AGL Resources or other immediate parent company during the Authorization Period under rule 52 and/or an order issued in this file is unknown at this time. The proposed sale of capital securities (*i.e.,* common stock or preferred stock) may in some cases exceed the then authorized capital stock of a Subsidiary. In addition, the Subsidiary may choose to use capital stock with no par value.

The requested authorization is limited to AGL Resources' wholly owned Subsidiaries and will not affect the aggregate limits or other conditions contained herein. A Subsidiary would be able to change the par value, or change between par value and no-par stock, without additional Commission approval. Any such action by a Utility Subsidiary would be subject to and would only be taken upon the receipt of any necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business. In addition, each of the Utility Subsidiaries will maintain, during the Authorization Period, a common equity capitalization of at least 30%.

IX. Payment of Dividends Out of Capital or Unearned Surplus

Applicants request authority for the Nonutility Subsidiaries to pay dividends from time to time through the Authorization Period, out of capital and unearned surplus, to the extent permitted under applicable corporate law and state or national law applicable in the jurisdiction where each company is organized, and any applicable financing covenants.

AGL Resources anticipates that there will be situations in which a Nonutility Subsidiary will have unrestricted cash available for distribution in excess of the company's current and retained earnings. In these situations, the declaration and payment of a dividend would have to be charged, in whole or in part, to capital or unearned surplus. The sale of an asset, for example, may provide cash in excess of the selling company's retained earnings. In addition, distributions out of capital may be necessary in connection with winding down a subsidiary. Further, there may be periods during which unrestricted cash available for distribution by a Nonutility Subsidiary exceeds current and retained earnings due to the difference between accelerated depreciation allowed for tax purposes, which may generate significant amounts of distributable cash, and depreciation methods required to be used in determining book income. Finally, even under circumstances in which a Nonutility Subsidiary has sufficient earnings, and therefore may declare and pay a dividend to its immediate parent, the immediate parent may have negative retained earnings, even after receipt of the dividend, due to losses from other operations. In this instance, cash would be trapped at a subsidiary level where there is no current need for it.

X. Financing Entities

AGL Resources and the Subsidiaries seek authorization to organize new corporations, trusts, partnerships or other entities, or to use existing Financing Entities, such as AGL Capital, that will facilitate financings by issuing short-term debt, long-term debt, preferred securities, equity securities, or other securities to third parties and transfer the proceeds of these financings to AGL Resources or their respective parent Subsidiaries. To the extent not exempt under rule 52, the Financing Entities also request authorization to issue these securities to third parties. In connection with this method of financing, AGL Resources and the Subsidiaries may (i) issue debentures or other evidences of indebtedness to Financing Entities in return for the proceeds of the financing; (ii) acquire voting interests or equity securities issued by the Financing Entities to establish ownership of the Financing Entities (the equity portion of the entity generally being created through a capital contribution or the purchase of equity securities, ranging from one to three percent of the capitalization of the Financing Entities); and (iii) guarantee a Financing Entity's obligations in connection with a financing transaction. Any amounts issued by Financing Entities to a third party under this authorization will be included in the overall external financing limitation authorized herein for the immediate parent of the Financing Entity. However, the underlying intra-system mirror debt and parent guarantee shall not be so included. AGL Resources and the Subsidiaries also request authorization to enter into support or expense agreements (''Expense Agreement'') with Financing Entities to pay the expenses of any such entity. Any affiliate transactions entered into by a Financing Entity in connection with an Expense Agreement would be conducted at fair market value without regard to cost, and therefore, Applicants request an exemption under section 13(b) from the at cost standards of rules 90 and 91 for AGL Resources and the Subsidiaries to enter into these transactions.

XI. Restructuring and Reorganization

Applicants propose to restructure AGL Resources' nonutility holdings from time to time as may be necessary or appropriate in the furtherance of AGL Resources and the Subsidiaries' authorized nonutility activities. Restructuring could involve the acquisition of one or more new subsidiaries to acquire and hold direct or indirect interests in any or all of AGL Resources and the Subsidiaries' existing or future authorized nonutility businesses. Restructuring could also involve the merger or transfer of existing subsidiaries, or portions of existing businesses, among the AGL Resources associates and/or the reincorporation of existing subsidiaries in a different state. This would enable AGL Resources and the Subsidiaries to consolidate similar businesses and to participate effectively in authorized nonutility activities, without the need to apply for or receive additional Commission approval.

These direct or indirect subsidiaries might be corporations, partnerships, limited liability companies or other entities in which AGL Resources, directly or indirectly, might have a 100% interest, a majority equity or debt position, or a minority debt or equity position. These subsidiaries would engage only in businesses to the extent AGL Resources and the Subsidiaries are authorized, whether by statute, rule, regulation or order, to engage in those businesses. AGL Resources does not seek authorization to acquire an interest in any nonassociate company as part of the authority requested in this Application and states that the reorganization will not result in the entry by AGL Resources and the Subsidiaries into a new, unauthorized line of business.

XII. Intermediate Subsidiaries

AGL Resources proposes to acquire, directly or indirectly, the securities of one or more entities (''Intermediate Subsidiaries''), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs, FUCOs, Rule 58 Companies, ETCs, or other non-exempt Nonutility Subsidiaries (as authorized in this proceeding or in a separate proceeding), provided that Intermediate Subsidiaries may also engage in administrative activities (''Administrative Activities'') and development activities (''Development Activities''), defined below, relating to these subsidiaries.

Administrative Activities include ongoing personnel, accounting, engineering, legal, financial, and other support activities necessary to manage AGL Resources' investments in Nonutility Subsidiaries. Development Activities will be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and other preliminary activities that may be required in connection with the purchase, acquisition, financing or construction of facilities, or the acquisition of securities of or interests in new businesses.

Administrative Activities will include ongoing personnel, accounting, engineering, legal, financial, and other support activities necessary to manage AGL Resources' investments in Nonutility Subsidiaries.

An Intermediate Subsidiary may be organized, among other things, (i) to facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, Rule 58 Company, ETC or other Nonutility Subsidiary; (ii) after the award of such a bid proposal, to facilitate closing on the purchase or financing of an acquired company; (iii) at any time subsequent to the consummation of an acquisition of an interest in any such company to, among other things, effect an adjustment in the respective ownership interests in such business held by AGL Resources and non-affiliated investors; (iv) to facilitate the sale of ownership interests in one or more acquired non-utility companies; (v) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (vi) as a part of tax planning in order to limit AGL Resources' exposure to taxes; (vii) to further insulate AGL Resources and the Utility Subsidiaries from operational or other business risks that may be associated with investments in non-utility companies; or (viii) for other lawful business purposes.

Investments in Intermediate Subsidiaries may take the form of any combination of the following (i) purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests; (ii) capital contributions; (iii) open account advances with or without interest; (iv) loans; and (v) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from (i) financings authorized in this proceeding; (ii) any appropriate future debt or equity securities issuance authorization obtained by AGL Resources from the Commission; and (iii) other available cash resources, including proceeds of securities sales by Nonutility Subsidiaries under rule 52. To the extent that AGL Resources provides funds or Guarantees directly or indirectly to an Intermediate Subsidiary that are used for the purpose of making an investment in any EWG, FUCO, or Rule 58 Company, the amount of the funds or Guarantees will be included in AGL Resources' ''aggregate investment'' in these entities, as calculated in accordance with rule 53 or rule 58, as applicable.

AGL Resources requests authorization to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Nonutility Subsidiaries, and the activities and functions related to these investments. To effect any consolidation or other reorganization, AGL Resources may wish to merge or contribute the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary (including a newly formed Intermediate Subsidiary) or sell (or cause a Nonutility Subsidiary to sell) the equity securities or all or part of the assets of one Nonutility Subsidiary to another one. To the extent that these transactions are not otherwise exempt under the Act or rules thereunder, AGL Resources requests authorization to consolidate or otherwise reorganize under one or more direct or indirect Intermediate Subsidiaries, AGL Resources' ownership interests in existing and future Nonutility Subsidiaries. These transactions may take the form of a Nonutility Subsidiary selling, contributing, or transferring the equity securities of a subsidiary or all or part of a subsidiary's assets as a dividend to an Intermediate Subsidiary or to another Nonutility Subsidiary, and the acquisition, directly or indirectly, of the equity securities or assets of the subsidiary, either by purchase or by receipt of a dividend. The purchasing Nonutility Subsidiary in any transaction structured as an intrasystem sale of equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable laws and accounting requirements.

AGL Resources requests authorization to make expenditures on Development Activities, as defined above, in an aggregate amount of up to $600 million. AGL Resources proposes a ''revolving fund'' concept for permitted expenditures on Development Activities. Thus, to the extent a Nonutility Subsidiary in respect of which expenditures for Development Activities were made subsequently becomes an EWG, FUCO, or Rule 58 Company, the amount so expended will cease to be considered an expenditure for Development Activities, but will instead be considered as part of the ''aggregate investment'' in the entity under rule 53 or 58, as applicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–5887 Filed 3–15–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49380; File No. SR–NASD–2003–110]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Uniform Hearing Procedures for and Consolidation of Rules Applicable to Expedited Proceedings

March 9, 2004.

I. Introduction

On July 15, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to create a new rule series, the proposed NASD Rule 9550 Series, to consolidate, clarify and streamline those existing procedural rules that have an expedited proceeding

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

component. On September 2, 2003, the NASD amended the proposed rule change.[3] On November 18, 2003, the NASD again amended the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on December 16, 2003.[5] The Commission received no comment letters with respect to the proposal.

On February 4, 2004, the NASD amended the proposed rule change.[6] This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2; solicits comments on the proposed rule change from interested persons; and grants accelerated approval to Amendment No. 3 to the proposed rule change.

II. Description of the Proposal and Amendment Nos. 1, 2 and 3 Thereto

The NASD submitted the proposed rule change and Amendment Nos. 1 and 2 thereto to create a new rule series, the proposed Rule 9550 Series, to consolidate, clarify and streamline those existing procedural rules that have an expedited proceeding component.

After the proposed rule change, as amended, was published for comment in the **Federal Register**, the NASD submitted Amendment No. 3 to the proposed rule change, in order to address comments from Division staff. Specifically, Amendment No. 3 provides that: (1) Notices will indicate that hearing officers can impose any appropriate sanctions; (2) certain timelines do not provide any substantive rights to parties; (3) if service of a notice is by fax and the NASD knows that the fax number on file with the NASD is incorrect, NASD staff shall serve the notice via overnight or personal delivery; (4) service is complete upon sending the notice by fax, mailing the notice by overnight courier, or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service; (5) an immediately effective summary suspension or other limitation under the proposed summary proceedings rule will remain in effect unless the respondent shows good cause for a stay; and (6) where two consolidated matters contain different timelines under NASD Rule 9559, the Chief Hearing Officer assigned to the matter has discretion to determine which timeline is appropriate under the facts and circumstances of the case.[7]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3 to the proposed rule change, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2003–110. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–110 and should be submitted by April 6, 2004.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[8] In particular, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Act,[9] which requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specifically, the Commission believes that the consolidation of rules relating to expedited proceedings should make the expedited proceedings process clearer, and enable market participants to better understand the expedited proceedings process.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.[10] In Amendment No. 3, the NASD further clarified the expedited proceeding process by addressing procedural concerns raised by Division staff. Granting accelerated approval will enable the NASD to implement these changes more expeditiously.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, section 15A(b)(6) of the Act.[11]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NASD–2003–110) is approved, as amended, and that Amendment No. 3 is approved on an accelerated basis.

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[3] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine England, Assistant Director, Division of Market Regulation (''Division''), Commission dated August 29, 2003 (''Amendment No. 1''). Amendment No. 1 replaced and superseded the proposed rule change in its entirety.

[4] *See* letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine England, Assistant Director, Division, Commission dated November 17, 2003 (''Amendment No. 2''). Amendment No. 2 replaced and superseded the proposed rule change in its entirety.

[5] *See* Securities Exchange Act Release No. 48887 (December 5, 2003), 68 FR 70066.

[6] *See* letter from James S. Wrona, Associate General Counsel, NASD, to Katherine England, Assistant Director, Division, Commission dated February 3, 2004 (''Amendment No. 3''). In Amendment No. 3, the NASD addressed staff comments relating to the service of notice on parties and the ability of hearing officers to promote sanctions. *See* Section II *infra.*

[7] Parties involved in a given case will be promptly notified of the appropriate timeline chosen by the Chief Hearing Officer. Telephone conversation between James S. Wrona, Associate General Counsel, NASD, Katherine England, Assistant Director, Division, Commission, Joseph Morra, Special Counsel, Division, Commission, and Ian Patel, Attorney, Division, Commission on January 14, 2004.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–5840 Filed 3–15–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49383; File No. SR–NASD–2004–014]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc. to Adopt Interpretative Material 3150 to Establish Exemptions From the Reporting Requirements of NASD Rule 3150

March 9, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 27, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On February 20, 2004, NASD amended the proposed rule change.[3] NASD filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(1)[5] thereunder, in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to adopt Interpretative Material 3150 (''IM–3150'') to establish exemptions from the reporting requirements of NASD Rule 3150. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

3150. Reporting Requirements For Clearing Firms

(a) Each member that is a clearing firm or self-clearing firm shall be required to report to [the Association] *NASD* in such format as [the Association] *NASD* may require, prescribed data pertaining to the member and any member broker-dealer for which it clears. A clearing firm or self-clearing firm may enter into an agreement with a third party pursuant to which the third party agrees to fulfill the obligations of a clearing firm or self-clearing firm under this Rule. Notwithstanding the existence of such an agreement, each clearing firm or self-clearing firm remains responsible for complying with the requirements of this Rule.

(b) Pursuant to the Rule 9600 Series, [the Association] *NASD* may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member or class of members, unconditionally or on specified terms, from any or all of the provisions of this Rule that it deems appropriate.

IM–3150. Exemptive Relief

(a) Upon written request for exemptive relief pursuant to the Rule 9600 Series, NASD generally will grant an exemption from the reporting requirements of Rule 3150 to a self-clearing firm that:

(1) derives, on an annualized basis, at least 85 percent of its revenue from transactions in fixed income securities;

(2) conducts an institutional business that settles transactions on an RVP/DVP basis, provided that such exemption from reporting shall apply only with respect to such institutional business unless NASD determines that any other remaining business otherwise qualifies for an exemption under this IM–3150 or is de minimis in nature; or

(3) does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., that engages solely in proprietary trading, or that conducts business only with other broker-dealers or any other non-customer counter-parties).

(b) Upon written request for exemptive relief pursuant to the Rule 9600 Series, NASD also generally will grant an exemption to a clearing firm with respect to one or more of the introducing firms for which it clears if the introducing firm meets one of the above-stated grounds for exemptive relief.

(c) Any clearing or self-clearing firm that, due to a change in the facts pertaining to the operation and nature of its business, or the operation and nature of the business of a firm for which it clears, as applicable, no longer qualifies for an exemption previously granted by NASD from the reporting requirements of Rule 3150 must promptly report such change in circumstances to NASD, Department of Member Regulation, and commence compliance with the reporting requirements of Rule 3150.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 3150(a) requires each clearing firm (both those that are self-clearing and those that clear for other firms) to report to NASD, on a daily basis, and in a format determined by NASD, prescribed data pertaining to the member and any member broker-dealer for which it clears. This data is reported into NASD's electronic surveillance system, which identifies member ''exceptions'' based on historical and current comparisons of member data. The exceptions trigger follow-up reviews and possible member examinations. As provided in NASD Rule 3150(b), NASD may, in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member or class of members, unconditionally or on specified terms, from any or all of the provisions of

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated February 20, 2004 (''Amendment No. 1''). In Amendment No. 1, NASD made technical corrections and minor language revisions to the filing. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on February 20, 2004, the date NASD filed Amendment No. 1. *see* 15 U.S.C. 78s(b)(3)(C).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(1).

NASD Rule 3150 that it deems appropriate.

NASD initially notified its members of the availability of certain exemptions in a letter dated June 20, 2002,[6] in which NASD stated that it would exempt the following classes of self-clearing members from the filing requirements of NASD Rule 3150:

1. members that derive the preponderance of their revenue for the last two calendar years from fixed income securities;
2. members that conduct an institutional business and that settle transactions on an RVP/DVP basis;
3. members that conduct no traditional retail securities business.

Based on these classes and NASD's current regulatory needs, proposed IM–3150 would establish three classes of self-clearing members that may be exempt from the reporting requirements of NASD Rule 3150(a).

Under proposed IM–3150(a)(1), NASD generally would exempt self-clearing firms that are primarily engaged in transactions in fixed income securities. Proposed IM–3150(a)(1) replaces the term ''preponderance of their revenue'' set forth in the June 20, 2002 letter with the phrase ''at least 85 percent of its revenue'' and eliminates the requirement that members must have derived at least 85 percent of their revenue for the last two calendar years from fixed income securities. Instead, to qualify for this exemption, members must be able to ascertain that transactions in fixed income securities account for at least 85 percent of their annual revenue. Annualizing the 85 percent requirement allows firms to average their fixed income business over one year and takes into account daily, weekly, and monthly fluctuations in a firm's sources of revenue. Proposed IM–3150(a)(1) further clarifies that members must have derived at least 85 percent of their revenue from transactions in fixed income securities. These changes are consistent with the exemptions NASD staff has granted under this standard pursuant to the June 20, 2002 letter.

Under proposed IM–3150(a)(2), NASD generally would continue to exempt the institutional business of self-clearing firms that settle on an RVP/DVP basis. With respect to any other remaining business of such self-clearing firms, NASD will determine whether that business otherwise qualifies for an exemption under IM–3150 or is sufficiently *de minimis* as to not require reporting under NASD Rule 3150.

NASD is proposing to modify the language of the exemption pertaining to ''members that conduct no traditional retail securities business'' in order to clarify the types of firms that might qualify for this exemption. Accordingly, proposed IM–3150(a)(3) would create an exemption for firms that do not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (*e.g.*, engage solely in proprietary trading, or conduct business only with other broker-dealers).

Additionally, under proposed IM–3150(b), NASD may grant an exemption to a clearing firm with respect to one or more of the introducing firms for which it clears if the introducing firm falls within one of the three proposed classes. Proposed IM–3150 continues to require members to request all exemptions from NASD Rule 3150(a) in writing pursuant to the Rule 9600 Series, including possible exemptions under proposed IM–3150. Members that do not fall within one or more of the three enumerated classes set forth in proposed IM–3150 are not precluded from requesting an exemption from NASD Rule 3150(a), pursuant to Rule 3150(b) and the Rule 9600 Series, if they believe their business activities justify such a request.

NASD is currently reviewing the electronic surveillance system's data requirements in view of current regulatory developments. Among other things, NASD will be reassessing whether firms that primarily conduct an institutional business should be exempted from the reporting requirements of NASD Rule 3150. In the event NASD seeks to amend or rescind the classes of firms for which exemptions from NASD Rule 3150 generally will be available under proposed IM–3150, NASD will file a proposed rule change to amend IM–3150. Additionally, in the event there is a change in the facts pertaining to a self-clearing firm's business such that the firm would no longer qualify for an exemption granted by NASD under IM–3150, the exemption is revoked under IM–3150(c), and the affected self-clearing firm must notify the Department of Member Regulation and commence reporting under NASD Rule 3150.[7]

In addition, the proposed rule change replaces several references to ''the Association'' in the text of the proposed rule change with ''NASD.'' NASD no longer refers to itself using its full corporate name or ''the Association.'' Instead, NASD uses ''NASD'' unless otherwise appropriate for corporate or regulatory reasons.[8]

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is designed to accomplish these ends by publishing the grounds upon which NASD generally will exempt self-clearing and clearing firms from the reporting requirements of NASD Rule 3150(a).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A) of the Act,[10] and Rule 19b–4(f)(1)[11] thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is

[6] NASD has published this letter on the NASD Web site at *http://www.nasdr.com/insite_mem_letters.asp.*

[7] It is the position of NASD that any exemptive letter granted may be rendered a nullity when the material facts upon which such exemptive letter is premised have changed or are otherwise determined to be false. In view of the fact that NASD processes the information collected under NASD Rule 3150 for use in effectuating its examination program, NASD believes it is important to expressly state this position in the rule and require affected self-clearing broker-dealers to notify the Department of Member Regulation of the lapse of any exemption under IM–3150 because of a disqualifying change in the material facts.

[8] Telephone conversation between Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Sheila D. Swartz, Attorney, Division of Market Regulation, Commission (March 2, 2004).

[9] 15 U.S.C. 78o–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(1).

necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2004–014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2004–014 and should be submitted by April 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–5842 Filed 3–15–04; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49381; File No. SR–PCX–2004–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Exchange's Designated Examination Fee Exemption

March 9, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the regulatory fee portion of its Schedule of Fees and Charges (''Fees'') in order to make a technical change to its Designated Examination Fee (''DEA'') Fee exemption. The text of the proposed rule change is attached as Exhibit A. The text of the proposed rule changes is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the regulatory fee portion of its Fees in order to make a technical change to the DEA Fee exemption.

On September 24, 2003, the Exchange submitted a filing with the Commission to amend the DEA Fee exemption.[3] In this filing, the Exchange amended the existing DEA Fee exemption to allow an exemption for any PCX Registered Floor Broker or Marker Maker[4] that effects at least 25% of all securities transactions, as measured in contract or share volume, on the PCX Floor or any other PCX Options trading facility, including PCX Plus. The amendment was intended to more accurately reflect the application of the exemption and references the Exchange's new trading platform, PCX Plus. This amendment became effective upon filing.

At this time, the Exchange proposes to make one technical change to the DEA Fee exemption, by adding the word ''and'' to the phrase ''as measured in contract or share volume.'' As revised, the phrase would read ''as measured in contract and/or share volume.'' The exemption is intended to be calculated using all securities transactions, as measured in contract and/or share volume. In other words, the 25% securities transactions threshold can be met based on either a combination of contracts and share volume, or exclusively contracts or share volume. The word ''and'' was inadvertently omitted from the previously filing and the Exchange wishes to make the technical correction at this time.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[3] *See* Securities Exchange Act Release No. 48569 (September 30, 2003), 68 FR 57721 (October 6, 2003) (SR–PCX–2003–52).

[4] Pursuant to Rule 6.1(c)(2), the term ''Market Maker'' includes Lead Market Maker, Remote Market Maker, Floor Market Maker and Supplemental Market Maker.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [7] and subparagraph (f) of Rule 19b–4.[8] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–PCX–2004–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2004–11, and should be submitted by April 6, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–5886 Filed 3–15–04; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b)(3).

[8] 17 CFR 240.19b–4(f).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P021]

State of Oregon (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective March 4, 2004, the above numbered declaration is hereby amended to include Harney and Wheeler Counties for Public Assistance in the State of Oregon as disaster areas due to damages caused by severe winter storms occurring on December 26, 2003 and continuing through January 14, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is April 19, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: March 10, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–5869 Filed 3–15–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 4652]

Office of Visa Services; 60-Day Notice of Proposed Information Collection: Form DS–230, Application for Immigrant Visa and Alien Registration; OMB Control Number 1405–0015

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Application for Immigrant Visa and Alien Registration.

Frequency: Once per respondent.

Form Number: DS–230.

Respondents: Immigrant visa applicants.

Estimated Number of Respondents: 475,000 per year.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 475,000 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., RM L–703, Washington, DC 20520, who may be reached at 202–663–1166.

Dated: March 10, 2004.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 04–5901 Filed 3–15–04; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4641]

Meeting of the Department of State Advisory Committee on Cultural Diplomacy

SUMMARY: The Department of State Advisory Committee on Cultural Diplomacy will meet March 31, 2004 at 1 p.m. Members of the press and general public may attend, although attendance will be limited by seating availability.

Access to Department of State buildings is strictly controlled, and individual building passes are required for all attendees.

To attend the meeting, please call (202) 205–2178 or (202) 205–2122 and provide your date of birth and Social Security number. Members of the public who have confirmed their attendance must present a photo ID at the security desk before they enter the Department of State and are escorted to the meeting room.

The Advisory Committee on Cultural Diplomacy is responsible for advising the Secretary of State on programs and policies to advance the use of cultural diplomacy in United States foreign policy. This charge includes providing to the Secretary guidance on increasing the presentation abroad of the finest of U.S. creative, visual, and performing arts, as well as strategies for increasing public-private partnerships to sponsor cultural exchange programs that promote the national interests of the United States. An agenda for the committee's first session will be distributed at the meeting.

Dated: March 10, 2004.

Joseph Merante,

Chief, Cultural Programs Division, Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–5899 Filed 3–15–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–15621; Notice 2]

Accuride Corporation; Grant of Application for Decision of Inconsequential Noncompliance

Accuride Corporation (Accuride) has determined that approximately 1,053 Extra Service Wheels, produced between May 27, 2003, and May 31, 2003, do not meet certain requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars.'' Some 466 of the 1,053 Extra Service Wheels were shipped to eleven different customers.

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Accuride has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

Notice of receipt of the application was published, with a 30-day comment period, on July 21, 2003, in the **Federal Register** (68 FR 43254). NHTSA received no comments.

Accuride described the noncompliant wheels as size 22.5 x 8.25 inch, 15 degree drop center, one piece tubeless aluminum dual wheels. Accuride produced these wheels at its Erie, Pennsylvania plant and machined them at the Accuride plant in Cuyahoga Falls, Ohio. The symbol ''DOT'' and the designation, which indicates the source of the rims'' published nominal dimensions, in this case ''T,'' were inadvertently not marked on the wheels. Accuride believes that the omission of the ''DOT–T'' marking is inconsequential to safety as the omission in no way affects the performance of the wheel and does not otherwise compromise safety. Accuride states that all other information markings required by FMVSS No. 120 are correctly marked.

Paragraph S5.2 of FMVSS 120 requires that each rim be marked with specific information, including a designation indicating the source of the rims' published nominal dimensions and the symbol ''DOT,'' constituting a certification by the manufacturer of the rim that it complies with all applicable motor vehicle safety standards. Exclusion of the information may cause mismatching of tires to rims that could result in tire and rim separations or blowouts.

In this case, the agency agrees that the noncompliance is inconsequential to motor vehicle safety as all other information markings, including the correct rim size designation, as required by FMVSS No. 120 are correctly marked and the consumer can refer to these markings to match the rims to tires. Also, the agency traditionally considers failure to mark ''DOT'' as a failure to certify under 49 CFR Part 567—Certification rather than a failure to comply with a FMVSS. As such, the absence of the ''DOT'' symbol in this case will not compromise the safe operation of motor vehicles.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance at issue is inconsequential to motor vehicle safety. Accordingly, Accuride's application is hereby granted, and the applicant is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: (49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: March 11, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–5891 Filed 3–15–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–347 (Sub–No. 3X)]

Florida West Coast Railroad Company, Inc.—Abandonment and Discontinuance of Service Exemption—in Alachua and Gilchrist Counties, FL

On February 25, 2004, Florida West Coast Railroad Company, Inc. (FWCR), filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon and discontinue service over an approximately 13-mile line of railroad extending from milepost 734.0, in Trenton, to milepost 721.0, in Newberry, in Alachua and Gilchrist Counties, FL. The line traverses United States Postal Service ZIP Codes 32669 and 32693, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in FWCR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by June 14, 2004.[1]

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than April 5, 2004. Each

[1] FWCR initially proposed a consummation date of April 15, 2004. FWCR's representative has subsequently acknowledged that, if its petition is granted, consummation cannot occur before the Board has authorized the proposed abandonment and discontinuance.

trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–347 (Sub-No. 3X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) David H. Anderson, Law Office of David H. Anderson, 288 Littleton Road, Suite 21, Westford, MA 01886. Replies to the FWCR petition are due on or before April 5, 2004.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days after the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: March 11, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–5889 Filed 3–15–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 8, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 15, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1870.

Regulation Project Number: REG–125638–01 Final.

Type of Review: Extension.

Title: Guidance Regarding Deduction and Capitalization of Expenditures.

Description: The information required to be retained by taxpayers will constitute sufficient documentation for purposes of substantiating a deduction. The information will be used by the agency on audit to determine the taxpayer's entitlement to a deduction. The respondents include taxpayers who engage in certain transactions involving the acquisition of a trade or business or an ownership interest in a legal entity.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 3,000.

Estimated Burden Hours Recordkeeper: 1 hour.

Estimated Total Recordkeeping Burden: 3,000 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–5850 Filed 3–15–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 9, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW Washington, DC 20220.

DATES: Written comments should be received on or before April 15, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1869.

Form Number: IRS Form 8806.

Type of Review: Extension.

Title: Information Return for Acquisition of Control or Substantial Change in Capital Structure.

Description: Form 8806 is used to report information regarding transactions involving acquisition of control or substantial change in capital structure under section 6043.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 10.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—6 hr., 42 min.

Learning about the law or the form—2 hr., 10 min.

Preparing and sending the form to the IRS

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 113 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–5851 Filed 3–15–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–163–84]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–163–84 (TD 8439), Treatment of Transactions Between Partners and Partnerships §§ 1.707–3(c)(2), 1.707–5(a)(7)(ii), 1.707–6(c) and 1.707–8).

DATES: Written comments should be received on or before May 17, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *(Larnice.Mack@irs.gov).*

SUPPLEMENTARY INFORMATION:

Title: Treatment of Transactions Between Partners and Partnerships.

OMB Number: 1545–1243.

Regulation Project Number: PS–163–84.

Abstract: Internal Revenue Code section 707(a)(2) provides that if there are transfers of money or property between a partner and a partnership, the transfer will be treated, in certain situations, as a disguised sale between the partner and the partnership. The regulations require that the partner or the partnership should disclose the transfer and certain attendant facts in some situations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Time Per Respondents: 7,500.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 9, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–5904 Filed 3–15–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of closed meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held April 14 and 15, 2004.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on April 14 and 15, 2004, in Room 4600E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 694–1861 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (2000), that a closed meeting of the Art Advisory Panel will be held on April 14 and 15, 2004, in Room 4600E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

David B. Robison,

Chief, Appeals.

[FR Doc. 04–5905 Filed 3–15–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0365]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine if a claimant is entitled to disinter the remains of a loved one from or within a national cemetery.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 17, 2004.

ADDRESSES: Submit written comments on the collection of information to Mechelle Powell, National Cemetery Administration (41D1), Department of

Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0365'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 273–5181 or FAX (202) 273–6695.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Disinterment, VA Form 40–4970.

OMB Control Number: 2900–0365.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 40–4970 to request removal of remains from a national cemetery for interment at another location. Interments made in national cemeteries are permanent and final. Disinterment will be permitted for cogent reasons with prior written authorization by the Cemetery Director. Approval can be granted when all immediate family members of the decedent, including the person who initiated the interment, (whether or not he/she is a member of the immediate family) give their written consent. The form is an affidavit that requires signatories to execute the document before a notary. In lieu of submitting VA Form 40–4970, an order from a court of local jurisdiction will be accepted.

Affected Public: Individuals or households.

Estimated Annual Burden: 55.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 329.

Dated: March 8, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–5919 Filed 3–15–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0559]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the number of interments conducted at State veterans' cemeteries.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 17, 2004.

ADDRESSES: Submit written comments on the collection of information to Mechelle Powell, National Cemetery Administration (402B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail comments to: *mechelle.powell@mail.va.gov.* Please refer to ''OMB Control No. 2900–0559'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 501–1960 or FAX (202) 273–6695.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: State Cemetery Data, VA Form 40–0241.

OMB Control Number: 2900–0559.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 40–0241 is used to provide data regarding number of interments conducted at State veterans' cemeteries each year. The State Cemetery Grants Services use the data collected to project the need for additional burial space and to demonstrate to the States (especially those without State veterans' cemeteries) the viability of the program.

Affected Public: Federal Government, and State, local or tribal government.

Estimated Annual Burden: 65.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 65.

Dated: March 8, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–5920 Filed 3–15–04; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
March 16, 2004

Part II

Environmental Protection Agency

40 CFR Parts 60, 72, and 75

Supplemental Notice for the Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 72, and 75

[OAR–2002–0056; FRL–7628–8]

RIN 2060–AJ65

Supplemental Notice for the Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking (SNPR).

SUMMARY: Today's action is a SNPR to a notice of proposed rulemaking (NPR) published on January 30, 2004. The NPR proposed to: set national emission standards for hazardous air pollutants (NESHAP) pursuant to section 112 of the Clean Air Act (CAA); alternatively, to revise the regulatory finding EPA made by notice dated December 20, 2000 pursuant to CAA section 112(n)(1)(A); and if the December 2000 finding is revised as proposed, to set standards of performance, under CAA section 111, for mercury (Hg) for new and existing coal-fired electric utility steam generating units (Utility Units), as defined in CAA section 112(a)(8), and for nickel (Ni) for new and existing oil-fired Utility Units. Thus, regardless of whether it would base its action on section 111 or 112, EPA intends to require reductions in the emissions of Hg and Ni from coal- and oil-fired utility units, respectively.

Today's SNPR includes proposed rule language for the action proposed in the NPR published on January 30, 2004, proposed state plan approvability criteria, and a proposed model cap-and-trade rule. EPA is also proposing to revise regulations to establish methodologies to measure mercury (Hg) emissions from new and existing coal-fired electric utility steam generating units. Today's SNPR and the associated NPR are part of a broader effort to issue a coordinated set of emissions limitations for the power sector.

DATES: *Comments.* Submit comments on or before April 30, 2004.

Public Hearing. The EPA will hold a public hearing. The details of the public hearing, including the time, date, and location, will be provided in a future **Federal Register** notice and announced on EPA's Web site for this rulemaking *http://www.epa.gov/interstateairquality.*

ADDRESSES: *Comments.* Comments may be submitted by mail (in duplicate, if possible) to EPA Docket Center (Air Docket), U.S. EPA West (6102T), Room B–108, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0056. By hand delivery/courier, comments may be submitted (in duplicate, if possible) to EPA Docket Center, Room B–108, U.S. EPA West, 1301 Constitution Ave., NW., Washington, DC 20460, Attention Docket ID No. OAR–2002–0056. Also, comments may be submitted electronically according to the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

Docket. The official public docket is available for public viewing at the EPA Docket Center, EPA West, Room B–108, 1301 Constitution Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information on today's SNPR and specific information on today's action under CAA section 112, contact William Maxwell, Combustion Group (mail stop C439–01), Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5430, fax number (919) 541–5450, electronic mail (e-mail) address, *maxwell.bill@epa.gov.* For information on section 111 Hg Model Trading Rule contact Mary Jo Krolewski, U.S. EPA, 1200 Pennsylvania Ave (MC 6204J), Washington, DC 20460, telephone number (202) 343–9847, fax number (202) 343–2358, electronic mail (e-mail) address, *krolewski.maryjo@epa.gov.* For information on the part 75 Hg monitoring requirements contact Ruben Deza, U.S. EPA, 1200 Pennsylvania Ave (MC 6204J), Washington, DC 20460, telephone number (202) 343–3956, fax number (202) 343–2358, electronic mail (e-mail) address, *deza.ruben@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Categories and entities potentially regulated by this action include the following:

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal government	[2] 22112	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/tribal government	[2] 22112	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian Country.

[1] North American Industry Classification System.
[2] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists examples of the types of entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should examine the applicability criteria in § 63.9981 of the proposed rule or §§ 60.45a and 60.46a of the proposed NSPS amendments. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action including both Docket ID No. OAR–2002–0056 and Docket ID No. A–92–55. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Not all items are listed under both docket numbers, so interested parties should inspect both docket numbers to ensure that they are aware of all materials relevant to the proposed rule. The official public docket is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202)

566–1744, and the telephone number for the Air Docket is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Access. You may access this **Federal Register** document electronically through the 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 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 EPA Dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed paper form in the official public docket. 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 EPA Docket Center.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on 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).

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' The EPA is not required to consider these late comments. However, late comments may be considered if time permits.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. 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. OAR–2002–0056. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by e-mail to *a-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2002–0056. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD–ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate if possible) to EPA Docket Center (Air Docket), U.S. EPA West (6102T), Room B–108, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR–2002–0056. The EPA requests a separate copy also be sent to the contact person listed above (*see* **FOR FURTHER INFORMATION CONTACT**).

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to EPA Docket Center, Room B–102, U.S. EPA West, 1301 Constitution Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR–2002–0056. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

By Facsimile. Fax your comments to (202) 566–1741, Attention Docket ID No. OAR–2002–0056.

CBI. 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: Mr. William Maxwell, c/o OAQPS Document Control Officer (Room C404–2), U.S. EPA, Research Triangle Park, 27711, Attention Docket ID No. OAR–2002–0056. 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.

Public Hearing. Persons interested in presenting oral testimony should contact Ms. Kelly Hayes, Combustion Group (C439–01), Emission Standards Division, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541–5578, at least 2 days in advance of the public hearing. If no requests to present oral testimony are received by this date, EPA will cancel the hearing and announce the cancellation on the Web site for this rulemaking, *http://www.epa.gov/interstateairquality*.

The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information will be considered with the same weight as any oral statement and supporting information presented at a public hearing.

Outline. The information presented in this preamble is organized as follows:

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Appendix B to the Preamble—Unit Allocations

I. Background

A. Summary of January 30, 2004 NPR

In a notice of proposed rulemaking (NPR) published on January 30, 2004 (69 FR 4651), EPA proposed: (1) Set national emission standards for hazardous air pollutants (NESHAP) pursuant to section 112 of the Clean Air Act (CAA); (2) alternatively, to revise the regulatory finding that it made on December 20, 2000 (65 FR 79825) pursuant to CAA section 112(n)(1)(A) (December 2000 Finding); and (3) if the December 2000 finding is revised as proposed, to set standards of performance pursuant to CAA section 111 for both mercury (Hg) for new and existing coal-fired electric utility steam generating units (Utility Units), as defined in CAA section 112(a)(8); and nickel (Ni) for new and existing oil-fired Utility Units. Thus, regardless of whether it would base its actions on section 111 or 112, EPA intends to require reductions in the emissions of Hg and Ni from coal- and oil-fired utility units, respectively. The January 30, 2004 NPR, and today's SNPR, are part of a broader effort to issue a coordinated set of emissions limitations for the power sector.

The December 2000 Finding consisted of a finding, pursuant to CAA section 112(n)(1)(A), that regulation of coal- and oil-fired Utility Units under CAA section 112 is appropriate and necessary. The section 112 ''MACT'' rule proposed in the January 30, 2004 NPR would require coal- and oil-fired Utility Units to meet hazardous air pollutant (HAP) emissions standards reflecting the application of the maximum achievable control technology (MACT) determined pursuant to the procedures set forth in CAA section 112(d). In the January 30, 2004 NPR, EPA also co-proposed and solicited comment on implementing a cap-and-trade program under section 112, similar to that proposed under section 111 of the CAA.

The proposed NPR CAA section 112 MACT rule would limit emissions of Hg from coal-fired EGUs and Ni from oil-fired EGUs. Exposure to Hg or Ni above identified thresholds has been demonstrated to cause a variety of adverse health effects. The NPR also proposed an alternative to regulate Hg from coal-fired EGUs and Ni from oil-fired EGUs under Section 111.

In the January 30, 2004 NPR, EPA also proposed, in the alternative, standards of performance under CAA section 111 to establish a mechanism by which Hg emissions from new and existing coal-fired Utility Units would be capped at specified, nation-wide levels. A first phase cap would become effective in 2010 and a second phase cap would become effective in 2018. Facilities would demonstrate compliance with the standard by holding one ''allowance'' for each ounce of Hg emitted in any given year. Allowances would be readily transferrable among all regulated facilities. EPA believes that such a ''cap and trade'' approach to limiting Hg emissions is the most cost effective way to achieve the reductions in Hg emissions from the power sector that are needed to protect human health and the environment.

The added benefit of this cap-and-trade approach is that it dovetails well with the sulfur dioxide (SO_2) and nitrogen oxides (NO_X) Interstate Air

Quality Rule (IAQR) that was also proposed through a notice January 30, 2004 (69 FR 4565). That proposed rule would establish a broadly-applicable cap and trade program that would significantly limit SO_2 and NO_X emissions from the power sector. The advantage of regulating Hg at the same time and using the same regulatory mechanism as for SO_2 and NO_X is that significant Hg emissions reductions can and will be achieved by the air pollution controls designed and installed to reduce SO_2 and NO_X. In other words, significant Hg emissions reductions can be obtained as a ''co-benefit'' of controlling emissions of SO_2 and NO_X. Thus, the coordinated regulation of Hg, SO_2, and NO_X allows Hg reductions to be achieved in a cost effective manner. This is consistent with Congress' intent expressed in CAA section 112(n), that EPA would regulate HAP emissions from Utility Units only after taking into account compliance with other CAA programs.

B. Overview of Today's Action

Today's action is a SNPR augmenting EPA's January 30, 2004 NPR. This SNPR includes proposed rule language for the action proposed in the NPR and proposed state plan approvability criteria. This SNPR also includes a model cap-and-trade rule, including the proposed CFR rule language for the basic elements of the proposed Hg Budget Trading Program. The rule language is located at the end of the preamble.

In today's SNPR, EPA is proposing that each state impose control requirements that demonstrate it will meet its statewide Hg emissions budget, proposed in the NPR. States may join the trading program by adopting or referencing the model trade rule in State regulations or adopting regulations that mirror the necessary components of the model trading rule. Today's SNPR identifies the necessary common components of state rule rules and identifies EPA and state responsibilities for administering a Hg trading program. Today's notice also discusses the program elements of the model trading program, including applicability, allowance allocations, banking, compliance, and enforcement.

EPA is also proposing to revise Parts 72 and 75 to establish methodologies to measure mercury (Hg) emissions from new and existing coal-fired electric utility steam generating units. In today's proposed rule, EPA would add subpart I to Part 75. Subpart I would provide mercury monitoring requirements that could be adopted by State agencies (or, if necessary, by EPA) as part of any regulatory requirements included in the final rules. Proposed Subpart I sets forth general procedures for measuring total vapor phase mercury mass emissions from fossil fuel-fired electric generating units, using continuous emission monitoring systems or sorbent trap monitoring systems. In addition to adding Subpart I to Part 75, today's proposed rule would revise the regulatory language at several places in Parts 72 and 75 to include specific mercury monitoring definitions and provisions.

II. Standard of Performance Requirements

A. Introduction

The January 30, 2004 NPR explained that under the section 111 co-proposal each State would be required to submit a state plan demonstrating ''that each State will meet the assigned statewide mercury emission budget.'' Each state plan should include fully-adopted State rules for the mercury reduction strategy with compliance dates providing for controls by 2010 and 2018.

The purpose of this section is to identify criteria for determining approvability of a State submittal in response to the performance standard requirements. In addition, this section describes the actions the Agency intends to take if a State fails to submit a satisfactory plan.

B. Performance Standard Approvability Criteria

As discussed in the NPR, Section 111(a) and (d)(1) authorizes EPA to promulgate a ''standard of performance'' that States must apply to existing sources through a State plan. As also discussed in the NPR, EPA is interpreting the term ''standard of performance'', as applied to existing sources, to include a cap-and-trade program.

The State budgets are not an independently enforceable requirement. Rather, each State must impose control requirements that the State demonstrates will limit state-wide emissions from affected new and existing sources to the amount of the budget. EPA believes that the best way to assure this emission limitation is for the State to assign to each affected source—new and existing—an amount of allowances that sum to the state budget. Therefore, EPA proposes that all regulatory requirements be in the form of a maximum level of emissions—that is, a cap—for the sources. Also, consistent with the IAQR, EPA is proposing that States may meet their Statewide emission budget by allowing their sources to participate in a national cap-and-trade program. That is, a State may authorize its affected sources to buy and sell allowances out of state, so that any difference between the State's budget and the total amount of statewide emissions will be offset in another State (or States).

EPA notes that the January 30, 2004 NPR stated that States not participating in the trading program would be required to make the individual source allocations specified in the NPR (as noted above) as the basis for the Statewide budget. In today's supplemental notice, EPA is proposing that each State must submit a demonstration that it will meet its assigned Statewide emission budget, but that regardless of whether the State participates in a trading program, the State may allocate its allowances by its own methodology rather than following the method used by EPA to derive the state emissions budgets. This alternative approach is consistent with the approach in the IAQR (*see* 69 FR 4565).

Moreover, States remain authorized to require emissions reductions beyond those required by the State budget, and nothing in today's SNPR or the associated NPR would preclude the States from requiring such stricter controls.

In addition, EPA proposes today that sources would be required to comply with the 40 CFR part 75 requirements proposed today. EPA believes that compliance with these requirements are necessary to demonstrate compliance with a mass emissions limit.

If a State fails to submit a State plan as proposed to be required in the January 30, 2004 NPR and today's SNPR, EPA would prescribe a Federal plan for that State, under CAA section 111(d)(2)(A). EPA proposes today's model rule as that Federal plan. By the same token, as discussed below, EPA proposes today's model rule (with some changes) as the regulatory requirements under section 112(n)(1)(A), as co-proposed in the NPR as the basis for Hg regulation.

C. Best Demonstrated Technology—Activated Carbon Injection

Mercury-specific air pollution control device development has made major strides since the EPA announced its Information Collection Request in 1998. Currently, there are a broad range of technologies under consideration, consistent with the view that the EPA believes a portfolio approach is required to adequately and effectively implement significant reductions in mercury emissions from coal-fired power plants. In selecting a Hg emissions control

technology approach, there are temporal relationships between research and development projects, technology demonstration projects, and commercial deployment of new technologies, which must be taken into consideration when designing and proposing long-term regulatory development programs similar to the section 111 Trading Program of this proposal.

1. Mercury Control Technologies

Ongoing Hg Research and Development (R&D) programs recognize that conventional air pollution control technologies (*e.g.,* scrubbers, SCRs and fabric filters) remove about one-third of the potential Hg emissions from today's coal-fired power plants. EPA's Office of Research and Development (ORD) has published an excellent report that describes these technologies and their effectiveness in reducing Hg emissions.[1] Additionally, they have recently completed a memo which updates the status of Hg control technologies relative to coal-fired power plants.[2] These existing criteria pollutant control technologies are commercially deployed today, but generally show inconsistent levels of mercury control from plant to plant. These R&D programs focus on ways to make these existing technologies more effective and more consistent at controlling Hg emissions, and on altogether new approaches for Hg emissions control. The Department of Energy (DOE) is committed to an aggressive R&D program in support of EPA's commitment to significantly reduce Hg emissions from coal-fired power plants.[3]

There are two overarching goals for the DOE R&D program: (1) to develop control technologies capable of 50–70% Hg capture for commercial demonstration at bituminous coal-fired power plants by 2005, and at lower rank coal-fired power plants by 2007 and (2) to develop lower cost control technologies capable of 90% Hg capture for commercial demonstration by 2010. The DOE R&D program takes technologies from a conceptual level through bench scale and pilot scale proof of concept. For the more promising technologies, defined in terms of performance and cost, full-scale field tests are conducted to generate the information necessary for a multi-year demonstration project. In addition to funding for the Hg R&D program, DOE is also provided funds by Congress to conduct such full-scale technology demonstrations under the Clean Coal Power Initiative.

Several categories of technologies are now under development and evaluation at DOE and ORD, which EPA has considered in proposing regulations for Hg emissions from coal-fired power plants. These include sorbent injection technologies, technologies that enhance the Hg capture of traditional pollutant controls, such as SO_2 ''scrubbers'' and electrostatic precipitators (ESPs), multi-pollutant control technologies, and novel concepts.

a. *Sorbent Injection Technologies.* DOE and ORD have supported sorbent injection projects at the bench, pilot, and commercial-scale. This type of technology has the greatest promise for taking Hg control beyond the performance of conventional (non-Hg) technologies in the near-term. During short-term tests, these technologies have achieved emissions reductions as high as 90% of inlet Hg levels on bituminous coals. Performance on subbituminous coals has been as high as 65% reduction. In addition, systems with supplemental fabric filters have been more effective than those with ESPs. Although full scale sorbent injection tests have focused on activated carbon injection, DOE is also sponsoring pilot scale research on lower cost sorbents. DOE is now engaged in longer-term studies of sorbent injection technologies in order to gain the information needed to conduct multi-year commercial demonstrations of this technology. Given the differences in the effectiveness of this technology on coals of different rank and chlorine content, it is likely that several demonstration projects will be necessary to establish predictable cost and performance for this type of Hg control.

b. *Enhanced Conventional Technologies.* Air pollution systems designed to capture emissions of sulfur dioxide (SO_2) and particulate matter (PM) generally capture some Hg emissions as well. DOE is investigating methods to enhance the performance of such systems on Hg emissions capture. In general, these systems seek to increase the oxidized fraction of Hg present in the power plant's flue gas, and decrease the fraction of elemental Hg, which is more difficult to capture. DOE has had mixed results from injecting chemicals to enhance the Hg removal by wet scrubbers designed for SO_2 capture. URS Corporation is working with DOE to develop catalytic approaches to oxidizing elemental Hg in flue gases. This program began in 2001 and will continue through 2004.

c. *Multi-Pollutant Capture Technologies.* Multi-pollutant approaches have potential synergies which could increase pollution reduction and lower control costs. Work with the Electro-catalytic oxidation process under development by Powerspan Corporation was initiated in 2001 and will continue through 2004. Early pilot-scale results have been encouraging, but the inlet Hg for these tests was much lower in elemental Hg than levels expected at many commercial sites. Additional elemental Hg is being added to the test system to simulate removal at other sites.

Calcium-based sorbents and oxidizing agents are being evaluated under a cooperative agreement between DOE and the Southern Research Institute. These systems could remove both SO_2 and Hg, and could be helpful particularly with lower rank coals.

d. *Novel Approaches to Mercury Control.* It has long been observed that poorly tuned coal burners generate higher levels of unburned carbon in coal ash than properly tuned burners. This unburned carbon, although undesirable from an efficiency perspective, can function like activated carbon injection and adsorb Hg emissions. DOE has patented a process to take advantage of this phenomenon by extracting partially combusted coal from the furnace, and reinjecting it in the flue gas after the air preheater. Pilot-scale tests have been very promising.

DOE is also investigating the ability of a specific wavelength of ultraviolet light to oxidize elemental Hg to a form more easily captured by conventional air pollution control equipment.

2. Longer-Term Field Tests

In contrast to most of DOE's short-term Hg R&D projects, in September 2003, DOE initiated a series of eight longer-term, large-scale field tests that will investigate the potential for improvements and more wide-spread applicability of Hg control using one or more of the approaches outlined above. The actual testing varies by project, but generally will begin in early 2004 and last for several months. Technologies to be evaluated include both sorbent-based approaches, like activated carbon injection, as well as oxidation-based approaches intended to improve Hg collection by more traditional air pollution control technologies.

[1] *See Control of Mercury Emissions from Coal-fired Electric Utility Boilers: Interim Report,* EPA–600/R–01–109, April 2002.

[2] *See* ''Control of Mercury Emissions from Coal-fired Electric Utility Boilers'', U.S. EPA, Office of Research and Development memorandum, February 2004.

[3] *See* Mercury Control Technologies, U.S. Department of Energy memorandum, January 8, 2004.

3. Initial Mercury Demonstration Projects

As discussed above, the DOE and ORD R&D programs are complemented by a demonstration program within the Clean Coal Power Initiative. In January 2003, DOE announced the first awards under this program,[4] including the following two projects that would demonstrate Hg emissions reduction technologies:

Wisconsin Electric Power Company's Presque Isle plant will evaluate the TOXECON process combined with chemical additives as an integrated Hg, particulate matter, SO_2, and NO_X emissions control system. In this project, sorbents, including powdered activated carbon for Hg control and chemicals for NO_X and SO_2 control, will be injected into flue gas for subsequent reaction with pollutants and collection in a pulse-jet baghouse that is installed downstream of the existing particulate control device. The TOXECON configuration allows for separate treatment or disposal of the ash collected in the primary particulate control device. The duration of the project is estimated to be 5 years, and its overall cost is $75 million.

The City of Colorado Springs is teaming with Foster Wheeler to demonstrate an advanced circulating fluidized bed combustor, with integrated pollution controls expected to reduce Hg emissions by over 90 percent. This 6-year project carries a total cost of just over $300 million.

These projects evidence the commitment of project participants, including DOE and ORD, to invest the resources needed to bring promising Hg control concepts to commercial readiness. We believe the nature of the Hg control challenge is so complex that a number of additional demonstration projects will be needed, but we are confident that resources will be made available to pursue those projects and solutions will be developed that have broad application.

4. The Timing of Technology Development and Commercialization

The normal flow of development of new technologies is R&D at the bench scale and pilot scale (typically 2 to 4 years), followed by large scale testing (typically one year under a range of operating conditions and technology configurations at a facility), followed by one or more cycles of full-scale demonstrations (typically 6 years each).

In implementing the Clean Coal Technology Program, DOE has gained extensive experience with the process of demonstrating emerging air pollution control technologies. Based on SO_2 and NO_X retrofit technology demonstrations, the typical project required a little over 6 years from selection of the project to reports on its technical performance. This time period excluded the administrative time needed to solicit and evaluate proposals. In addition, the actual project duration was truncated for one-half of these projects to exclude unusually lengthy reporting periods following completion of the technology testing period.

Although pursuit is continuing on some Hg emissions control technologies at the bench and pilot scale, much work has already been completed at these smaller scales. However, some technologies, like sorbent injection, have entered the large scale field testing stage, and we have initiated a full-scale demonstration project for sorbent injection technology. It appears that these technologies, with at least 50–70% Hg emissions reduction, will be ready for broader full-scale demonstration on bituminous coal in 2005, and on subbituminous coal and lignite in 2007. If these demonstrations are successful, commercial deployment could occur on a large scale after 2010, or perhaps later. Assuming two years to permit and construct such commercial units, large scale operation of the technology is feasible by 2013 and 2015. It is important to note that reliable and predictable performance will be achieved only if such demonstration projects can be completed on a range of coal types with a range of characteristics (such as Hg, chlorine, and sulfur content), and at plants with a range of hardware (ESPs of varying relative sizes; spray dryers on coals with low chlorine content). Additional technologies, perhaps much lower in costs, should follow in 2–4 additional years.

Greater Hg emissions reduction performance is an integral part of DOE's and ORD's Hg emissions control technology development programs. A second wave of technologies operating at 90% reduction should be ready for full-scale demonstration by 2010, leading to effective reductions after 2018. An important caveat to these time projections is that they could be extended if the same units being retrofit for Hg emissions must contemporaneously focus on installing separate pollution control systems for other pollutants. The significance of this potential problem will vary with the type of control technologies being installed.

Substantial progress in Hg control technology development has been achieved through a partnership between government (both ORD and DOE) and industry. A broad portfolio of technologies is beginning to emerge, and EPA is confident these technologies will most likely be able to provide 50 to 70% reduction of Hg emissions in the period after 2015, with up to 90% reduction of Hg emissions on many applications after 2018. Thus, EPA is proposing a Phase II cap of 15 tons in this supplemental notice, which will take full advantage of the emerging, demonstrated technologies that are outlined above. More details and actual demonstration data are available in the docket related to this rulemaking effort.

D. Compliance Date for Nickel Controls

In the January 30, 2004 NPR, EPA proposed that the compliance date for Ni controls under section 111(d) correspond to the 2010 compliance date for the Phase I Hg controls. EPA concluded that the compliance dates for the two sets of controls should be synchronized. The oil-fired unit population is limited (the number of existing units is approximately 130) and their primary use is in providing peak shaving power during periods of high electricity demand. Moreover, current industry guidance indicates that the viability of new oil-fired generation is extremely limited due to the economic and generation efficiencies afforded by natural gas-fired simple- and combine-cycle stationary combustion turbine units.

III. Emission Guidelines and Compliance Times for Coal-Fired Electric Utility Steam Generating Units

In the January 30, 2004 NPR to reduce national mercury emissions, EPA stated that it would develop and administer a national Hg trading program to assist States in the achievement of these goals; today's notice proposes such a program. This program employs a cap on total emissions in order to ensure that emissions reductions are achieved, while providing the flexibility and cost effectiveness of a market-based system. This Section provides background information and a description of the Hg Budget Trading Program, as well as an explanation of how the trading program would interface with other State and Federal programs. In addition, a model rule for the trading program is proposed. States can voluntarily choose to participate in the Hg Budget Trading Program, and they may do so by adopting the model rule, which is a fully approvable control strategy for achieving emissions reductions required under the mercury reduction rulemaking. States may submit rules

[4] *See http://www.fe.doe.gov/news/techlines/03/tl_ccpi_2003sel.html.*

other than the model rule, but EPA will need to review such rules. States who do not adopt the model trading rule cannot participate in the inter-state trading program administered by EPA.

More specifically, States that choose to participate in the Hg Budget Trading Program must adopt all the provisions of the model rule, except that they have the flexibility with respect to the requirements for allocating allowances to their sources. The applicability of the model trading rule is discussed more fully below. EPA must review these State rules through notice-and-comment rulemaking, but this rulemaking will be expedited for, at the least, those State rules that mirror the model rule. If a State does not choose to participate in the Hg Budget Trading Program (that is, it does not wish to allow its sources to participate in inter-state trading, and it may or may not wish allow its sources to participate in intra-state trading), then the State may submit rules other than the model rule, and EPA will evaluate these rules in the regular course of notice-and-comment rulemaking.

A. Program Summary

As discussed in the January 30, 2004 NPR, the trading program establishes, for affected utility units, a first phase Hg cap at a level that reflects the Hg reductions expected as co-benefits accompanying the SO_2 and NO_X caps in the IAQR in 2010 and 2015 and a Phase II cap of 15 tons starting in 2018. The new trading program for Hg would require sources to hold allowances covering emissions beginning January 1, 2010. EPA is also proposing that the owner or operator must hold allowances for all the affected Utility Units at a facility at least equal to the total Hg emissions for those units during the year. Compliance with the requirement to hold allowances will thus be determined on a facility-wide basis. In the January 30, 2004 NPR, EPA proposed a methodology for unit allocations for existing units (*see* 69 FR 4651). New units will also be covered under the Hg cap of the trading program and will be required to hold allowances.

B. Hg Budget Trading Program

1. General Provisions

Today's proposed Hg Budget Trading Rule will be incorporated into the 40 CFR part 60 as a new subpart HHHH. The new sections in subpart HHHH of 40 CFR part 60 are described below. The provisions of 40 CFR part 60 subpart HHHH will become effective and apply to sources only if a State incorporates 40 CFR part 60 subpart HHHH by reference into the State's regulation or adopts regulations that are in accordance with 40 CFR part 60 subpart HHHH.

a. *Overview and Purpose.* Section 60.4100 through 60.4106 of today's proposed Hg Budget Trading Rule includes Sections describing: to whom the Hg trading program would apply; the standard requirements for participants in the program (permitting, Hg allowances, monitoring, excess emissions, and liability provisions); exemptions for retired units from the program requirements; definitions, measurements, and abbreviations; and computation of deadlines stated within the proposal.

b. *Definitions, Measurements, Abbreviations, and Acronyms.* Many of the definitions, measurements, abbreviations, and acronyms are the same as those used in 40 CFR part 60, in order to maintain consistency among programs. However, certain terms specific to the Hg Budget Trading Program, including Hg Budget unit (a unit subject to the emissions limitation under the Hg Budget Trading Program) and several others are added. Key definitions are discussed in relevant Sections below describing the rule.

c. *Applicability.* The EPA proposes that the Hg Budget Trading Rule be applicable to coal-fired Utility Units. The term ''electric utility steam generating unit'' means any fossil fuel fired combustion unit that serves a generator of more than 25 MW that produces electricity for sale. A unit that cogenerates steam and serves a generator that supplies more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale shall be considered an Utility Unit.

i. *Monitoring.* In general, sources that participate in a cap-and-trade program must have the ability to accurately and consistently account for their emissions. Accuracy is an important design parameter because it ensures that emissions for all sources covered by the trading program are within the cap. In addition, because each Hg allowance will have economic value, it is important to ensure that emissions (and thus allowances used) are accurately quantified. Consistency is an important feature because it ensures that accuracy is maintained from source to source and year to year. It also ensures that the sources in the trading program are treated equitably. Finally, consistency facilitates administration of the program for both the regulated community and State and Federal agencies.

Consistent and accurate quantification of emissions ensures the integrity of a Hg reduction program. The continuous emissions monitoring methods must incorporate rigorous quality assurance testing and substitute data provisions for times when monitors are unavailable because of planned and unplanned outages. In addition, there must be requirements for record keeping and electronic reporting. Provisions like these are contained in 40 CFR part 75, and are used in both the Acid Rain and NO_X SIP Call programs, for SO_2 and NO_X, but not currently for Hg.

As discussed further below, EPA is proposing revisions to 40 CFR part 75 to establish requirements for mercury emission monitoring, quality assurance, substitute data, record keeping, and reporting and to include a requirement for States to require year-round part 75 monitoring and reporting for all sources. EPA believes that emissions will then be consistently and accurately monitored and reported from unit to unit and from State to State.

ii. *Responsible Party.* Another critical element of a trading program is to be able to identify a responsible party for each regulated source. The responsible party for a source covered by the trading program would be required to demonstrate compliance with the provisions of the Hg Budget Trading Program. In general, the coal-fired electric Utility Units included in the proposed trading program have readily identifiable owners and operators that would serve as the responsible party.

d. *Retired Unit Exemption.* Section 60.4105 of today's proposal provides an exemption from Hg Budget Trading Program requirements for retired units. The purpose of this provision is to free retired Hg Budget units from unnecessary requirements (*e.g.*, emissions monitoring and reporting). The EPA proposes an exemption beginning on the day the unit permanently retires, requiring no notice and comment period regarding the retirement. This provision proposes that the mercury authorized account representative (Hg AAR) (*i.e.*, the person authorized by the owners and operators to make submissions and handle other matters) submit notification to the permitting authority of the Hg Budget unit's retirement within 30 days of the cessation of activity. In response, the permitting authority would amend the operating permit in accordance with the exemption and notify EPA of the unit's status as exempt. Criteria within this provision ensure that all program requirements prior to the exemption are fulfilled and records are kept on site to verify the non-emitting status of the retired unit. A retired unit could continue to hold Hg allowances

previously allocated or be allocated Hg allowances in the future depending on the allocation provisions adopted by the State where the retired unit is located. The number of future year Hg allowances that a retired unit would be allocated would be dependent on the given State's allocation system. The Hg allowance allocations are discussed below in Section II.B.5 of this preamble.

In order to resume operation without violating program requirements (*i.e.*, an exemption requires that the unit's permit language be changed to reflect that it would not emit any Hg emissions), the Hg AAR of the Hg Budget unit must submit a permit application to the permitting authority no less than 18 months (or less, if so specified by the applicable State permitting regulations) prior to the date on which the unit is first to resume operation, to allow the permitting authority time to review and approve the application for the unit's re-entry into the program. If a retired unit resumes operation, EPA proposes to automatically terminate the exemption under this part.

e. *Standard Requirements.* Today's proposal delineates, in proposed § 60.4106, the standard requirements that Hg budget units and their owners, operators, and Hg AARs must meet under the Hg Budget Trading Program. This provision sets forth and provides references to other portions of the trading rule for the full range of program requirements: permits, monitoring, Hg emissions limitations, excess emissions, recordkeeping and reporting, liability, and effect on other authorities. For example, the permitting, monitoring, and emissions limit requirements are discussed in general and the relevant Sections of the trading rule are cited. The liability provisions state that the requirements of the trading program must be met, and any knowing violations or false statements are subject to enforcement under the applicable State or Federal law. Violations and the associated liability are established on a facility-wide basis. The provision addressing the effect on other authorities establishes that no provision of the trading program can be construed to exempt the owners or operators of a Hg Budget source from compliance with any other provision of the applicable SIP, any federally enforceable permit, or the CAA. This provision ensures, for example, that a State may set a binding source-specific Hg limitation and, regardless of how many allowances a Hg Budget source holds under the trading program, the emissions limit established in the SIP cannot be violated.

f. *Computation of Time.* Proposed § 60.4107 clarifies how to determine the deadlines referenced in the proposal. For example, deadlines falling on a weekend or holiday are extended to the next business day. These are the same computation-of-time provisions as are in the regulation for the other emissions trading programs.

2. Hg Authorized Account Representative (AAR)

Sections 60.4110 through 60.4114 of today's proposed Hg Budget Trading Rule establishes the process for certifying the Hg AAR and describes his or her duties. A Hg AAR is the individual who is authorized to represent the owners and operators of each Hg Budget unit at a Hg Budget source in matters pertaining to the Hg Budget Trading Program. Because the Hg AAR is representing the owners and operators of all the Hg Budget units at a Hg Budget source, the Hg AAR must certify that he or she was selected by an agreement binding on all such owners and operators and is authorized to act on their behalf. The Hg AAR's responsibilities include: the submission of permit applications to the permitting authority, submission of monitoring plans and certification applications, holding and transferring Hg allowances, and submission of emissions data and compliance reports.

The Agency recognizes that the Hg AAR cannot always be available to perform his or her duties. Therefore, the rule proposes to allow for the appointment of one alternate Hg AAR (alternate Hg AAR) for a Hg Budget source. The alternate Hg AAR would have the same authority and responsibilities as the Hg AAR. Therefore, unless expressly provided to the contrary, whenever the term ''Hg authorized account representative'' is used in the rule, it should be read to apply to the alternate Hg AAR as well. While the alternate Hg AAR would have full authority to act on behalf of the Hg AAR, all correspondence from EPA, including reports, would be sent only to the Hg AAR.

Today's proposal requires the completion and submission of the account certificate of representation form in order to certify a Hg AAR for a Hg Budget source and all Hg Budget units at the source. There would be one standard form which would be submitted by sources to EPA. The EPA would establish a compliance account for each source in the mercury allownce tracking system (MATS). The form would include: the plant name, State, and identifying number (ORIS or facility code); the identifying number of each Hg budget unit at the source; the Hg AAR name, the Hg AAR identification number (if already assigned), address, phone, fax, and e-mail (as well as similar information for the alternate Hg AAR, if applicable); the name of every owner and operator of the source and each Hg Budget unit at the source; and certification language and signature of the Hg AAR and alternate, if applicable.

In order to change the Hg AAR, alternate Hg AAR, or list of owners and operators, EPA is proposing that a new complete account certificate of representation be submitted. The EPA believes the Hg AAR requirements afford the regulated community with flexibility, while ensuring source accountability and simplifying the administration of the trading program. These submissions can be made electronically to EPA.

3. Permits

a. *General Requirements.* The EPA has attempted to minimize the number of new procedural requirements for Hg Budget permitting and to defer, whenever possible, to the permitting programs already established by the permitting authority. The proposed Hg Budget Trading Program regulations assume that the Hg Budget permit would be a portion of a federally enforceable permit issued to the Hg Budget source and administered through permitting vehicles such as operating permits programs established under title V of the CAA and 40 CFR part 70. The term ''Hg Budget permit'' throughout this preamble and the Hg Budget Trading Program regulations therefore refers to the Hg Budget Trading Program portion of the permit issued by the permitting authority to a Hg Budget source.

b. *Hg Budget Permit Application Deadlines.* The proposed rule sets the initial Hg Budget permit application deadlines for units in operation before January 1, 2007 so that the permits will be issued by January 1, 2010. January 1, 2010 is the beginning of the first control period for the Hg Budget Trading Program, and therefore also the date by which initial Hg Budget permits for existing units must be effective. Application submission deadlines are based on the permitting authority's title V permitting regulations. For instance, if a permitting authority's permitting regulations allowed 12 months for final action by the permitting authority on a permit application, the application deadline for units in operation before 2007 governed by the permitting rule would be January 1, 2009 (12 months prior to January 1, 2010). The same principle applies to Hg Budget units

commencing operation on or after January 1, 2007, except that the application submission deadline is the later of the date the Hg Budget unit commences operation or January 1, 2010. The Hg Budget permit renewal application deadlines are the same as those that apply to permit renewal applications in general for sources under title V. For instance, if a permitting authority requires submission of a title V permit renewal application by a date which is 12 months in advance of a title V permit's expiration, the same date would also apply to the Hg Budget permit application.

c. *Hg Budget Trading Program Permit Application.* The Hg Budget Trading Program requires that a Hg Budget permit application properly identify the source and include the standard requirements under proposed § 60.4121. The Hg Budget Trading Program permit application should include all elements of the program (including the standard requirements). Such an approach allows the permitting authority to incorporate virtually all of the applicable Hg Budget Trading Program requirements into a Hg Budget permit by including as part of such permit the Hg Budget permit application submitted by the source. Directly incorporating the Hg Budget permit application into the Hg Budget permit and, thus, into the source's operating permit or the overarching permit minimizes the administrative burden on the permitting authority of including the Hg Budget Trading Program applicable requirements.

d. *Hg Budget Permit Issuance.* As stated earlier, most of the procedures needed by a permitting authority to issue Hg Budget permits have already been established by the permitting authority through permitting vehicles such as operating permits programs under title V and 40 CFR part 70 or 71. Generally, the permits regulations promulgated by the permitting authority cover: permit application, permit application shield, permit duration, permit shield, permit issuance, permit revision and reopening, public participation, and State and EPA review. The proposed Hg Budget Trading Program permit regulations generally require use of the procedures under these other regulations and add some requirements such as Hg Budget permit application submission and renewal deadlines, Hg Budget permit application information requirements and permit content, and initial Hg Budget permit effective dates.

e. *Hg Budget Permit Revisions.* For revisions to the Hg Budget permit, the Hg Budget Trading Program again defers to the regulations addressing permits revisions promulgated by the permitting authority under title V and 40 CFR part 70 or 71. The proposal also provides that the allocation, transfer, or deduction of Hg allowances is automatically incorporated in the Hg Budget permit, and does not require a permit revision or reopening by the permitting authority. The Hg Budget permit must, however, expressly state that each source must hold enough Hg allowances to account for Hg emissions by the allowance transfer deadline for each control period. The EPA believes that requiring the permitting authority to revise or reopen a Hg Budget permit each time a Hg allowance allocation, transfer, or deduction is made would be burdensome and unnecessary.

4. Compliance Certification

Sections 60.4130 through 60.4131 of today's proposed Hg Budget Trading Rule sets forth the requirements concerning certification by the Hg AAR at the end of each control period that the Hg Budget units at the facility were in compliance with the emissions limitation and other requirements of the Hg Budget Trading Program. The Hg AAR must submit a compliance certification report for the Hg Budget units at each facility by March 1 following the control period, to both the permitting authority and the Administrator. This report must identify the Hg Budget units and the Hg Budget source, and include a compliance certification statement. The compliance certification statement must indicate whether all of the applicable requirements of the Hg Budget Trading Program, including the requirement to hold allowances greater than or equal to emissions and the requirement to monitor and report according to the provisions in § 60.4106 of today's proposal, were met by the unit for the most recent control period. The report also allows the Hg AAR to specify which allowances (by serial number) should be deducted from the Hg Budget facility's compliance account.

5. Hg Allowance Allocations

Sections 60.4140 through 60.4142 of today's proposed model rule addresses the allocation of Hg allowances to Hg Budget units. Within each participating State, the Hg Budget Trading Program would establish a State trading program budget (*i.e.,* a cap of annual Hg emissions for all units included in the program), which is the total number of Hg allowances that each State may allocate to its Hg Budget units for each control period. Section 60.4141 of today's proposed rule sets timing requirements for when the allocations should be completed by each State and submitted to EPA for inclusion into the MATS and provides an option for how States may allocate Hg allowances to the Hg Budget units. States have the flexibility to allocate their state budget to individual units however they choose.

a. *State Trading Program Budget.* The January 30, 2004 NPR proposed a formula for determining the total amount of emissions for the Budget Trading Program within a specific Sate for 2010, and, using that same mechanism, proposed the amount of emissions for the Program within each State for 2018. That formula is, in essence, the sum of the hypothetical allocations to each affected Utility Unit in the State, and that allocation, in turn, is based on the proportionate share of their baseline heat input to total heat input of all affected units. For purposes of this hypothetical allocation of the allowances, each unit's baseline heat input is adjusted to reflect the ranks of coal combusted by the unit during the baseline period. Adjustment factors of 1 for bituminous, 1.25 for subbituminous, and 3 for lignite coals were proposed in the NPR. These adjustment factors and the methodology for determining the State budgets are described in the memorandum entitled ''Allocation Adjustment Factors for the Proposed Mercury Trading Rulemaking'' in the docket. Alternatively, for purposes of this hypothetical allocation of allowances to Utility Units which where used to calculate the State budgets, EPA could have used the proposed MACT emission rate proposed in the NPR and the proportionate share of their baseline heat input to total heat input of all affected units. EPA solicits comment on this alternative to calculate State budgets. As noted above, the sum of the unit emission allowances in a State would comprise the State's emissions budget.

EPA proposes today that each State be required to submit a state plan under section 111(d) that assures that the State budget is met by capping emissions, through the allocation of allowances, from each affected Utility Unit. The State may allocate allowances to Utility Units in any manner it wishes, as long as the total number of allowances does not exceed the State budget. The State is not required to allocate allowances to each affected Utility Unit in accordance with the allocation option proposed in Section III.B.4.c below or the formula used to determine the State budget. Those unit-specific allocations are hypothetical and determined solely for accounting purposes.

EPA does, however, solicit comment on whether to require the State to allocate allowances to each affected Utility Unit in accordance with this hypothetical allocation. EPA recognizes that statements in the NPR may be read to propose a requirement that the State must allocate allowances to each affected Utility Unit in accordance with this hypothetical allocation. Today's SNPR is proposing that the State may allocate allowances in accordance with its own methodology. EPA solicits comment on whether to authorize the State to have flexibility in the allowance allocation methodology, or whether to mandate that the State allocate allowances in accordance with the hypothetical allocation, depending on whether the State (i) authorizes its sources to participate in the interstate trading program, (ii) authorizes its sources to participate in only intra-state trading, or (iii) does not authorize its sources to trade allowances. Allocating allowances to sources using the hypothetical allocation methodology satisfies the requirements for States to meet the Standard of Performance required by section 111(d) because the hypothetical allocation is consistent with the State budgets and would ensure that the State budget and therefore the Standard of Performance is met. The docket for today's action includes a memorandum that describes in more detail the basis for EPA's proposed allocation methods.

Finally, it should be noted that the State may decide to allocate fewer total allowances to its sources than the amount of its budget.

b. *Timing Requirements.* Today's proposed rule sets minimum requirements for when a State would finalize Hg allowance allocations for each control period in the Hg Budget Trading Program and submit them to EPA for inclusion into the MATS. The proposed timing requirements ensure that all Hg Budget units would have sufficient time and the same minimum amount of time to plan for compliance for each control period and to trade Hg allowances. Finalizing allowances for less than three years in advance may restrict a Hg Budget unit's ability to plan for compliance by creating uncertainty year to year about the amount of future allocations that the Hg Budget unit would receive. It would also prevent a Hg Budget unit from officially transferring future year allowances because the MATS only contains the very near term years' allowances.

The timing requirements would also contribute to the efficient administration of the Hg Budget Trading Program. By establishing this schedule at the outset of the trading program, both the States and EPA would be able to develop internal procedures for effectively implementing the Hg allowance provisions of the trading program. This is particularly important for EPA with its role as administrator of the MATS for all participating States. The timing requirements would ensure that EPA would be able to record in the MATS the time sensitive Hg allowance allocations for the Hg Budget units in all participating States at the same time for each control period.

States may choose any of a number of options for the timing of issuing allowances, beyond the three year requirement, and that choice will interact to a great extent with the state's choice of method for allocating allowances. The timing options generally range from: (1) Year-by-year allocations, in which the Hg allowance allocations would be placed into the MATS on an annual basis for future control periods; (2) 5 to 10 year allocations where Hg allowance allocations would be periodically placed into the MATS for 5 to 10 consecutive control periods; and (3) a single, permanent allocation where the Hg allowance allocations would be set only once at the beginning of the trading program and recorded in the MATS for an extended, rolling block of time (*e.g.,* a rolling 30-year period). These timing options can apply to both an auctioning and a permanent allocation mechanism.

Timing options which provide an opportunity to periodically update the allocation of Hg allowances to Hg budget units might have certain advantages. These advantages include that an allocation regime which is periodically updated would provide an opportunity to reallocate allowances based on changes in the electricity industry that may significantly affect the mix of electricity generators that produce electricity in the future. Depending on the formula that is used to allocate the allowances, trading programs that periodically update the allocations may provide an opportunity to reward energy efficiency improvements at specific Hg Budget units. They could also facilitate the introduction of more efficient, new generation.

Permanent allocations provide a long planning horizon for the Hg Budget units that receive an allocation. Permanent allocations would not create incentives for the owners or operators of high emitting units to continue operating only for the sake of continuing to receive allowances, but would result in retired units receiving allowances in perpetuity. Additionally, permanent allocations provide an incentive to improve a Hg Budget unit's energy efficiency and require fewer resources to administer as compared to updating allocation systems. Nonetheless, these incentives would not affect the total emissions over time because the emissions are restricted by the cap, regardless of the allocation system. In a permanent allocation system, all allowances are allocated to Hg Budget units at the beginning of the trading program. New Hg Budget units that begin operations after the allocation of allowances would be required to obtain allowances from the market in order to comply with the trading program requirements (which may impede competition by hindering the entry of new units into the market), or there would need to be a new source set-aside that increased from year to year, coupled with a declining allocation to existing sources.

EPA is leaving the choice of timing of allocations largely up to the states, requiring only that they be finalized in the Hg Budget Trading Program and submitted to EPA for inclusion into the MATS three years in advance. This would ensure that all Hg Budget units would have sufficient time and the same minimum amount of time to plan for compliance for each control period and to trade Hg allowances. EPA is soliciting comments on this timing requirement.

A rolling annual updating system, determining allocations for a single control period six years in advance, has been developed in coordination with the example allocation approach provided in the subsequent section. The full example allocation approach is presented in the regulatory text. This example is offered as guidance and not as an implied requirement for the States to take part in the model trading program. At the start of the program, initial allocations would be made for the first five control periods of the program. Afterwards, annual updating would determine the allocations for the control period six years in advance. Consequently, units would always have in their accounts five years of allowances going forward, which would facilitate the operation of an efficient liquid allowance market and provide greater certainty to unit's compliance planning decisions, but might leave limited allowances in the near term for new units.

c. *Options for Hg Allowance Allocation Methodology Recommendation.* Allowance allocations decisions in a cap-and-trade program largely reflect distributional issues, as economic forces would be expected to result in economically

efficient and environmentally similar outcomes (except in cases of market failure). Consequently, the EPA is proposing to give states the flexibility to choose an allocations method most appropriate for their particular circumstances.

States have many different possible options and combinations in the development of an allocations methodology. The key design differences are: (1) Auction or free distribution of allowances; (2) permanent or updated allowances; and (3) allowances based on input-basis, output basis, or based on emission reductions. These options would differ in terms of the amount of allowances different sources receive, whether states generate revenue from the allowances, in their treatment of new coal-fired generation, in their difficulty of administration, and in their coordination with a safety valve mechanism.

Today's proposal allows the state to decide whether it will allocate allowances to sources for free, or hold an auction to sell them to bidders. Auctions, at which allowances would be offered for sale, would ensure all parties access to allowances, and would be efficient since sources would bid their perceived value for allowances. The pool of allowances to be auctioned would be created by specified procedures, such as setting aside a fixed or incremented percentage of allocations each year, or auctioning all available allowances. For example, in the current Acid Rain Program, one percent of available allowances could be used for auctions. The auctions would be open to any person (including sources or third-party entities), who would submit bids according to auction procedures, a bidding schedule, a bidding means, and requirements for financial guarantees specified in the regulations. Winning bids, and required payments, for allowances would be determined in accordance with the regulations. Auctions could be held regularly for single compliance periods, or less frequently for a block of years at a time. An auctioning method of allocations would work well with a safety valve mechanism, where allocations would be reduced from future budgets to reflect allowances purchases via the safety-valve. Auctions would also eliminate any potential disadvantage to new units in the market for allowances. Responsibility for managing auctions would fall to the individual states, which would also have full discretion as to the use of auction revenues. EPA solicits comment on whether it would have authority to charge purchasers for allowances, in the case of Federal plans promulgated under 111(d)(2)(A) (if the State fails to submit a State plan under section 111(d)(1)) or 112(n)(1)(A) (if EPA concludes that this provision provides regulatory authority). Any amounts collected by EPA would be deposited in the general revenues under the Miscellaneous Receipts Act.

However, requiring controlled sources to both reduce emissions and pay for allowances for their remaining emissions could impose significant costs on the emitting sources. Allocating allowances for free could provide assistance to the entities incurring most of the costs of complying with the necessary mercury reductions, lessening the financial impact of the program on these sources. It would also give states the ability to determine who would be the initial allowance recipients.

If a state decided to allocate allowances for free, the state would need to decide between permanent and updating allocations. As mentioned above, permanent allocations provide a long planning horizon and would not create incentives for the owners or operators of high emitting units to continue operating. However, since they are based on a historic baseline period, permanent allocations would not reflect changes in the industry going forward and sources would continue to receive allowances even after they retire. Permanent allocations do not provide for allowances to new Hg Budget units that begin operations after the allocation of allowances and these units would be required to obtain allowances from the market in order to comply with the trading program requirements. This could inhibit the entry of new units into the market.

A new source set-aside (taking away allowances from existing sources) could be created if there is a desire to encourage new generation and concern about the availability of allowances on the market. Alternately, a portion of allowances could be set aside and sold through an auction to make these allowances accessible. A drawback of these approaches is that it can be difficult to forecast the amount of the new sources over time and thus the appropriate size of the set-aside. Allowance requests resulting from the entry of numerous new sources could, in time, exceed the amount of allowances set aside.

Updating allocations provide an opportunity to reallocate allowances based on changes in the industry that may significantly affect the mix of generators that produce electricity in the future. By updating allocations, states would periodically review their basis for allocations and reallocate allowances to sources. Updating would include new generating units as they enter service and develop baseline data (input or output) for calculation of allocations. However, updating might also provide a subsidy to all generation, rewarding units for generating by providing them allocations based on generation (either input or output). Slightly different incentives would be provided depending on whether the updating is input or output-based. This may result in a slight distortion in the price of electricity, and might also encourage older units not to retire, although the total number of allowances (and thus emissions) are capped either way. Any such effects would be less pronounced with the lengthening of the period of time between the base-line and the actual receipt of the allocations.

Updating may be done annually for a period in advance, or periodically, with updates for several years at a time. The less frequent the updating, the more this program becomes like a permanent allocation. Updating also works well with a safety valve mechanism, as it provides the opportunity to reduce allocations from a future budget before they are allocated to reflect allowances purchases via the safety-valve mechanism.

This SNPR proposes to allow states to decide the basis for their allocation decisions, whether allocating through a permanent or updating method. Generally, allocations have considered using a baseline heat input (mmBtu of coal burned) or baseline generating output (kWh). In a permanent allocation, this decision has consequences that are purely distributional, with the output method favoring more efficient existing plants. If states want to have allocations reflect the difficulty of controlling for mercury, they might consider multiplying baseline data by ratios based on coal type (1.0 for bituminous, 1.25 for subbituminous, 3.0 for lignite for a heat input basis), similar to the methodology proposed in the NPR for determining state budgets.

Finally, states may consider hybrid systems, combining various aspects of the general approaches outlined above, in their choice of plan. In summary, the EPA is providing states with the flexibility to develop a plan which is best suited to their circumstances.

Included below is an example (offered for informational guidance) of an allocations methodology that includes allowances for new generation, addresses the safety-valve mechanism, and is administratively straightforward. The method involves input-based

allocations for existing coal units (with different ratios based on coal-type), with updating to take into account new coal generation on a modified output basis (without coal-type ratios). The method described for allocating to existing sources is also consistent with the hypothetical allocations relied on for determining the state budgets and described in the January 30, 2004 NPR and the memorandum entitled ''Allocation Adjustment Factors for the Proposed Mercury Trading Rulemaking'' in the docket.

Initial allocations for existing sources could be made for the first five control periods at the start of the program, on the basis of heat input and with different ratios based on coal-type. After the first 5 years, the budget will be distributed on an annual basis, taking into account data from new units.

As new units enter into service and establish a baseline, they begin to pick up allowances in relation to their generation. Allowances allocated to existing plants slowly decline as their share of total heat input decreases with the entry of new plants. In this EPA example methodology, existing units as a group would not update their heat input numbers. This would eliminate the potential generation subsidy (and efficiency loss) as well as an incentive for less efficient (and higher ratio) units to generate more. This methodology would also be easier to implement since it would not require the updating of existing units' baseline data. However, retiring units would continue to receive allowances indefinitely.

Through this EPA example methodology, new units as a group would only update their heat input numbers once—in the initial baseline period when they start operating. This would eliminate any potential generation subsidy and be easier to implement, since it would not require the collection and processing of data needed for regular updating.

EPA believes that allocating based on heat input data (rather than output data) for existing units is desirable because accurate protocols exist for monitoring this data and reporting it to EPA and several years of certified data are available for most of the affected sources. However, allocating on the basis of input for new sources would serve to subsidize less-efficient new generation. For a given generation capacity, the most efficient unit would have the lowest fuel input or heat input. Allocating to new units based on heat input may encourage the building of less efficient units since they would get more allowances than an efficient, lower heat input unit. The modified output approach, as described below, would encourage new clean generation and would not reward inefficient or high-emission new units.

Allowances would be allocated to new units on a modified output basis. Once new units have an adequate operating baseline (in the EPA example methodology, EPA proposes taking the average of the highest three years out of five years of operations), the total annual heat input of the affected units would be updated by adding the calculated new unit modified-output to the original existing coal-type-adjusted unit heat input. For purposes of including data from new units in the updated allocation calculation, new units would calculate their heat input by multiplying their gross output by a heat rate conversion factor of 8,000 btu/kWh. The 8,000 btu/kWh conversion factor was chosen as a mid-point between expected heat-rates for new pulverized coal plants and new IGCC coal plants as assumed in EPA's economic modeling analysis (IPM documentation at *http://www.epa.gov/airmarkets/epa-ipm/attachment-h.pdf*). This would create level benefits for new coal units based on their output and provide incentives for efficiency (rather than favoring higher heat-rate new units). A higher heat-rate conversion number would provide more incentive for new generation, and we are asking for comment as to the appropriate number. To calculate their modified output number, new coal-fired cogeneration units would add together their electric output and half of their equivalent electrical output energy in the unit's process steam and multiply this total by 8,000 btu/kWh. Allocations would be allocated to all units in proportion to their share of the updated, adjusted total heat input.

New units that have entered service, but have not yet established a baseline output and have not yet started receiving allowances through the update, could receive allowances each year from a new source set-aside. In the example methodology described in the model rule, EPA has proposed a new source set-aside representing two percent of the State's mercury trading program budget.

Allowances in the new source set-aside could be distributed in a number of different ways. For example, as described in today's model rule, the new source allowances could be distributed based on a unit's utilization/output and the unit's mercury emission NSPS rate limitation presented in the January 30, 2004 NPR. Because the proposed NSPS rates vary across coal types, this allocation method could provide new coal plant investors with varying incentives depending upon the coal type. While this set-aside would help new sources relative to no set-aside, because the demand for allowances for future sources is unknown, it is difficult to know beforehand what should be the appropriate size of the set-aside pool.

EPA is taking comment on a number of alternatives for distributing the new source set-aside in the example methodology. For example, a single emissions rate for all new coal plants may be used together with utilization/output levels to calculate allowance allocations for new coal units before they begin receiving allowances through the update. Alternatively, the lower of the NSPS rates for the respective coal types and a rate representing the proposed mercury cap in 2018 divided by projected 2018 total affected unit generation may be used to calculate allowance allocations for new coal units before they begin receiving allowances through the update. This alternative would ensure that new sources should receive allowances at the same rate as that applied to existing sources and no greater than their proposed NSPS. We ask for comment on these various proposals, and for any other alternatives commenters may wish to raise.

In today's proposed example allocation methodology, these new units would be granted allowances from the set-aside for the control period, initially based on the unit's full utilization rates. At the end of the year, the actual allowance allocation will be adjusted to account for actual unit utilization/output, and excess allowances will be returned and redistributed, first taking into account new unit requests that were not able to be addressed. Any subsequent unused set-aside allowances would be redistributed to existing units based on their existing allocations. An alternate method for allocating these allowances would provide new sources with allowances at the end of the relevant control period, based on their actual utilization. This would eliminate the need for returning and redistributing allowances, but would also deprive sources of the ability to trade those allowances during the course of the year. EPA is soliciting comment on the timing and method of allocating allowances from the set aside in the example methodology.

While EPA recognizes States' flexibility in choosing their allocations method and is proposing that States be allowed to determine their own method for allocating allowances to sources in their state, EPA is also asking for

comment on all aspects of this example allocations proposal.

6. Safety Valve Provision

In the January 30, 2004 NPR, EPA is proposing a safety valve provision that sets the maximum cost purchasers must pay for Hg emissions allowances. This provision addresses some of the uncertainty associated with the cost of Hg control.

Under the safety valve mechanism, the price of allowances is effectively (although not legally) capped. Sources may purchase allowances from subsequent year budgets at the safety-valve price at any time. However, it is unlikely they would do so unless the market allowance price exceeded the safety valve price. EPA proposes a price of $2,187.50 for a Hg allowance (covering one ounce) and this price will be annually adjusted for inflation. The permitting authority will deduct corresponding allowances from future allowance budgets. EPA solicits comment on whether it would have authority to charge purchasers this amount for allowances, in the case of Federal plans promulgated under 111(d)(2)(A) (if the State fails to submit a State plan under section 111(d)(1)) or 112(n)(1)(A) (if EPA concludes that this provision provides regulatory authority). Any amounts collected by EPA would be deposited in the general revenues under the Miscellaneous Receipts Act.

The purpose of this provision is to minimize unanticipated market volatility and provide more market information that industry can rely upon for compliance decisions. The safety valve mechanism ensures the cost of control does not exceed a certain level, but also ensures that emissions reductions are achieved. The future year cap is reduced by the borrowed amount, ensuring the integrity of the caps.

The safety valve mechanism would need to be incorporated into a state's chosen allocations methodology to ensure the availability of un-distributed allowances from which purchasers could borrow. Making allowances available through the safety valve without taking them away from future budgets would undermine the integrity of the cap. The safety valve mechanism would be easiest to incorporate into a system where allowances are periodically auctioned or updated because at least some portion of the State budgets would not have been previously allocated to individual units (which might not be the case in a permanent, historically based allocation method). Within EPA's example allocations methodology, the safety valve allowances borrowed from future budgets would be taken out of the pool of allowances available for units that have been generating for at least five years (not from the new source set aside) in the subsequent updating calculation of allocations. Under this allocation methodology, the future budget for the State would be lowered by the amount borrowed through the safety valve mechanism for the control period six years in advance.

We ask for comment on the need for a safety valve and the viability of our example approach, and solicit suggestions for other viable approaches.

7. Hg Allowance Tracking System

Sections 60.4150 through 60.4157 of today's proposed trading rule covers the mercury allowance tracking system (MATS). The proposed rule is intended to be reasonably consistent with the allowance tracking systems developed for the NO_X SIP Call and Acid Rain Program. Such consistency would help to allow the integration of the a mercury trading program with the existing trading programs under the NO_X SIP Call and Acid Rain Program and possible other NO_X and SO_2 trading programs (under the IAQR) in the future. It would also save industry and government the time and resources necessary to develop new tracking systems.

The MATS would be an automated system used to track Hg allowances held by Hg Budget units under the Hg Budget Trading Program, as well as those allowances held by other organizations or individuals. Specifically, the MATS would track the allocation of all Hg allowances, holdings of Hg allowances in accounts, deduction of Hg allowances for compliance purposes, and transfers between accounts. The primary role of MATS is to provide an efficient, automated means of monitoring compliance with the Hg Budget Trading Program. The MATS would also provide the allowance market with a record of ownership of allowances, dates of allowance transfers, buyer and seller information, and the serial numbers of allowances transferred. Although today's proposal assigns each allowance a unique serial number, EPA requests comments on the necessity of serial numbers and on whether the administrative burden to allowance holders and EPA of tracking and reporting serial numbers outweighs the benefits of serial numbers for tax and accounting purposes.

The EPA is proposing that MATS contain two primary types of accounts: Compliance accounts and general accounts. Compliance accounts are created for each Hg Budget source with one or more Hg Budget units, upon receipt of the account certificate of representation form. General accounts are created for any organization or individual upon receipt of a general account information form.

a. *Compliance Accounts.* As part of the implementation of the Hg Budget Trading Program, EPA is proposing to establish compliance accounts for each Hg Budget source upon receipt of the account certificate of representation form. These accounts would be identified by a 12-digit account number incorporating the plant's Office of Regulatory Information System's (ORIS) code or facility identification number. Allocations for the first six years (2010–2015), as prescribed by each State, would be transferred into these compliance accounts prior to the first control period in 2010. Prior to the second control period, in 2011, and each year thereafter, allocations for the new sixth year, as prescribed by each State, would be transferred into each compliance account (*e.g.*, in 2011, year 2016 Hg allowances would be allocated). As for the deadline for transferring Hg allowances to cover emissions in the control period (*i.e.*, the Hg allowance transfer deadline of midnight on March 1 following the control period), each compliance account must hold sufficient Hg allowances to cover the Hg Budget source's Hg emissions for the prior year's control period. Utility companies may use general accounts to hold surplus allowances (as has been done in the Acid Rain Program) for trading and banking. Brokers and other entities use general accounts to hold allowances that are intended to be traded.

b. *Compliance.* Once a control period has ended, Hg Budget source would have a window of opportunity (*i.e.*, until the Hg allowance transfer deadline of midnight on March 1 following the control period) to evaluate their reported emissions and obtain any additional Hg allowances (including safety valve allowances) they may need to cover the emissions during the year. On March 1 following each control period, the Hg AAR must also submit a compliance certification report for each Hg Budget source. Should the Hg Budget source not obtain sufficient Hg allowances to offset emissions for the season, three Hg allowances for each ounce of excess emissions would be deducted from the source's compliance account for the following control period. EPA believes that it is important to set up this automatic offset deduction because it ensures that non-compliance with the Hg emission limitations of this

part is a more expensive option than controlling emissions. EPA required the same offset deduction of three to one in the NO_X SIP call, and is taking comment on the use of the same ratio is today's proposed rule. The automatic offset provisions do not limit the ability of the permitting authority or EPA to take enforcement action under State law or the CAA.

c. *General Accounts.* Today's proposal allows any person or group to open a general account in MATS. These accounts would be identified by the ''9999'' that would compose the first four digits of the MATS account number. Unlike compliance accounts, general accounts cannot be used for compliance but can be used for holding or trading Hg allowances (*e.g.*, by Hg allowance brokers or owners of multiple Hg Budget units or sources). General accounts are currently used for both SO_2 allowances in the Acid Rain Program and NO_X allowances in the NO_X Budget Trading Program.

To open a general account, a person or group must complete the standard general account information form, which is similar to the account certificate of representation that precedes the opening of a compliance account and any overdraft account. The form would include: the Hg AAR name, phone, fax, and e-mail (as well as similar information for the Alternate Hg AAR, if applicable); Hg AAR mailing address; the names of all parties with an ownership interest with the respect to the Hg allowances in the account; and certification language and signatures of the Hg AAR and alternate, if applicable.

Revisions to information regarding an existing general account are made by submitting a new general account information form which would be sent to EPA in all cases, whether the form is used to open a new account, or revise information on an existing one. The EPA would notify the Hg AAR cited on the application of the establishment of his or her account in the MATS or of the registration of requested changes.

8. Banking

Banking is the retention of unused allowances from one control period for use in a later control period. Banking allows sources to create reductions beyond required levels and ''bank'' the unused allowances for use later. Generally speaking, banking has several advantages: It can encourage earlier or greater reductions than are required from sources, stimulate the market and encourage efficiency, and provide flexibility in achieving emissions reduction goals (*e.g.*, by allowing for periodic increased generation activity that may occur in response to interruptions of power supply from non-Hg emitting sources). In addition, a banked allowance is one less ounce of pollutant emitted in a given year. On the other hand, banking may result in banked allowances being used to allow emissions in a given year to exceed a State's trading program budget.

EPA is proposing that banking of allowances after the start of the Hg trading program be allowed with no restriction. Banking after a program starts and the budget is imposed allows sources to retain any allowances not surrendered for compliance at the end of each control period. Once the trading program budget is in place, sources may over-control for one or more seasons and withdraw from the bank in a later season. This type of banking provides the general advantages as described above (encourages early reductions, stimulates the market, and provides flexibility to sources), while also potentially causing Hg emissions in some control periods to be greater than the allowances allocated for those seasons.

9. Allowance Transfers

The EPA is proposing that once a Hg AAR is appointed and an account is established in the MATS, Hg allowances can be transferred to or from the accounts with the submission of an allowance transfer form to EPA. Transfers can occur between any accounts at any time of year with one exception: transfers of current and past year allowances into and out of compliance accounts are prohibited after the Hg allowance transfer deadline (March 1 following each control period) until EPA completes the annual reconciliation process by deducting the necessary allowances.

There would be one standard Hg allowance transfer form. This form would be submitted to the EPA in all cases. This form can be submitted electronically. The form would include: the transferror and transferee MATS account numbers; the transferror's printed name, phone number, signature, and date of signature; and a list of allowances to be transferred, by serial number.

10. Emissions Monitoring and Reporting

Monitoring and reporting of an affected source's emissions are integral parts of any cap-and-trade program. Consistent and accurate measurement of emissions ensures that each allowance actually represents one ounce of emissions and that one ounce of reported emissions from one source is equivalent to one ounce of reported emissions from another source. This establishes the integrity of each allowance and instills confidence in the market mechanisms that are designed to provide sources with flexibility in achieving compliance.

Given the variability in the type, operation, and fuel mix of sources in the proposed Hg cap-and-trade program, EPA believes that emissions must be monitored continuously in order to ensure the precision, reliability, accuracy, and timeliness of emissions data that support the cap-and-trade program. The EPA is proposing to allow two methodologies for continuously monitoring mercury emissions: (1) Mercury continuous emission monitoring systems (CEMS); and (2) sorbent trap monitoring systems. Based on preliminary evaluations, EPA believes it is reasonable to expect that both technologies will be well-developed by the time a mercury emissions trading program is implemented.

The EPA is proposing, and solicits comment on, two alternative approaches for the continuous monitoring of Hg emissions, as described below and discussed in more detail in section II.B of the Appendix A to this preamble.

In the first alternative, most sources would be required to use CEMS, with low-emitting sources having Hg emissions at or below a specified threshold value being allowed to use sorbent trap monitoring systems. The proposed threshold value is 9 lb (144 ounces) of Hg emissions per year (based on a 3-year average), although EPA is taking comment on three alternative thresholds of 29, 46, and 76 lb/yr.

Alternative 1 represents EPA's traditional approach to implementing an emissions trading program. The Acid Rain Program, as established by Congress in the 1990 Amendments to the Act, required the use of CEMS or an alternative monitoring system that is demonstrated to provide information with the same precision, reliability, accuracy, and timeliness as a CEMS. In implementing that program, as well as the NO_X Budget Trading Program, EPA has allowed alternatives to CEMS only where the emissions contributed by a particular category of affected sources are at a low level in comparison to the emissions cap for the program, or where an alternative monitoring system has been demonstrated, according to specified criteria, to meet the standard Congress set.

In the second alternative, all sources would be allowed to use either CEMS or sorbent trap monitoring systems. Those sources whose Hg emissions are above the specified emission threshold would

choose between CEMS and sorbent trap monitoring with quality assurance (QA) procedures comparable to a CEMS, to ensure the accuracy of measurements made for program compliance.

The QA requirements for the Acid Rain Program mandated by Congress under the Act have been codified in Appendices A and B of the Acid Rain Continuous Monitoring Regulation (40 CFR part 75). Part 75 specifies that each CEMS must undergo rigorous initial certification testing and periodic quality assurance testing thereafter, including the use of relative accuracy test audits (RATAs). A standard set of data validation rules and substitute data procedures apply to all of the CEMS. These stringent requirements provide an accurate accounting of the mass emissions from each affected source, and provide prompt feedback if the monitoring system is not operating properly. This ensures a level playing field among the regulated sources with accurate accounting for every ton of emissions, which inspires confidence in the trading of allowances.

For the purposes of a Hg emissions trading program, EPA believes that the same high level of QA should be required for both CEMS and sorbent trap monitoring systems, particularly for the higher-emitting sources that are responsible for the bulk of the Hg emissions. To achieve this, proposed Alternative 2 would require that for the sources with Hg emissions above the specified threshold value, a minimum of one substantive QA test of each monitoring system would be performed each quarter. A quarterly linearity check of each CEMS would be required, as well as an annual RATA. For the sorbent trap systems, which cannot accept calibration gas and, therefore, cannot be tested for linearity, an annual RATA and three quarterly 3-run relative accuracy audits (RAAs) would be required. This general approach to quality-assurance of continuous monitoring systems is consistent with both Part 75, Appendix B, and with Appendix F to 40 CFR part 60. However, the EPA is willing to consider replacing the RAA requirement with another type of substantive quarterly QA test, if commenters who favor the use of sorbent trap systems are aware of, and can provide details of, any such test or procedure.

For affected sources with Hg emissions at or below the specified threshold value, Alternative 2 would still require quarterly linearity checks and annual RATA for Hg CEMS, but for the sorbent trap monitoring systems, only an annual RATA would be required—the quarterly RAA requirement would be dropped.

The use of sorbent trap monitoring systems as an alternative to CEMS for monitoring Hg emissions has been proposed by EPA for determining compliance under either of the alternative non-trading approaches in the NPR for regulating Hg emissions from coal-fired utility units. The proposed QA requirements for CEMS and sorbent trap systems in Alternative 2 above are more stringent than the proposed QA requirements for monitoring compliance with the non-trading compliance alternatives in the NPR. This difference in the level of required QA reflects a fundamental difference in the purposes of monitoring for an emissions trading program compared to monitoring for an emissions limitation program. Monitoring for the trading program requires frequent assessments of the accuracy of the measurement method, because each unit of emissions measured is tied to an allowance which is tradeable at any time throughout the year. It is important for source owners to know how much ''money is in the bank'' at any given time. This need was recognized by Congress when it required the use of CEMS in the Acid Rain Program, which serves as the model for both the NO_X Budget Trading program and the proposed Hg trading program. Monitoring for a non-trading standard may not require such frequent assessment of monitoring system performance, because the compliance determination is done on an annual or semi-annual basis, using data that has been collected over a long period of time, and is designed only to determine if the emission limit has been met. The amount that a unit is below or above a non-trading standard does not translate into a tradeable commodity which can be bought or sold throughout the year.

Consistent with the current requirements in Part 75 for the Acid Rain and the NO_X SIP Call programs, the proposed rule would allow sources, under Section 60.4175 of Subpart HHHH of Part 60 and under Section 75.80(h) of Subpart I of Part 75, to petition for an alternative to any of the specified monitoring requirements in the rule. This provision provides sources with the flexibility to petition to use an alternative monitoring system under Subpart E of Part 75 or variations of the proposed ones as long as the requirements of existing Section 75.66 are met. Proposed amendments to 40 CFR part 75 (Part 75), as summarized in Appendix A to this preamble, set forth the specific monitoring and reporting requirements for Hg mass emissions and include the additional provisions necessary for a cap and trade program. Part 75 is used in both the Acid Rain and the NO_X Budget Trading programs, and most sources affected by this rulemaking are already meeting the requirements of Part 75 for one or both of those programs.

In order to ensure program integrity, EPA proposes to require states to include year round Part 75 monitoring and reporting for Hg for all sources. Proposed deadlines for monitor certification and other details are specified in the model trading rule. EPA believes that emissions will then be accurately and consistently monitored and reported from unit to unit and from State to State.

Part 75 also specifies reporting requirements. As is currently required for sources subject to both the Acid Rain program and the NO_X Budget Trading program, EPA proposes to require year round reporting of emissions and monitoring data from each unit at each affected facility. As required for the Acid Rain program and the NO_X Budget Trading program, this data would be provided to EPA on a quarterly basis in a format specified by the Agency and submitted to EPA electronically using EPA provided software. We have found this centralized reporting requirement necessary to ensure consistent review, checking, and posting of the emissions and monitoring data at all affected sources, which contributes to the integrity and efficiency of the trading program.

11. Program Audits

The EPA would publish a report annually, commencing after the first year of compliance, that would contain, for each Hg budget unit, the control period Hg emissions and the number of Hg allowances deducted for all reasons. This would be done in order for States to track emissions and Hg allowance transaction activity in neighboring States.

12. Administration of Program

The administration of this program would be somewhat different from the administration of a typical State program. This is both because of the trading aspects of the program and because of the national nature of the trading program. In order for the market forces underlying the trading program to work, the sources that participate in the trading program must have confidence in the market. This confidence stems from a number of factors including: a belief that all of the sources included in the program are following the same set of rules, and a belief that trades can be

made easily, quickly, and with a great deal of confidence that they will not be altered or denied. Several things can help to foster these beliefs and thus a confidence in the market. The first is to start with a consistent set of rules. This can be done by developing a model rule and having all States and sources that participate in the trading program abide by the ground rules set forth in the model rule. The second is to implement those rules in a consistent and efficient manner. Because of the multi-state nature of the program, it would be difficult for any individual State to do that by itself. Therefore, EPA is proposing that this program be implemented jointly by EPA and the States that choose to participate in the program. As part of this joint implementation, States would have specific roles, EPA would have specific roles, and there would be roles that States and EPA would perform jointly.

States would be responsible for developing and promulgating rules consistent with the model rule and for submitting those rules as part of the State plan States would also be responsible for identifying sources subject to the rule, issuing new or revised permits as appropriate, and determining Hg allowance allocations. In addition, they would be responsible for receiving, reviewing and, where appropriate, approving most monitoring plans and monitoring certification applications, observing monitor certification and ongoing quality assurance testing and performing audits. The final primary area of State responsibility would be enforcement of the trading program. If violations occur, the State would take the lead in pursuing enforcement action. However, once the rules are approved as part of the State plan, they would also become federally enforceable, and EPA could also take enforcement action.

The EPA would have two primary roles in administration of the program. The first role would be EPA's traditional role in the approval and oversight of the State plan . The second would be a more unique role for EPA, in which EPA would administer significant portions of the program.

In EPA's traditional role in the State plan process, EPA would be responsible for taking action to approve or disapprove the State plan revision once it was submitted to EPA. Once the State plan revision was approved, EPA would play an oversight role in ensuring that the State plan was properly implemented. This oversight role might include audits of the State program, or taking enforcement action, if EPA believed that sources were violating the State plan .

In EPA's more unique role as administrator of portions of the program, EPA would run both the system to receive, store program related data, and verify total emissions for the control period, and the MATS. The EPA would use the same system that it is currently using to track emissions data from the Acid Rain Program and the NO_X SIP Call. There are a number of advantages to the sources, States, and EPA to using this existing system. Since many units are already reporting to the system for purposes of the Acid Rain Program and NO_X Budget Trading Program, using this existing system will represent little change for many units and EPA. This will help to reduce administrative costs for both units and EPA and will help to minimize startup problems associated with a new program. It also means that each State will not need to develop, maintain and operate such a system.

In addition to receiving the emissions data, quality assuring it, and providing reports to both States and units about the emissions data, EPA would have several other responsibilities as the administrator of the data system. The EPA would be involved in approval of any petitions for alternatives to the allowable monitoring methods. The EPA would also be involved in providing units and States assistance in using the data system. This assistance may include: Answering individual questions from units and States, providing guidance documents and training for units and States, and providing software to assist in the submittal of program related data.

As the administrator of MATS, EPA would be responsible for receiving applications for Hg AARs, tracking all official transfers of Hg allowances, and using the end of control season emissions data and Hg allowance data to determine compliance for the control season. In order for EPA to play this role, each State would have to provide EPA with its Hg allowance allocations consistent with a prescribed schedule and format. The Hg AARs for individual sources would have to provide EPA with information about all official Hg allowance transfers in a prescribed format. The Hg AAR's would also have to provide EPA with an end of control period compliance certification. At the end of the control period, EPA would use all of this data to determine how many Hg allowances should be deducted from each source's compliance account. In the event that there were not enough Hg allowances to cover a source's emissions for a control period, EPA would notify the State and would automatically deduct Hg allowances for the next control period according to the emissions offset provisions set forth in the proposed trading rule.

The main joint role that EPA and States would have is for the approval of alternatives to the allowable monitoring methods. This role is more fully discussed in Section V.C.9 of the preamble on monitoring.

C. Approvability of Trading Rule Within a State Plan

1. Necessary Common Components of Trading Rule

The EPA intends to approve the portion of any State's plan submission that adopts the model rule, provided: (1) The State has the legal authority to adopt the model rule and implement its responsibilities under the model rule, and (2) the state plan submission accurately reflects the Hg reductions to be expected from the State's adoption of the model rule. Provided a State meets these two criteria, then EPA intends to approve the model rule portion of the State's plan submission.

State adoption of the model rule would ensure consistency in certain key operational elements of the program among participating States, while allowing each State flexibility in other important program elements. Uniformity of the key operational elements is necessary to ensure a viable and efficient trading program with low transaction costs and minimum administrative costs for sources, States, and EPA. Consistency in areas such as allowance management, compliance, penalties, banking, emissions monitoring and reporting and accountability are essential.

The EPA's intent in issuing a model rule for the Hg Budget Trading Program is to provide States with a model program that serves as an approvable strategy for achieving the required reductions. States choosing to participate in the program will be responsible for adopting State regulations to support the Hg Budget Trading Program, and submitting those rules as part of the state plan. There are two alternatives for a State to use in joining the Hg Budget Trading Program: incorporate 40 CFR part 60, subpart HHHH by reference into the State's regulations or adopt State regulations that mirror 40 CFR part 60, subpart HHHH, but for the potential variations described below.

Some variations and omissions from the model rule are acceptable in a State rule. This approach provides States

flexibility while still ensuring the environmental results and administrative feasibility of the program. EPA proposes that in order for a state plan to be approved for State participation in the Hg Budget Trading Program, the State rule should not deviate from the model rule except in the area of allowance allocation methodology. Allowances allocation methodology includes any updating system and any methodology for allocating to new units.

State plans incorporating a trading program that is not approved for inclusion in the Hg Budget Trading Program may still be acceptable for purposes of achieving some or all of a State's obligations provided the general criteria. However, only States participating in the Hg Budget Trading Program would be included in EPA's tracking systems for Hg emissions and allowances used to administer the multi-state trading program.

In terms of allocations, States must include an allocation section in their rule, conform to the timing requirements for submission of allocations to EPA that are described in this preamble, and allocate an amount of allowances that does not exceed their State trading program budget. However, States may allocate allowances to budget sources according to whatever methodology they choose. The EPA has included an optional allocation methodology but States are free to allocate as they see fit within the bounds specified above, and still receive state plan approval for purposes of the Hg Budget Trading Program.

2. Revisions to Regulations

Today's action proposes revisions to the regulatory provisions in 40 CFR 60.21 and 60.24 to make clear that a standard of performance for existing sources under section 111(d) may include an allowance program of the type described today.

D. Co-Proposal of Cap- and Trade Program under CAA Section 112(n)

In the January 30, 2004 NPR, EPA has taken comment on a proposal to promulgate, under section 112(n)(1)(A), a cap-and-trade program for Hg from coal-fired Utility Units. The model rule proposed here for Section 111 would serve as the Federal trading rule if the EPA decides to promulgate a cap-and-trade program under CAA Section 112. In general, a trading program under Section 112(n)(1)(A) would be federally implemented with the EPA serving as the permitting authority, unlike Section 111 which has the States serving as the permitting authority. Today's proposed model trading rule would be implemented the same for each state with no opportunity for flexibility for certain operational aspects of the trading program (*i.e.*, allocation methodologies) among different States.

In implementing this program under section 112(n), EPA would adopt caps and establish deadlines similar to those published on January 30, 2004 under the section 111 cap and trade proposal. EPA would allocate these cap levels of annual emissions across coal-fired units using the proposed MACT emission limits presented in the NPR and the proportionate share of their baseline heat input to total heat input of all affected units. Alternatively, EPA could allocate these cap levels of annual emissions across all coal-fired Utility Units in accordance with the allocation methodology identified in today's section 111 cap-and-trade proposal. EPA is soliciting comment on this alternative proposal.

For new units under a section 112 trading program, EPA is proposing they would be covered under the cap and would use a similar new unit set-aside in combination with an updating allocation system discussed under today's section 111 proposal and provided in today's regulatory text. Since no NSPS would be required under section 112, EPA would also make adjustments to its new unit allocation methodology proposed under section 111. EPA is proposing that initially the new unit would receive allocation based on their utilization/output and MACT rate limitations proposed in the NPR, until the new unit establishes a baseline output and receives allowances through the updating mechanism.

EPA is also proposing the use of a safety valve of $2,187.50 per Hg allowance (covering one ounce) under a section 112 trading program. The safety valve would be implemented similarly to today's section 111 trading program, except that the funds would be collected to the U.S. Treasury and not the State. EPA is taking comment on the implementation of a safety valve under section 112 and EPA is taking comment on whether it has authority under a 112(n)(1)(A) to collect payment from the purchaser.

EPA would also require part 75 monitoring requirements identified in today's section 111 proposal. In addition, a trading program under section 112 would provide for administrative appeals at EPA of final agency actions under the program.

IV. Statutory and Executive Order Reviews

In the NPR, EPA provided its review of the statutory and executive order requirements under this rulemaking. These orders include: (1) Executive Order 12866: Regulatory Planning and Review, (2) Paperwork Reduction Act, (3) Regulatory Flexibility Act, (4) Unfunded Mandates Reform Act of 1995, (5) Executive Order 13132: Federalism, (6) Executive Order 13175: Consultation and Coordination with Indian Tribal Governments, (7) Executive Order 13045: Protection of Children from Environmental Health and Safety Risks, (8) Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use, and (9) National Technology Transfer and Advancement Act.

The following provides a summary of EPA's conclusions. For Executive Order 12866: Regulatory Planning and Review, EPA concluded the proposed rule was an economically ''significant regulatory action'' because the annual cost may exceed $100 million dollars. For the Paperwork Reduction Act, EPA provided an analysis of the information collection requirements required by the proposed rule. For the Regulatory Flexibility Act, EPA determined that the proposed rule will not have a significant impact on a substantial number of small entities. For the Unfunded Mandates Reform Act of 1995, EPA determined that the proposed rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in aggregate, or the private sector in any one year; and accordingly, EPA prepared a written statement under section 202 of the UMRA which is summarized in the NPR. For Executive Order 13132 and Executive Order 13175, EPA concluded that the proposed rule did not have federalism or tribal implications. For Executive Order 1304, EPA concluded the strategies proposed in the NPR will further improve air quality and will further improve children's health. For Executive Order 13211, EPA concluded that the proposed rule was significant because the proposal had a greater than a 1% impact on the cost of electricity production and because it results in the retirement of greater than 500 MW of coal-fired generation. In this SNPR, EPA is not making changes to these statutory and executive order conclusions.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 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 action proposes a model cap-and-trade program including environmental monitoring and measurement provisions that States are encouraged to adopt as part of their SIPs. If States adopt those provisions, sources that participate in the cap-and-trade program would be required to meet the applicable monitoring requirements of part 75. Part 75 incorporates a number of voluntary consensus standards.

Further discussion of how EPA intends to adhere to the requirements of the NTTAA in this rulemaking is containing in a technical support document that will be placed in the e-docket by the date of publication of this document.

Dated: February 24, 2004.

Michael O. Leavitt,

Administrator.

Appendix A to the Preamble—Proposed Changes to Parts 72 and 75

I. Summary of Proposed Changes

As required by Title IV of the Act, Part 75 contains requirements for continuously monitoring and reporting SO_2 mass emissions, CO_2 mass emissions, NO_X emission rate and heat input rate under the Acid Rain Program. Subpart H of Part 75 also provides NO_X mass emission monitoring guidelines that may be adopted for use under a State or Federal NO_X mass emission reduction program. (Subpart H has in fact been adopted under the NO_X Budget Trading Program established in response to the 1998 State Implementation Plan (SIP) Call by the Administrator.) However, Part 75 does not currently contain requirements for monitoring or reporting mercury mass emissions.

Today's proposed rule would add Subpart I (§§ 75.80 through 75.84) to Part 75. For mercury mass emissions monitoring, Subpart I would serve the same purpose as Subpart H does for NO_X mass emissions monitoring, in that it would provide the monitoring guidelines for a multi-state trading program. Subpart I would provide standard procedures for obtaining precise, reliable, accessible, and timely mercury mass emissions data under such a program.

If the proposed Subpart I monitoring provisions were to be adopted as part of a mercury mass emission reduction program, States would not have to develop their own mercury emission reduction strategies and industry would not have to become familiar with and implement multiple approaches to achieving the required emission reductions.

Today's proposed rule would add specific mercury monitoring provisions to Parts 72 and 75, in support of Subpart I. One definition in § 72.2 would be revised and one new definition would be added. The proposal would add two new sections to Part 75 (§§ 75.38 and 75.39), and would revise §§ 75.2, 75.10, 75.15, 75.20, 75.21, 75.22, 75.24, 75.31, 75.32, 75.33, 75.37, 75.38, 75.39, 75.53, 75.57, 75.58, and 75.59. Revisions to Appendices A, B, and F of 40 CFR part 75 are also proposed. The proposed amendments to Parts 72 and 75 would only apply to sources in a State or Federal mercury mass emissions reduction program that adopts the monitoring provisions of Subpart I.

Today's proposed rule therefore encourages States to consider implementing a cap-and-trade program for mercury mass emissions reduction, using Part 75 monitoring. Having a standardized approach to emissions monitoring would greatly facilitate the administration of such a program. It would also establish a ''level playing field'' among the regulated sources, thereby ensuring the integrity of the commodity being traded (*i.e.*, the emission allowances). These concepts have been convincingly demonstrated by the success of the EPA's Acid Rain Program.

II. Detailed Discussion of the Proposed Revisions

A. Monitoring Requirements for a Mercury Trading Program

Today's proposed rule would add emission monitoring requirements to Part 75 for a mercury mass emission reduction program. To achieve this, Subpart I, containing five new sections (§§ 75.80 through 75.84), would be added to the rule. Compliance with Subpart I would be required only if the mercury monitoring provisions of Subpart I were adopted as an element of a State or Federal mercury mass emissions reduction program.

Under proposed § 75.80(a), the term ''affected unit'' would mean any coal-fired unit subject to such a program. The ''permitting authority'' would be the State or Federal authority under which the program is implemented, and the ''designated representative'' would be the party responsible to ensure that the affected unit compliance with the program requirements.

If an affected unit in the mercury mass emission reduction program were also subject to the Acid Rain Program or to other programs requiring the use of Part 75 monitoring (*e.g.*, the NO_X Budget Trading Program), the owner or operator would have to comply with the mercury monitoring provisions in addition to the monitoring requirements of the other program(s). Compliance with the monitoring and reporting provisions of Subpart I would be required by the applicable deadline specified in the State or Federal regulations establishing the trading program.

Regarding the monitoring of mercury emissions, proposed § 75.80(c) sets forth prohibitions similar to those outlined in the Acid Rain Program. Specifically, the use of any other alternative monitoring system, reference method, or continuous emission monitoring system without obtaining prior written approval from the permitting authority would be prohibited. In addition, the owner or operator of an affected unit would be prohibited from: (1) Operating the unit so as to discharge mercury to the atmosphere without accounting for such emissions; (2) disrupting the continuous emission monitoring system or any other approved emission monitoring method to thereby avoid monitoring and recording mercury mass emissions; or (3) retiring or permanently discontinuing the use of the required continuous emission monitoring systems, or any other approved emission monitoring system(s) except in a few precisely defined circumstances.

Proposed § 75.80(d) describes the initial certification, recertification, and quality-assurance (QA) requirements for the monitoring systems needed to quantify mercury mass emissions. In general, these requirements would be the same as or similar to the ones established for Acid Rain Program monitoring systems in §§ 75.20 and 75.21 and in Appendix B of 40 CFR part 75. Since most coal-fired electric generating units are subject to the Acid Rain Program and are familiar with the basic Part 75 monitor certification and QA procedures, EPA believes that this would facilitate compliance with the mercury monitoring requirements.

Section 75.80(f) of the proposed rule would require the owner or operator to report substitute data values for every unit operating hour in which a valid, quality-assured hour of mercury emissions data is not obtained with a certified monitoring system or a reference method. For uncertified monitoring systems, maximum potential concentrations or emission rates would be reported until all of the certification tests have been passed. After certification, special missing data algorithms would be used to provide the substitute data values. These missing data routines are discussed in greater detail below, in section II.C.6 of this appendix.

Proposed § 75.80(h) would allow sources to petition for an alternative to any requirement of Subpart I. The petition would have to meet the requirements of § 75.66 and any additional requirements established by the State or Federal mercury mass emission reduction program.

Proposed § 75.81 sets forth the general requirements for monitoring mercury emissions and heat input for affected units with simple exhaust configurations (*i.e.*, one unit, one stack). Note that although mercury compliance would be determined on a facility-wide basis, the emissions from each individual unit at the facility would be monitored, in the same manner as is done under the Acid Rain and NO_X Budget Programs. The owner or operator would be required to determine hourly mercury mass emissions in one of two ways: (1) by monitoring the mercury emission rate (lbs/10^{12} Btu), the unit heat input rate (mmBtu/

hr), and the unit operating time (hr); or (2) measuring mercury concentration (μg/dscm), the stack gas flow rate (scfh), and the unit operating time (hr). In both cases, the hourly mercury mass emissions (in ounces) would be determined by multiplying the measured parameters together and using a conversion constant to obtain the desired units of measure.

To use the first mercury mass monitoring option (*i.e.*, mercury emission rate times heat input rate), the owner or operator would be required to install a mercury-diluent CEMS (consisting of a mercury concentration monitor and an O_2 or CO_2 diluent gas monitor), a flow rate monitoring system, and a continuous moisture monitoring system (or to use an appropriate default moisture value, either from § 75.11 or § 75.12, or a site-specific value approved by petition under § 75.66).

If the source elected to use the second mercury mass monitoring option (*i.e.*, mercury concentration multiplied by flow rate), a mercury concentration monitor or a sorbent trap monitoring system would be required, along with a flow rate monitoring system, a continuous moisture monitoring system (or approved default moisture value), and, if heat input monitoring is required under the trading program, the owner or operator would also have to certify an O_2 or CO_2 monitoring system. Regarding the use of sorbent trap monitoring systems, two versions of § 75.81(b)(1) are being proposed, corresponding to two alternative approaches discussed in detail below, in section II.B.3 of this appendix. Under Alternative # 1, the use of sorbent trap systems would be restricted to affected units that emit less than 9 lbs (144 ounces) of mercury per year (*i.e.*, on a 3-year average basis, for the same calendar years used to allocate the Hg allowances). Under Alternative # 2, this restriction does not appear in proposed § 75.81(b)(1). Finally, note that under proposed § 75.81(c), new units that commence commercial operation more than 6 months after the date of publication of the final rule implementing the trading program would be required to use mercury CEMS. For new coal-fired electric generating units, this is consistent with the monitoring requirements for other pollutants (*e.g.*, SO_2 , NO_X) under NSPS and the Acid Rain Program.

Section 75.82 of the proposed Subpart I sets forth requirements for monitoring emissions from units with common stack or multiple stack exhaust configurations. While many power plants have simple one unit-one stack exhaust configurations with CEMS installed on the stack, other plants have more than one unit discharging through a common stack or have a unit that discharges through multiple stacks. The emission calculations for a single unit with a single stack are relatively simple, but complications can arise with the calculations for common or multiple stacks. These configurations sometimes require special monitoring and apportioning methodologies, as described in proposed § 75.82. The provisions in § 75.82 mirror, when appropriate, existing Part 75 provisions for monitoring SO_2 and NO_X mass emissions from similar units and groups of units.

Proposed § 75.83 of Subpart I would establish the requirement to calculate mercury mass emissions and heat input rate in accordance with Appendix F of Part 75. For a detailed discussion of these calculations, see section II.C.12 of this appendix.

Finally, proposed § 75.84 of Subpart I sets forth the general recordkeeping and reporting requirements associated with mercury mass emission monitoring. For the most part, proposed § 75.84 refers to other sections of Part 75, where the specific recordkeeping and reporting requirements are found, although note that a few provisions in § 75.84 are unique and appear only in that section.

B. Types of Mercury Monitoring Systems

1. Mercury CEMS

Today's proposed rule would expand the definition of ''continuous emission monitoring system or CEMS'' to include a ''Hg concentration monitoring system'' and a ''Hg-diluent monitoring system''. A mercury concentration monitoring system would consist of a mercury pollutant concentration monitor and an automated data acquisition and handling system (DAHS), and would provide a permanent, continuous record of mercury emissions in units of micrograms per dry standard cubic meter (μg/dscm).

A mercury-diluent monitoring system would consist of a mercury pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated DAHS. The monitoring system would provide a permanent, continuous record of: Mercury concentration in units of micrograms per dry standard cubic meter (μg/dscm); diluent gas concentration (in percent O_2 or CO_2); and mercury emission rate in units of pounds per trillion British thermal units (lb/10^{12} Btu).

2. Sorbent Trap Systems

Today's proposed rule would also add a new definition to § 72.2, *i.e.*, the definition of a ''sorbent trap monitoring system''. As set forth in the proposed definition in § 72.2, a sorbent trap monitoring system would consist of a probe, a pair of sorbent traps (each containing a reagent such as iodinized carbon (IC)), a heated umbilical line, moisture removal components, an air-tight sample pump, a dry gas meter, and an automated data acquisition and handling system (DAHS). The monitoring system would sample the stack gas at a rate proportional to the stack gas volumetric flow rate. The sampling would be done as a batch process, with the sorbent traps being used for a data collection period ranging from hours to weeks, depending upon the mercury concentration in the stack. Using the sample volume measured by the dry gas meter during the data collection period and the results of laboratory analysis of the mercury captured in the sorbent traps, the mercury concentration in the stack gas would be determined in units of micrograms per dry standard cubic meter (μg/dscm). Mercury mass emissions for each hour in the sampling period would then be calculated using the higher of the two average mercury concentrations obtained with the paired sorbent traps for that period in conjunction with contemporaneous measurements of the stack gas flow rate.

3. Use of Mercury CEMS and Sorbent Trap Systems

In today's proposed rule, EPA solicits comment on two alternative approaches concerning the use of Hg CEMS and sorbent trap monitoring systems in a Hg mass emissions trading program. Proposed rule language for both alternatives is provided. The two alternatives are as follows:

Alternative 1: Under this approach, EPA would allow the use of sorbent trap systems for a subset of the affected units. The use of sorbent traps would be limited to low-emitting units, having estimated 3-year average Hg emissions of 144 ounces (9 lb) or less, for the same three calendar years used to allocate the Hg allowances. The threshold value of 9 lb per year is based on 1999 data gathered by EPA under an information collection request (ICR) that appeared in the **Federal Register** on April 9, 1998. Based solely on the 1999 ICR data, 228 of the 1120 coal-fired electrical generating units in the database (*i.e.*, 20 percent of the units), representing 1 percent of the 48 tons of estimated nationwide emissions, would qualify to use sorbent trap monitoring systems.

This approach is consistent with the way that EPA has implemented the Acid Rain and NO_X Budget Programs. In both of these trading programs, the use of CEMS has been required with few exceptions. Alternatives to CEMS have only been allowed where either: (1) The emissions contributed by a particular category of affected sources are at a very low level in comparison to the emissions ''cap'' for the program (for example, oil and gas-fired units may use the procedures in Appendix D of Part 75 for SO_2 mass emissions accounting, and oil and gas-fired peaking units may use Appendix E for NO_X emissions accounting); or (2) an alternative monitoring system has been demonstrated, according to the criteria in Subpart E of Part 75, to be capable of generating data that has the same precision, reliability, accuracy, and timeliness as a CEMS.

This general approach to emissions monitoring has worked well in the Acid Rain and NO_X Budget Trading Programs. All required CEMS must undergo rigorous initial certification testing and periodic quality-assurance testing, and must conform to Part 75 performance specifications. Emissions data from the monitoring systems are reduced in a consistent manner that represent real-time conditions. A standard set of data validation rules and substitute data procedures apply to all of the CEMS. These stringent requirements provide an accurate accounting of the mass emissions from each affected unit and ensure a ''level playing field'' among the regulated sources. This in turn inspires confidence among the trading program participants in the integrity of the commodity being traded (*i.e.*, the emission allowances).

Alternative 1 restricts the use of sorbent trap monitoring systems for the same reason that Part 75 restricts the use of Appendices D and E for SO_2 and NO_X emissions accounting, *i.e.*, because the methodology represents a departure from traditional CEMS technology. Nevertheless, in light of recent field studies which have indicated that

sorbent traps are capable of providing accurate measurements of mercury concentration that compare favorably to measurements made with mercury CEMS (Docket 2002–0056, Items 0023 through 0027), EPA is taking comment on the following alternative Hg emission thresholds, below which the sorbent trap systems could be used: 29 lb/year, 46 lb/year, and 76 lb/year. Based on the 1999 ICR data, these thresholds would represent, respectively, 5, 10, and 20 percent, respectively, of the estimated nationwide emissions, and would allow 39, 50, and 65 percent, respectively, of the affected units to use the sorbent trap systems.

Alternative 2: The EPA is also proposing a second continuous Hg monitoring alternative whereby any source could use either CEMS or sorbent traps, on the condition that quarterly relative accuracy testing of each sorbent trap system is performed. A full 9-run RATA would be required annually and a 3-run relative accuracy audit (RAA) would be required in each of the other quarters of the year in which the unit operates for at least 168 hours. For sources with annual Hg emissions below the specified threshold value, the QA requirements for sorbent trap monitoring systems would be less, with only an annual RATA being required.

The EPA believes that in order to extend the use of sorbent trap systems to the units that potentially account for 80 percent (or more) of the Hg emissions in the budget for an emissions trading program, an additional, substantive quarterly QA test should be required. This is consistent with the QA requirements of Parts 60 and 75, for monitors that are used for compliance determination. Both Part 60 and Part 75 require at least one such QA test to be performed each quarter. Appendix F of Part 60 requires affected facilities to perform a RATA in one calendar quarter of the year and to perform either a cylinder gas audit (CGA) or a RAA in the other three quarters. Under Appendix B of Part 75, quarterly linearity checks are required, in addition to semiannual or annual RATA. Because sorbent trap systems cannot be calibrated with cylinder gases, linearity checks and CGA are not feasible. Therefore, a RATA would be required in one quarter and an RAA in the other three quarters. However, note that the Agency is willing to consider replacing the RAA requirement with another type of substantive quarterly QA test, if commenters who favor the use of sorbent trap systems are aware of, and can provide details of, any such test or procedure.

C. Adapting Part 75 Monitoring to a Mercury Trading Program

Today's proposed rule would amend the text and appendices of Part 75 to set forth requirements for the continuous monitoring and reporting of mercury mass emissions under a trading program that adopts Subpart I.

The proposed revisions include a number of changes that EPA believes would facilitate the implementation of such a program. These include, but are not limited to, special provisions for measuring mercury mass emissions with sorbent trap monitoring systems, quality assurance and quality control requirements for mercury CEMS and sorbent traps, missing data procedures for both mercury CEMS and sorbent trap systems, determination of monitor availability, recordkeeping and reporting provisions, and mathematical equations for quantifying mercury mass emissions.

The majority of the proposed changes are substantive, and are patterned after requirements already established for SO_2 and NO_X monitors. EPA believes that this would greatly assist the affected sources in becoming familiar with the new requirements and would maintain a consistency between the new rule requirements and those already established by Part 75. The proposed revisions would require mercury emissions data to be reported to EPA in electronic quarterly reports, in a format similar to the one currently used for SO_2 and NO_X emissions reporting.

1. Applicability

Today's proposed rule would add paragraph (d) to § 75.2, indicating that the mercury monitoring provisions of Part 75 would apply to sources subject to a State or Federal mercury mass emission reduction program only to the extent that Part 75 monitoring is adopted by such a program.

2. General Operating Requirements for Mercury Monitoring Systems

EPA proposes to amend § 75.10 to include general operating requirements for mercury CEMS (*i.e.*, mercury concentration monitoring systems and mercury-diluent monitoring systems). These revisions would require all data collected by the mercury CEMS to be reduced to hourly averages, in the same manner as is done for SO_2, NO_X, CO_2 and flow rate monitors. Mercury CEMS would also have the same minimum data capture requirements as other Part 75 CEMS to validate the hourly averages.

3. Special Operating Procedures for Sorbent Trap Monitoring Systems

EPA proposes to add text to § 75.15 (previously reserved), to set forth special provisions for measuring mercury mass emissions with sorbent traps. For each monitoring system, the use of paired sorbent traps would be required. The use of redundant backup systems would be allowed, provided that each backup system uses paired sorbent traps. A stack flow monitor and a moisture monitoring system (or approved moisture constant) would be used in conjunction with the sorbent trap system to quantify mercury mass emissions.

Each sorbent trap monitoring system would be installed and operated in accordance with EPA Method 324. This method specifies the minimum quality assurance and quality control procedures necessary to ensure proper operation of the system. Mercury sampling would be proportional to the stack gas volumetric flow rate. In section 6.5.2.1 of Appendix A to Part 75, there is a standardized procedure for dividing the operating range of the affected unit into three load levels, *i.e.*, low, mid, and high, and for identifying which of these load levels is normal. For the purposes of applying Method 324, an intermediate sampling rate of 0.3 to 0.5 liters per minute through each sorbent trap would be used when the unit is operating at the normal load level, whether low, mid, or high. The sampling rate would then be increased or decreased, as appropriate, by 0.1 liters/min when the unit operates at the other two load levels. EPA solicits comment on the appropriateness of this sample rate adjustment procedure.

After each sample collection period (the length of which would depend upon the expected mercury concentration in the stack gas), the mass of mercury adsorbed in the sorbent trap would be determined using Method 324. For each sorbent trap, the average mercury concentration (μg/dscm) for the collection period would be calculated by dividing the total mercury mass by the total volume of dry gas metered. For each pair of sorbent traps, the higher of the two average Hg concentrations would be used for reporting purposes. Finally, the mercury mass emissions for each hour of the collection period would be determined using the average mercury concentration in conjunction with the hourly flow rates recorded by the stack flow monitor.

All valid data from the primary sorbent trap monitoring system would be required to be reported in the electronic quarterly report under § 75.84(f). When the primary monitoring system is non-operational or for hours in which data from that system are invalid (as determined using the quality control procedures in section 9.0 of Method 324), the owner or operator would have the option of reporting valid mercury concentration data from a certified redundant backup monitoring system or from the Ontario Hydro reference method. However, if for a particular hour no quality-assured mercury concentration data are available, the owner or operator would report the appropriate substitute data values, in accordance with proposed § 75.39.

4. Certification and Recertification of Mercury Monitoring Systems

Proposed revisions to § 75.20 would specify the required initial certification tests for mercury CEMS and sorbent trap monitoring systems. The mercury concentration and mercury-diluent CEMS would be required to undergo the same full battery of certification tests that is required for SO_2 and NO_X monitoring systems (*i.e.*, 7-day calibration error tests, linearity checks, cycle time tests, and relative accuracy test audits (RATAs)). In addition, a 3-point check of the converter, using $HgCl_2$ standards, as described in sections 8.3 and 13.1 of proposed Performance Specification 12A, would be required. For sorbent trap monitoring systems, only a RATA would be required for initial certification, since the 7-day calibration error test, linearity check and cycle time test, all of which require calibration gas injection, cannot be performed on a sorbent trap system. Proposed revisions to §§ 75.21 and 75.22 would require the Ontario Hydro method to be used as the mercury concentration reference method for relative accuracy testing. Under the proposed revisions to § 75.20(b), all three types of mercury monitoring systems would be subject to the

same recertification requirements as the other Part 75 monitoring systems.

5. Bias Adjustment of Mercury Emissions Data

Today's proposed rule would amend § 75.24 to require mercury emissions data to be adjusted for bias in the same manner as is done for SO_2, NO_X, and flow rate data. If the bias test performed on the relative accuracy data indicates that a mercury-diluent monitoring system, a mercury concentration monitoring system, or a sorbent trap monitoring system is biased low with respect to the reference method, the owner or operator would be required to either: (1) Adjust the monitoring system to eliminate the cause of the bias and perform another RATA to verify that the bias has been eliminated; or (2) calculate a bias adjustment factor (BAF) and apply it to the subsequent mercury emissions data recorded by the monitoring system.

6. Missing Data Procedures for Mercury Monitoring Systems

For mercury concentration and mercury-diluent CEMS, proposed revisions to § 75.31 would require the same initial missing data procedures that are used for SO_2 monitors to be applied until 720 hours of quality-assured mercury concentration or mercury emission rate data have been collected, following initial certification of the CEMS. That is, the hourly values of mercury concentration or mercury emission rate recorded immediately before and after the missing data event would be averaged and applied to each hour of the missing data period.

EPA proposes to amend § 75.32 to require the percent monitor data availability (PMA) to be calculated and reported after 720 hours of quality-assured mercury concentration or mercury emission rate data have been collected following initial certification. At that point, the owner or operator would switch from using the initial missing data procedures to the proposed standard missing data procedures in § 75.38. The proposed standard missing data procedures for mercury CEMS are modeled after the familiar SO_2 missing data algorithms in § 75.33(b). EPA considered using the load-based NO_X missing data routines in § 75.33(c) as the model for mercury, but this approach is not being proposed, in the absence of any data indicating that vapor phase mercury emissions are load-dependent. The Agency solicits comments on the proposed missing data approach.

For a unit equipped with a flue gas desulfurization (FGD) system that meaningfully reduces the concentration of mercury emitted to the atmosphere, or for a unit equipped with add-on mercury emission controls, the initial and standard mercury missing data procedures would apply only when the FGD or add-on controls are documented to be operating properly, in accordance with § 75.58(b)(3). A certification statement from the designated representative verifying proper operation of the emission controls during the missing data periods would be required in each electronic quarterly report. For any hour in which the FGD or add-on controls are not operating properly, the maximum potential mercury concentration (MPC) or the maximum potential mercury emission rate (MER) would be the required substitute data value.

Also for units equipped with FGD systems or add-on mercury emission controls, proposed § 75.38 would allow the owner or operator to petition to use the maximum controlled mercury concentration or emission rate in the 720-hour missing data lookback (in lieu of the maximum recorded value) when the PMA is less than 90.0 percent.

In proposed § 75.39, EPA would add initial and standard missing data procedures for sorbent trap monitoring systems. Once a sorbent trap monitoring system has been certified, missing data would be substituted whenever a gas sample is not extracted from the stack, or when the results of the mercury analyses representing a particular period of unit operation are missing or invalid. In the latter case, the missing data period would begin when the sorbent traps for which the mercury analyses are missing or invalid were put into service and would end when valid mercury concentration data are first obtained with another pair of sorbent traps.

The initial missing data procedures would be applied from the hour of certification until 720 quality-assured hours of data have been collected with the sorbent traps. The initial missing data algorithm would require the owner or operator to average the mercury concentrations from all valid sorbent trap analyses to date, including data from the initial certification test runs, and to fill in this average concentration for each hour of the missing data period.

Once 720 quality-assured hours of mercury concentration data are collected, the owner or operator would begin reporting the percent monitor data availability (PMA) and would begin using the standard missing data algorithms. The standard missing data procedures for sorbent trap systems would follow a ''tiered'' approach, based on the PMA. For example, at high PMA (≥ 95.0%), the substitute data value would be the average mercury concentration obtained from all valid sorbent trap analyses in the previous 12 months. At lower PMA values, the substitute data values would become increasingly conservative, until finally, if the PMA drops below 80.0%, the maximum potential mercury concentration (MPC) would be reported.

Similar to the proposed provision for mercury CEMS, if a unit that uses sorbent traps is equipped with an FGD system or add-on mercury emission controls, the initial and standard missing data procedures could only be applied for hours in which proper operation of the emission controls was documented. In the absence of such documentation, the mercury MPC would be reported.

7. Monitoring Plan Information for Mercury Monitoring Systems

EPA is proposing to amend § 75.53 to require the owner or operator to provide essential information for each mercury monitoring system in the monitoring plan for the affected unit. The information to be provided would include the identification and description of each monitoring system component (*e.g.*, the analyzer, DAHS, etc.). For each mercury CEMS, the maximum potential mercury concentration, the maximum expected concentration (if applicable), the maximum potential mercury emission rate (if applicable), span value(s), full-scale range(s), daily calibration units of measure, and other specified parameters would be defined in the monitoring plan. Appropriate formulas for calculating mercury emission rate (if applicable) and mercury mass emissions would also be included in the plan.

8. Recordkeeping and Reporting

Today's proposed rule would amend § 75.57 to add general recordkeeping provisions for mercury monitoring systems and the auxiliary monitors (flow, moisture, and O_2 or CO_2) needed to quantify mercury mass emissions and heat input. The owner or operator would be required to record data from these monitoring systems on an hourly average basis, and to report it electronically on a quarterly basis.

For mercury concentration CEMS, the owner or operator would record, for each operating hour, information such as the component-system identification codes, the date and hour, the average mercury concentration, the bias-adjusted mercury concentration (if a bias adjustment factor (BAF) is required), the method of determination codes for the mercury concentration, flow rate and moisture data, and the percent monitor data availability for each monitored parameter.

For mercury-diluent systems, the owner or operator would record hourly information such as the monitoring system and component identification codes, the date and hour, the average mercury and diluent gas concentrations, the average stack gas flow rate and moisture content, the average mercury emission rate, the bias-adjusted mercury emission rate (if a BAF is required), the percent monitor data availability for mercury emission rate, flow rate and moisture, the method of determination codes for the mercury emission rate, flow rate, percent moisture and diluent gas concentration, the identification codes for emissions formulas used to calculate the mercury emission rate and mercury mass emissions, and the F-factor used to convert mercury concentrations into emission rates.

For sorbent trap monitoring systems, the owner or operator would record hourly information such as component-system identification codes, date and hour, average mercury concentration, bias-adjusted mercury concentration (if a BAF is required), the method of determination codes and percent monitor data availability for mercury concentration, flow rate and moisture, the average flow rate of the stack gas sample through each sorbent trap, and the unit or stack operating load level.

Today's proposed rule would also amend § 75.59, the quality-assurance and quality-control (QA/QC) recordkeeping section, to require that records be kept of all QA tests of mercury monitoring systems (*e.g.*, calibrations, linearity checks, and RATAs). The proposed revisions to § 75.59(a)(7) would further require the following data elements to be recorded for each RATA run using the Ontario Hydro reference method:

the percentage of CO_2 and O_2 in the stack gas, the moisture content of the stack gas, the average stack temperature, the dry gas volume metered, the percent isokinetic, the particle-bound mercury collected by the filter, blank, and probe rinse, the oxidized mercury collected by the KCl impingers, the elemental mercury collected in the HNO_3 /H_2O_2 impinger and in the $KMnO_4$ /H_2SO_4 impingers, the total mercury including particle-bound mercury, and the total mercury excluding particle-bound mercury.

Finally, for each sorbent trap monitoring system, the owner or operator would be required to record information such as the ID number of the monitoring system in which the paired sorbent traps are used to collect mercury, the unique ID number of each sorbent trap, the beginning and ending dates and hours of the data collection period, the two average mercury concentrations for the data collection period, and information documenting the results of the required Method 324 leak checks, quality control procedures, and laboratory analyses of the mercury collected by the sorbent traps.

9. Span and Range Values for Mercury Monitors

EPA proposes to amend section 2 of Appendix A to Part 75, by adding a new sub-section, 2.1.7, to address span and range issues for mercury CEMS.

Since the mercury content of different types of coal is variable, the maximum potential mercury concentration (MPC) depends upon which type of coal is combusted in the unit. For the initial MPC determination, today's proposed rule would provide the owner or operator with three options: (1) To use a fuel-specific default value of 9 μg/dscm for bituminous coal, 10 μg/dscm for sub-bituminous coal, 16 μg/dscm for lignite, and 1 μg/dscm for waste coal (if different coals are blended, the highest MPC value for any fuel in the blend would be used); (2) to determine the MPC based on the results of site-specific emission testing using the Ontario Hydro method (at least three 2-hour runs at normal load). This option would be allowed only if the unit does not have add-on mercury emission controls or a flue gas desulfurization system, or if the testing is done upstream of these control devices; or (3) to base the MPC on 720 or more hours of historical CEMS data, if the unit has a mercury CEMS that has been tested for relative accuracy against the Ontario Hydro method and has met a relative accuracy specification of 20.0% or less.

The terms ''span'' and ''range'' do not apply to sorbent trap monitoring systems; however, note that an MPC determination would be required for these monitoring systems for the purposes of missing data substitution. Also, for units using mercury-diluent monitoring systems, calculation of the maximum potential mercury emission rate (MER), in units of lb/10^{12} Btu, would be required for purposes of missing data substitution. To determine the MER, the owner or operator would use the appropriate emission rate equation from section 9 of appendix F, substituting into the equation the MPC value, the minimum expected CO_2 concentration or maximum expected O_2 concentration during normal operation (excluding unit startup, shutdown, and process upsets), the expected stack gas moisture content (if applicable), and the appropriate F-factor.

For units with FGD systems (including fluidized bed units that use limestone injection) and for units equipped with add-on mercury emission controls (*e.g.,* carbon injection), a determination of the maximum expected mercury concentration (MEC) during normal, stable operation of the unit and emission controls would be required. To calculate the MEC, the previously-determined MPC value would be substituted into Equation A–2 in section 2.1.1.2 of Part 75, Appendix A. In applying Equation A–2, units using add-on mercury emission controls such as carbon injection would use a mercury removal efficiency obtained from design engineering calculations. For units with FGD systems, the owner or operator would use the best available estimate of the mercury removal efficiency of the FGD.

The span and range value(s) for each mercury monitor would be calculated as follows. A ''high'' span value would be determined by rounding the MPC value upward to the next highest multiple of 10 μg/dscm. If the affected unit is equipped with an FGD system or add-on mercury emission controls, and if the MEC value is less than 20 percent of the high span value and the high span value is 20 μg/dscm or greater, the owner or operator would be required to define a second, low span value of 10 μg/dscm.

If the owner or operator determines that only a high span value is required, the full-scale range of the mercury analyzer would be set greater than or equal to the span value. If two span values are required, the owner or operator could either use two separate (high and low) measurement scales, or quality-assure two segments of a single measurement scale.

The owner or operator would be required to make a periodic evaluation (at least annually of the MPC, MEC, span, and range values for each mercury monitor, to make any necessary span and range adjustments and corresponding monitoring plan updates, and to keep the results of the most recent span and range evaluation on-site, in a format suitable for inspection. Span and range adjustments might be required, for example, as a result of changes in the fuel supply, changes in the manner of operation of the unit, or with installation or removal of emission controls. Each required span or range adjustment would have to be made no later than 45 days after the end of the quarter in which the need to adjust the span or range is identified, except that up to 90 days after the end of that quarter would be allowed if the calibration gases currently being used for daily calibration error tests and linearity checks are unsuitable for use with the new span value.

If a full-scale range exceedance occurs during a quarter and is not caused by a monitor out-of-control period, for monitors with a single measurement scale, the owner or operator would report 200 percent of the full-scale range as the hourly mercury concentration until the readings come back on-scale. If over-scaling occurs, appropriate adjustments to the MPC, span, and range would be required to prevent future full-scale exceedances. For units with two separate measurement scales, no further action would be required if the low range is exceeded and the high range is available. However, if the high range is not able to provide quality assured data at any time during the continuation of a low-scale exceedance, then the MPC would be reported until the readings return to the low range or until the high range is able to provide quality-assured data.

Whenever changes are made to the MPC, MEC, full-scale range, or span value of the mercury monitor, the new settings, MPC or MEC, and calculations of the adjusted span value(s) would be represented in an updated monitoring plan. The monitoring plan update would be made in the quarter in which the changes become effective. Whenever a span adjustment is made, the owner or operator would be required to ensure that the new span value is reflected in the records for the daily calibration error tests and quarterly linearity checks. For mercury monitors, a diagnostic linearity check would be required when a span value is changed, using calibration gases consistent with the new span value.

10. Performance Specifications for Mercury Monitoring Systems

Today's proposed rule would amend section 3 of Appendix A to Part 75 by setting forth performance specifications for the initial certification of mercury monitoring systems. In particular, specifications for 7-day calibration error tests, linearity checks, cycle time tests, converter checks, and RATAs are proposed. A bias test of each mercury monitoring system would also be required and a bias adjustment factor would have to be applied to the subsequent data generated by any monitoring system found to have a low bias. For the 7-day calibration error tests, linearity checks and cycle time tests, proposed section 5.1.9 of Appendix A would require the use of elemental mercury calibration gas standards. For converter checks, the use of $HgCl_2$ standards would be required.

For each day of the 7-day calibration error test, the monitor would not be permitted to deviate from the zero or upscale reference calibration gas by more than 5.0 percent of the span value. As an alternative, if the span value is 10 μg/dscm (*i.e.,* the lowest allowable span for a mercury monitor), the calibration error test results would also be acceptable if the absolute value of the difference between the monitor response value and the reference value (*i.e.,* | R–A | in Equation A–5 of Appendix A), is less than or equal to 1.0 μg/dscm.

Linearity checks would be required for all mercury CEMS. For dual-span units, the test would be required on both measurement scales (or at two distinct segments of a single measurement scale). The maximum allowable linearity error at any gas injection level (low, mid, or high) would be 10.0% of the reference gas tag value. Alternatively, the results would be acceptable if the absolute difference between the reference gas value and the average analyzer response (*i.e.,* |R–

A| in Equation A–4 of Appendix A) does not exceed 1.0 μg/dscm.

A cycle time test of each mercury CEMS would be required. For this test, however, EPA is not proposing any new performance specification. The pass/fail criterion for the cycle time test of a mercury concentration or mercury-diluent monitoring system would be the same as for a Part 75 gas monitoring system (*i.e.,* 15 minutes).

A 3-point check of the converter would be required for each mercury monitor, using $HgCl_2$ standards. The test would be performed as described in section 8.3 of proposed Performance Specification 12A (PS–12A) and at each gas level, the monitor would have to meet the 5.0% of span specification in section 13.1 of proposed PS–12A.

Relative accuracy testing of all three types of mercury monitoring systems, *i.e.,* mercury concentration CEMS, mercury-diluent CEMS, and sorbent trap monitoring systems, would be required. The proposed relative accuracy specification for these monitoring systems is 20.0 percent. Alternatively, for low-emitting sources, where the average of the reference method measurements of mercury concentration during the relative accuracy test audit is less than 5.0 μg/dscm, or where the average mercury emission rate measured by the reference method is less than 5.5 lb/10^{12} Btu during the RATA, the test results would be acceptable if the difference between the mean value of the monitor measurements and the reference method mean value does not exceed 1.0 μg/dscm or 1.1 lb/10^{12} Btu (as applicable), in cases where the relative accuracy specification of 20.0 percent is not achieved. Also, for low-emitting sources that pass the RATA but fail the bias test, proposed revisions to section 7.6.5(b) of Appendix A would allow the use of a default BAF ''cap'' value of 1.250, if the calculated BAF exceeds 1.250.

Finally, EPA proposes to revise sections 6.5(a) and 6.5.7 of Appendix A to require that the RATAs of mercury monitoring systems be performed while the unit is combusting coal. The minimum acceptable time for each test run using the Ontario Hydro reference method would be 2 hours. For sorbent trap monitoring systems, a new pair of sorbent traps would be required to be used for each RATA run.

11. On-Going Quality-Assurance of Mercury Monitoring Systems

Today's proposed rule would revise sections 1 and 2 of Appendix B to Part 75 to add specific quality-assurance and quality control requirements for mercury monitoring systems.

First, for sorbent trap monitoring systems, EPA proposes to add a new section 1.5 to Appendix B to set forth the minimum acceptable elements of a QA/QC program for these monitoring systems. As previously noted, sorbent traps differ from traditional CEMS, in that daily calibration checks and quarterly linearity checks cannot be performed on these systems. Thus, the on-going quality of the data from a sorbent trap system depends vitally on the manner of operation of the system and the care with which the sorbent traps are handled. In view of this, EPA is proposing that the QA plan for sorbent trap systems include the following elements: (1) An explanation of the procedures for inscribing and tracking a unique identification number on each sorbent trap; (2) an explanation of the leak check procedures used and other QA procedures used to ensure system integrity and data quality (*e.g.,* dry gas meter calibrations, verification of moisture removal, verifying air-tight pump operation; (3) the data acceptance and quality-control criteria in section 9.0 of Method 324; (4) documentation of the procedures used to transport and analyze the sorbent traps; (5) documentation that the laboratory performing the sorbent trap analyses is certified by the International Organization for Standardization (ISO) to have a proficiency that meets the requirements of ISO 9000; and (6) the rationale used to justify the minimum acceptable data collection time for each sorbent trap. Proposed section 1.5 also requires records to be kept of the procedures and details associated with the RATA testing of the sorbent trap monitoring systems.

For mercury CEMS, revised section 2.1.1 of Appendix B would require the same daily calibration error tests to be performed on mercury monitors as are done on other Part 75 monitors. Each mercury monitor would be required to meet a daily calibration error specification of either 7.5 percent of the span value or an absolute difference of <1.5 μg/dscm between the reference gas and the analyzer response (whichever is less restrictive).

A monthly 3-point check of the converter would be required for each mercury monitor, using $HgCl_2$ standards (see proposed section 2.6 and proposed revisions to Figure 1 in Appendix B). This test would be done according to section 8.3 of proposed Performance Specification 12A and the monitor would be required to meet an error specification of 5.0% of span at each gas level. The test would only be required for months in which the unit operates for 168 hours or more.

Revised section 2.2.1 of Appendix A would require quarterly linearity checks to be performed on each mercury monitor. Elemental mercury standards would be used for these tests. Revised sections 2.3.1.2 and 2.3.1.3 of Appendix B would require an annual RATA and bias test of each mercury concentration monitoring system, each mercury-diluent monitoring system, and each sorbent trap monitoring system. The RATAs would be performed at the normal load level. If any monitoring system fails the bias test, the owner or operator would calculate a bias adjustment factor and apply it to the subsequent hourly data recorded by that system.

Regarding sorbent trap monitoring systems, note that two versions of the amended regulatory language and Figures in section 2 of Part 75, Appendix B are presented, corresponding to Alternatives # 1 and # 2, previously discussed in section II.B.3 of this appendix. Under Alternative # 1, only an annual RATA would be required in addition to the Method 324 QA/QC procedures. Under Alternative # 2, the annual RATA would be required for all sorbent trap monitoring systems, and additional quarterly 3-run relative accuracy audits (RAAs) would be required if the unit's average Hg emissions exceed 9 lbs/yr for the same calendar years used to allocate the Hg allowances. The RAAs would be required in every QA operating quarter (*i.e.,* quarters with at least 168 unit or stack operating hours) following initial certification, except for quarters in which a full RATA is performed.

EPA believes that the proposed performance specifications for the initial certification tests and on-going quality-assurance tests are reasonable and achievable, in view of the results of recent field evaluations of mercury CEMS and sorbent traps (Docket 2002–0056, Items # 0023 through 0027). The Agency solicits comment on the appropriateness of the proposed specifications.

12. Calculation of Mercury Mass Emissions

Today's proposed rule would add section 9 to Appendix F of Part 75. Proposed section 9 would provide the necessary equations for calculating the hourly, quarterly, and year-to-date mercury mass emissions. Three new equations, F–28, F–29, and F–30, would be added to Appendix F.

Equation F–28 would be used to determine the hourly mercury mass emissions (in ounces, rounded to one decimal place), when the mercury concentration (in μg/dscm)is measured with a mercury concentration CEMS or with a sorbent trap system. For units using mercury-diluent CEMS, proposed section 9.1.2 of Appendix F would require the measured hourly emission rate (in lb/10^{12} Btu) to be determined using a modified version of Equation F–5 or F–6 in Appendix F of Part 75 (when the diluent gas is measured on a dry basis) or a modified version of Equation 19–5 or 19–9 from EPA Method 19 in Appendix B of Part 60 (when the diluent gas is measured on a wet basis). Then, the mercury emission rate would be substituted into proposed Equation F–29 to determine the hourly mercury mass emissions (in ounces, rounded to one decimal place). The quarterly and year-to-date mercury mass emissions (in ounces) would be calculated using proposed Equation F–30.

Finally, where heat input monitoring is required, proposed section 9.3 of Appendix F would instruct the owner or operator to follow the heat input rate apportionment and summation procedures in sections 5.3, 5.6 and 5.7 of Appendix F.

Appendix B to the Preamble—Units Allocations

Unit level allocations used to develop the phase II state emissions budgets are presented below. For further discussion of the methodology used to develop these units level allocations see the memorandum entitled ''Allocation Adjustment Factors for the Proposed Mercury Trading Rulemaking'' in the docket. The same methodology described in the docket memo and used below would be used to develop the 2010 unit level allocations and state budgets.

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
AK	Healy	6288	2	65
AL	Gadsden	7	2	60
AL	Gadsden	7	1	73
AL	Charles R Lowman	56	1	112
AL	Widows Creek	50	1	132
AL	Widows Creek	50	4	135
AL	Widows Creek	50	5	144
AL	Gorgas	8	7	145
AL	Widows Creek	50	3	151
AL	Widows Creek	50	2	156
AL	Widows Creek	50	6	162
AL	Gorgas	8	6	166
AL	Barry	3	1	185
AL	Barry	3	2	193
AL	Colbert	47	3	229
AL	Colbert	47	4	231
AL	Colbert	47	1	237
AL	Colbert	47	2	239
AL	Gorgas	8	9	241
AL	Gorgas	8	8	244
AL	Charles R Lowman	56	3	316
AL	E C Gaston	26	4	321
AL	Charles R Lowman	56	2	327
AL	Barry	3	3	331
AL	E C Gaston	26	1	349
AL	E C Gaston	26	2	356
AL	Greene County	10	1	358
AL	Greene County	10	2	363
AL	E C Gaston	26	3	369
AL	Barry	3	4	508
AL	Colbert	47	5	508
AL	Widows Creek	50	7	580
AL	Widows Creek	50	8	607
AL	Gorgas	8	10	884
AL	Barry	3	5	972
AL	E C Gaston	26	5	1022
AL	James H Miller Jr	6002	1	1152
AL	James H Miller Jr	6002	2	1155
AL	James H Miller Jr	6002	3	1218
AL	James H Miller Jr	6002	4	1249
AR	Flint Creek Power Plant	6138	1	925
AR	White Bluff	6009	2	1325
AR	Independence	6641	1	1342
AR	White Bluff	6009	1	1383
AR	Independence	6641	2	1485
AZ	Irvington	126	4	150
AZ	Cholla	113	1	213
AZ	Apache Station	160	2	350
AZ	Apache Station	160	3	355
AZ	Cholla	113	3	505
AZ	Cholla	113	2	521
AZ	Cholla	113	4	680
AZ	Springerville	8223	2	707
AZ	Springerville	8223	1	720
AZ	Coronado Generating Station	6177	U2B	732
AZ	Coronado Generating Station	6177	U1B	741
AZ	Navajo Generating Station	4941	1	1145
AZ	Navajo Generating Station	4941	2	1220
AZ	Navajo Generating Station	4941	3	1223
CA	Rio Bravo Jasmin	10768	GEN1	59
CA	Port Of Stockton District Energy Facility (Posdef)	54238	STG	60
CA	Rio Bravo Poso	10769	GEN1	60
CA	Mt. Poso Cogeneration Plant	54626	27805–89	64
CA	Stockton Cogen Company	10640	GEN1	108
CA	Ace Cogeneration Plant	10002	10002	161
CO	Arapahoe	465	2	61
CO	Cameo	468	2	80
CO	Martin Drake	492	5	86
CO	Arapahoe	465	1	91
CO	Arapahoe	465	3	106
CO	Martin Drake	492	6	156
CO	Cherokee	469	1	160

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
CO	Nucla	527	1	163
CO	Cherokee	469	2	176
CO	Arapahoe	465	4	202
CO	Cherokee	469	3	217
CO	Martin Drake	492	7	252
CO	Valmont	477	5	257
CO	Hayden	525	H1	336
CO	Ray D Nixon	8219	1	393
CO	Cherokee	469	4	431
CO	Hayden	525	H2	454
CO	Rawhide Energy Station	6761	101	571
CO	Comanche (470)	470	1	586
CO	Comanche (470)	470	2	621
CO	Craig	6021	C3	732
CO	Craig	6021	C2	831
CO	Craig	6021	C1	845
CO	Pawnee	6248	1	1071
CT	AES Thames	10675	UNITA	131
CT	AES Thames	10675	UNITB	142
CT	Bridgeport Harbor Station	568	BHB3	454
DE	Indian River	594	1	87
DE	Indian River	594	2	94
DE	Edge Moor	593	3	116
DE	Indian River	594	3	161
DE	Edge Moor	593	4	188
DE	Indian River	594	4	290
FL	Scholz Electric Generating Plant	642	1	39
FL	Scholz Electric Generating Plant	642	2	45
FL	Crist Electric Generating Plant	641	4	81
FL	Crist Electric Generating Plant	641	5	103
FL	F J Gannon	646	GB01	127
FL	Cedar Bay Generating Company L.P.	10672	GEN 1B	129
FL	Cedar Bay Generating Company L.P.	10672	GEN 1C	131
FL	Cedar Bay Generating Company L.P.	10672	GEN 1A	132
FL	F J Gannon	646	GB02	136
FL	Central Power And Lime, Inc.	10333	GEN 1	177
FL	F J Gannon	646	GB03	186
FL	Northside	667	1A	187
FL	F J Gannon	646	GB04	210
FL	F J Gannon	646	GB05	228
FL	Northside	667	2A	231
FL	Lansing Smith	643	1	231
FL	Polk	7242	**1	237
FL	Lansing Smith	643	2	282
FL	Deerhaven	663	B2	287
FL	Indiantown Cogeneration Facility	50976	GEN 1	292
FL	Crist Electric Generating Plant	641	6	320
FL	F J Gannon	646	GB06	416
FL	Crystal River	628	1	457
FL	Big Bend	645	BB03	477
FL	Big Bend	645	BB01	489
FL	C D McIntosh	676	3	534
FL	Big Bend	645	BB02	534
FL	Stanton Energy	564	1	583
FL	Stanton Energy	564	2	593
FL	Crystal River	628	2	619
FL	Crist Electric Generating Plant	641	7	638
FL	Big Bend	645	BB04	651
FL	Seminole (136)	136	2	954
FL	Crystal River	628	4	957
FL	St. Johns River Power	207	2	962
FL	Seminole (136)	136	1	968
FL	St. Johns River Power	207	1	1004
FL	Crystal River	628	5	1076
GA	Arkwright	699	1	17
GA	Arkwright	699	2	18
GA	Mitchell	727	2	24
GA	Arkwright	699	4	24
GA	Arkwright	699	3	26
GA	Mitchell	727	1	29
GA	Kraft	733	2	51
GA	Kraft	733	1	55

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
GA	Yates	728	Y3BR	75
GA	Yates	728	Y1BR	87
GA	Yates	728	Y2BR	94
GA	Mitchell	727	3	104
GA	Yates	728	Y4BR	108
GA	Hammond	708	1	110
GA	Yates	728	Y5BR	117
GA	Kraft	733	3	118
GA	Hammond	708	2	118
GA	Hammond	708	3	119
GA	McIntosh (6124)	6124	1	200
GA	Harllee Branch	709	1	254
GA	Jack McDonough	710	MB1	301
GA	Harllee Branch	709	2	309
GA	Yates	728	Y7BR	322
GA	Yates	728	Y6BR	333
GA	Jack McDonough	710	MB2	336
GA	Harllee Branch	709	3	499
GA	Harllee Branch	709	4	508
GA	Hammond	708	4	511
GA	Bowen	703	2BLR	859
GA	Bowen	703	1BLR	879
GA	Wansley (6052)	6052	2	903
GA	Scherer	6257	1	952
GA	Wansley (6052)	6052	1	965
GA	Scherer	6257	2	1052
GA	Bowen	703	3BLR	1073
GA	Bowen	703	4BLR	1079
GA	Scherer	6257	3	1284
GA	Scherer	6257	4	1549
HI	Aes Hawaii, Inc.	10673	B	147
HI	Aes Hawaii, Inc.	10673	A	149
IA	Lansing	1047	1	1
IA	Lansing	1047	2	2
IA	Dubuque	1046	6	2
IA	Earl F Wisdom	1217	1	11
IA	Streeter Station	1131	7	14
IA	Pella	1175	6	14
IA	Pella	1175	7	15
IA	Sixth Street	1058	4	23
IA	Sixth Street	1058	3	29
IA	Ames	1122	7	29
IA	Sixth Street	1058	2	32
IA	Lansing	1047	3	35
I	Dubuque	1046	5	38
IA	Sixth Street	1058	5	50
IA	Fair Station	1218	2	50
IA	Dubuque	1046	1	55
IA	Sutherland	1077	1	64
IA	Sutherland	1077	2	64
IA	Council Bluffs	1082	1	81
IA	Prairie Creek	1073	3	83
IA	Ames	1122	8	101
IA	Council Bluffs	1082	2	128
IA	Muscatine	1167	8	138
IA	Sutherland	1077	3	156
IA	Riverside (1081)	1081	9	169
IA	George Neal North	1091	1	226
IA	Prairie Creek	1073	4	229
IA	Milton L Kapp	1048	2	274
IA	Muscatine	1167	9	296
IA	Burlington (IA)	1104	1	333
IA	Lansing	1047	4	376
IA	George Neal North	1091	2	435
IA	George Neal North	1091	3	847
IA	George Neal South	7343	4	1076
IA	Louisa	6664	101	1143
IA	Council Bluffs	1082	3	1236
IA	Ottumwa	6254	1	1243
IL	Meredosia	864	03	20
IL	Meredosia	864	01	22
IL	Grand Tower	862	07	25

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
IL	Grand Tower	862	08	26
IL	Meredosia	864	02	26
IL	Meredosia	864	04	27
IL	Lakeside	964	7	31
IL	Marion	976	2	32
IL	Lakeside	964	8	32
IL	Marion	976	1	33
IL	Marion	976	3	35
IL	Hutsonville	863	05	63
IL	Hutsonville	863	06	71
IL	Vermilion	897	1	82
IL	Grand Tower	862	09	90
IL	Dallman	963	32	96
IL	Dallman	963	31	98
IL	Hennepin	892	1	101
IL	Wood River	898	4	106
IL	Vermilion	897	2	112
IL	E D Edwards	856	1	130
IL	Waukegan	883	17	167
IL	Meredosia	864	05	191
IL	Will County	884	2	210
IL	Will County	884	1	222
IL	Dallman	963	33	259
IL	Crawford	867	7	268
IL	Marion	976	4	270
IL	E D Edwards	856	2	299
IL	Hennepin	892	2	314
IL	Joliet 29	384	71	324
IL	Coffeen	861	01	332
IL	Wood River	898	5	334
IL	Joliet 29	384	81	335
IL	Joppa Steam	887	4	354
IL	Joppa Steam	887	3	358
IL	Joppa Steam	887	6	362
IL	Joppa Steam	887	5	364
IL	Joppa Steam	887	1	366
IL	E D Edwards	856	3	366
IL	Joppa Steam	887	2	370
IL	Will County	884	3	378
IL	Crawford	867	8	382
IL	Joliet 29	384	82	409
IL	Fisk	886	19	410
IL	Joliet 29	384	72	422
IL	Duck Creek	6016	1	440
IL	Joliet 9	874	5	441
IL	Havana	891	9	479
IL	Waukegan	883	7	482
IL	Waukegan	883	8	529
IL	Powerton	879	61	530
IL	Powerton	879	52	535
IL	Powerton	879	51	536
IL	Powerton	879	62	545
IL	Will County	884	4	584
IL	Coffeen	861	02	589
IL	Kincaid	876	1	670
IL	Baldwin	889	2	705
IL	Baldwin	889	1	713
IL	Kincaid	876	2	714
IL	Newton	6017	2	772
IL	Baldwin	889	3	819
IL	Newton	6017	1	898
IN	Noblesville	1007	3	26
IN	Noblesville	1007	2	26
IN	Noblesville	1007	1	28
IN	Edwardsport	1004	8–1	40
IN	F B Culley Generating Station	1012	1	44
IN	Whitewater Valley	1040	1	45
IN	Edwardsport	1004	7–2	45
IN	Edwardsport	1004	7–1	50
IN	Eagle Valley (H T Pritchard)	991	3	59
IN	Eagle Valley (H T Pritchard)	991	5	61
IN	Eagle Valley (H T Pritchard)	991	4	65

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
IN	Dean H Mitchell	996	4	84
IN	Whitewater Valley	1040	2	97
IN	Wabash River	1010	2	99
IN	Wabash River	1010	3	102
IN	Eagle Valley (H T Pritchard)	991	6	120
IN	Wabash River	1010	5	122
IN	Harding Street Station (EW Stout)	990	60	125
IN	Dean H Mitchell	996	5	133
IN	Wabash River	1010	4	134
IN	F B Culley Generating Station	1012	2	136
IN	Harding Street Station (EW Stout)	990	50	139
IN	Dean H Mitchell	996	11	143
IN	R Gallagher	1008	1	146
IN	R Gallagher	1008	2	148
IN	R Gallagher	1008	4	153
IN	Tanners Creek	988	U1	158
IN	Dean H Mitchell	996	6	159
IN	R Gallagher	1008	3	159
IN	Tanners Creek	988	U2	164
IN	Frank E Ratts	1043	1SG1	166
IN	Frank E Ratts	1043	2SG1	169
IN	Wabash River	1010	1	174
IN	Tanners Creek	988	U3	218
IN	Bailly	995	7	224
IN	State Line Generating Station (IN)	981	3	288
IN	A B Brown Generating Station	6137	1	302
IN	Clifty Creek	983	6	308
IN	Clifty Creek	983	4	309
IN	Clifty Creek	983	1	313
IN	Clifty Creek	983	2	315
IN	Clifty Creek	983	5	316
IN	Clifty Creek	983	3	322
IN	A B Brown Generating Station	6137	2	334
IN	Petersburg	994	1	341
IN	Wabash River	1010	6	372
IN	Bailly	995	8	394
IN	State Line Generating Station (IN)	981	4	410
IN	F B Culley Generating Station	1012	3	419
IN	Warrick	6705	4	436
IN	R M Schahfer	6085	17	459
IN	Harding Street Station (EW Stout)	990	70	471
IN	R M Schahfer	6085	18	476
IN	Tanners Creek	988	U4	556
IN	R M Schahfer	6085	14	599
IN	Petersburg	994	2	601
IN	Michigan City	997	12	604
IN	Cayuga	1001	2	606
IN	Cayuga	1001	1	650
IN	Gibson	6113	3	717
IN	Petersburg	994	4	734
IN	Gibson	6113	2	742
IN	Merom	6213	1SG1	757
IN	Petersburg	994	3	764
IN	R M Schahfer	6085	15	787
IN	Merom	6213	2SG1	790
IN	Gibson	6113	1	815
IN	Gibson	6113	4	866
IN	Gibson	6113	5	871
IN	Rockport	6166	MB1	2321
IN	Rockport	6166	MB2	2327
KS	Riverton	1239	39	54
KS	Riverton	1239	40	79
KS	Quindaro	1295	1	105
KS	Lawrence Energy Center	1250	3	120
KS	Tecumseh Energy Center	1252	9	142
KS	Quindaro	1295	2	170
KS	Lawrence Energy Center	1250	4	225
KS	Tecumseh Energy Center	1252	10	245
KS	Nearman Creek	6064	N1	471
KS	Lawrence Energy Center	1250	5	535
KS	Holcomb	108	SGU1	643
KS	La Cygne	1241	1	1092

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
KS	Jeffrey Energy Center	6068	1	1182
KS	Jeffrey Energy Center	6068	2	1284
KS	La Cygne	1241	2	1304
KS	Jeffrey Energy Center	6068	3	1352
KY	Green River	1357	3	10
KY	Henderson I	1372	6	10
KY	Green River	1357	2	11
KY	Green River	1357	1	11
KY	Pineville	1360	3	35
KY	Tyrone	1361	5	70
KY	Robert Reid	1383	R1	80
KY	William C. Dale	1385	3	92
KY	Green River	1357	4	92
KY	William C. Dale	1385	4	99
KY	Green River	1357	5	118
KY	John S. Cooper	1384	1	126
KY	E W Brown	1355	1	128
KY	Shawnee	1379	10	156
KY	E W Brown	1355	2	186
KY	Shawnee	1379	6	190
KY	Shawnee	1379	1	195
KY	Shawnee	1379	4	196
KY	Shawnee	1379	2	197
KY	Shawnee	1379	5	200
KY	Shawnee	1379	9	206
KY	Coleman	1381	C3	208
KY	Cane Run	1363	5	210
KY	Coleman	1381	C1	211
KY	Shawnee	1379	3	211
KY	Coleman	1381	C2	215
KY	Shawnee	1379	7	215
KY	Shawnee	1379	8	216
KY	Cane Run	1363	4	217
KY	Elmer Smith	1374	1	224
KY	HMP&L Station 2	1382	H1	224
KY	HMP&L Station 2	1382	H2	234
KY	Cane Run	1363	6	251
KY	John S. Cooper	1384	2	251
KY	R D Green	6639	G2	338
KY	R D Green	6639	G1	343
KY	Big Sandy	1353	BSU1	347
KY	Elmer Smith	1374	2	393
KY	Mill Creek	1364	2	402
KY	Mill Creek	1364	1	408
KY	H L Spurlock	6041	1	411
KY	E W Brown	1355	3	481
KY	Mill Creek	1364	3	541
KY	Mill Creek	1364	4	568
KY	Ghent	1356	2	593
KY	Ghent	1356	4	622
KY	Ghent	1356	3	628
KY	Trimble County	6071	1	709
KY	Ghent	1356	1	710
KY	D B Wilson	6823	W1	722
KY	East Bend	6018	2	864
KY	Paradise	1378	1	869
KY	H L Spurlock	6041	2	903
KY	Paradise	1378	2	931
KY	Big Sandy	1353	BSU2	1087
KY	Paradise	1378	3	1187
LA	Rodemacher	6190	2	856
LA	R S Nelson	1393	6	942
LA	Big Cajun 2	6055	2B3	1035
LA	Big Cajun 2	6055	2B2	1035
LA	Big Cajun 2	6055	2B1	1053
LA	Dolet Hills	51	1	2621
MA	Salem Harbor	1626	1	118
MA	Salem Harbor	1626	2	132
MA	Somerset	1613	8	163
MA	Salem Harbor	1626	3	206
MA	Mount Tom	1606	1	222
MA	Brayton Point	1619	1	329

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
MA	Brayton Point	1619	2	331
MA	Brayton Point	1619	3	729
MD	R P Smith	1570	9	15
MD	AES Warrior Run	10678	001	20
MD	R P Smith	1570	11	94
MD	Herbert a Wagner	1554	2	190
MD	Dickerson	1572	1	212
MD	Dickerson	1572	2	219
MD	Dickerson	1572	3	223
MD	C P Crane	1552	1	223
MD	C P Crane	1552	2	259
MD	Herbert a Wagner	1554	3	415
MD	Chalk Point	1571	2	420
MD	Chalk Point	1571	1	424
MD	Morgantown	1573	1	690
MD	Morgantown	1573	2	706
MD	Brandon Shores	602	2	919
MD	Brandon Shores	602	1	928
ME	S.D. Warren Company #2	50447	#21	17
MI	Marysville	1732	9	10
MI	Marysville	1732	11	11
MI	Marysville	1732	12	12
MI	Marysville	1732	10	13
MI	Presque Isle	1769	2	16
MI	Wyandotte	1866	8	25
MI	James De Young	1830	5	39
MI	Eckert Station	1831	3	41
MI	Eckert Station	1831	1	43
MI	Eckert Station	1831	2	46
MI	Wyandotte	1866	7	46
MI	Harbor Beach	1731	1	55
MI	J B Sims	1825	3	75
MI	Presque Isle	1769	3	76
MI	Presque Isle	1769	4	77
MI	Endicott Generating	4259	1	85
MI	Trenton Channel	1745	18	86
MI	Shiras	1843	3	89
MI	Trenton Channel	1745	19	89
MI	Trenton Channel	1745	17	90
MI	Trenton Channel	1745	16	94
MI	Tes Filer City Station	50835	GEN 1	104
MI	Eckert Station	1831	5	113
MI	Eckert Station	1831	4	119
MI	Presque Isle	1769	6	128
MI	Presque Isle	1769	5	131
MI	Eckert Station	1831	6	145
MI	Presque Isle	1769	7	147
MI	Presque Isle	1769	9	153
MI	Presque Isle	1769	8	153
MI	J R Whiting	1723	1	154
MI	J R Whiting	1723	2	156
MI	Erickson	1832	1	177
MI	J R Whiting	1723	3	186
MI	St. Clair	1743	2	206
MI	St. Clair	1743	4	231
MI	St. Clair	1743	1	232
MI	St. Clair	1743	3	239
MI	J C Weadock	1720	7	245
MI	B C Cobb	1695	5	259
MI	B C Cobb	1695	4	265
MI	J C Weadock	1720	8	268
MI	J H Campbell	1710	1	359
MI	Dan E Karn	1702	1	368
MI	River Rouge	1740	2	372
MI	Dan E Karn	1702	2	376
MI	River Rouge	1740	3	376
MI	St. Clair	1743	6	416
MI	J H Campbell	1710	2	452
MI	St. Clair	1743	7	584
MI	Trenton Channel	1745	9A	631
MI	Monroe	1733	2	943
MI	Monroe	1733	3	970

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
MI	Monroe	1733	4	1076
MI	Monroe	1733	1	1105
MI	Belle River	6034	2	1152
MI	J H Campbell	1710	3	1199
MI	Belle River	6034	1	1223
MN	Minnesota Valley	1918	4	1
MN	Black Dog	1904	2	3
MN	Black Dog	1904	1	3
MN	High Bridge	1912	3	25
MN	High Bridge	1912	4	32
MN	Northeast Station	1961	NEPP	33
MN	Taconite Harbor Energy Center	10075	1	38
MN	Silver Lake	2008	4	43
MN	Taconite Harbor Energy Center	10075	3	53
MN	Taconite Harbor Energy Center	10075	2	55
MN	Syl Laskin	1891	2	95
MN	Syl Laskin	1891	1	97
MN	Hoot Lake	1943	2	102
MN	Clay Boswell	1893	1	112
MN	Clay Boswell	1893	2	115
MN	Riverside (1927)	1927	6	126
MN	Riverside (1927)	1927	7	128
MN	Hoot Lake	1943	3	128
MN	High Bridge	1912	5	146
MN	Black Dog	1904	3	146
MN	High Bridge	1912	6	246
MN	Black Dog	1904	4	267
MN	Riverside (1927)	1927	8	399
MN	Clay Boswell	1893	3	593
MN	Allen S King	1915	1	794
MN	Clay Boswell	1893	4	1010
MN	Sherburne County	6090	2	1178
MN	Sherburne County	6090	1	1215
MN	Sherburne County	6090	3	1586
MO	Columbia	2123	6	9
MO	Columbia	2123	7	12
MO	Blue Valley	2132	3	33
MO	Chamois	2169	2	77
MO	James River	2161	3	84
MO	Sibley	2094	2	84
MO	Sibley	2094	1	89
MO	James River	2161	4	94
MO	Lake Road	2098	6	156
MO	James River	2161	5	182
MO	Meramec	2104	2	186
MO	Meramec	2104	1	187
MO	Meramec	2104	3	231
MO	Montrose	2080	1	271
MO	Montrose	2080	2	280
MO	Montrose	2080	3	295
MO	Asbury	2076	1	312
MO	Thomas Hill	2168	MB1	345
MO	Meramec	2104	4	384
MO	Southwest	6195	1	394
MO	Sikeston	6768	1	509
MO	Thomas Hill	2168	MB2	549
MO	Sibley	2094	3	585
MO	Sioux	2107	1	618
MO	Sioux	2107	2	638
MO	Hawthorn	2079	5A	809
MO	Labadie	2103	4	895
MO	Rush Island	6155	1	904
MO	Labadie	2103	1	930
MO	Rush Island	6155	2	931
MO	New Madrid	2167	1	948
MO	Labadie	2103	2	958
MO	Labadie	2103	3	1002
MO	New Madrid	2167	2	1031
MO	Iatan	6065	1	1134
MO	Thomas Hill	2168	MB3	1303
MS	R D Morrow	6061	2	259
MS	R D Morrow	6061	1	263

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
MS	Watson Electric Generating Plant	2049	4	325
MS	Red Hills Generation Facility	55076	AA002	329
MS	Red Hills Generation Facility	55076	AA001	355
MS	Watson Electric Generating Plant	2049	5	677
MS	Daniel Electric Generating Plant	6073	2	712
MS	Daniel Electric Generating Plant	6073	1	738
MT	Colstrip Energy Limited Partnership	10784	GEN 1	96
MT	Lewis & Clark	6089	B1	253
MT	J E Corette	2187	2	288
MT	Colstrip	6076	1	620
MT	Colstrip	6076	2	651
MT	Colstrip	6076	3	1342
MT	Colstrip	6076	4	1475
NC	Elizabethtown Power	10380	UNIT2	11
NC	Elizabethtown Power	10380	UNIT1	11
NC	Lumberton Power	10382	UNIT1	13
NC	Lumberton Power	10382	UNIT2	21
NC	Buck	2720	6	23
NC	Buck	2720	5	24
NC	Cliffside	2721	1	25
NC	Buck	2720	7	25
NC	Cliffside	2721	2	26
NC	Cliffside	2721	4	36
NC	Cliffside	2721	3	41
NC	Dwayne Collier Battle Cogeneration Facility	10384	1B	43
NC	Dwayne Collier Battle Cogeneration Facility	10384	2A	44
NC	Dan River	2723	1	44
NC	Dwayne Collier Battle Cogeneration Facility	10384	2B	44
NC	W H Weatherspoon	2716	2	46
NC	W H Weatherspoon	2716	1	46
NC	Dan River	2723	2	46
NC	Dwayne Collier Battle Cogeneration Facility	10384	1A	47
NC	Tobaccoville	50221	GEN 1	50
NC	Tobaccoville	50221	GEN 2	50
NC	Westmoreland-Lg&E Partners Roanoke Valley I	54755	2	70
NC	W H Weatherspoon	2716	3	73
NC	Riverbend	2732	8	75
NC	Lee	2709	2	78
NC	Lee	2709	1	79
NC	Riverbend	2732	7	79
NC	L V Sutton	2713	1	80
NC	L V Sutton	2713	2	84
NC	Dan River	2723	3	112
NC	Buck	2720	8	132
NC	Riverbend	2732	10	132
NC	Riverbend	2732	9	134
NC	Cape Fear	2708	5	142
NC	Buck	2720	9	152
NC	G DG Allen	2718	2	154
NC	G G Allen	2718	1	156
NC	Cape Fear	2708	6	172
NC	Westmoreland-Lg&E Partners Roanoke Valley I	54035	1	201
NC	Asheville	2706	2	238
NC	Lee	2709	3	249
NC	Asheville	2706	1	255
NC	G G Allen	2718	5	259
NC	G G Allen	2718	3	271
NC	G G Allen	2718	4	278
NC	L V Sutton	2713	3	372
NC	Roxboro	2712	4B	376
NC	Roxboro	2712	4A	405
NC	Roxboro	2712	3A	424
NC	Roxboro	2712	3B	426
NC	Roxboro	2712	1	427
NC	Marshall	2727	1	448
NC	Marshall	2727	2	464
NC	Mayo	6250	1B	479
NC	Mayo	6250	1A	501
NC	Cliffside	2721	5	616
NC	Marshall	2727	3	752
NC	Marshall	2727	4	753
NC	Roxboro	2712	2	793

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
NC	Belews Creek	8042	2	1408
NC	Belews Creek	8042	1	1430
ND	Stanton	2824	10	267
ND	R M Heskett	2790	B2	327
ND	Stanton	2824	1	538
ND	Leland Olds	2817	1	1003
ND	Milton R Young	2823	B1	1167
ND	Coyote	8222	B1	1974
ND	Leland Olds	2817	2	1985
ND	Antelope Valley	6469	B2	2192
ND	Antelope Valley	6469	B1	2210
ND	Milton R Young	2823	B2	2317
ND	Coal Creek	6030	2	2755
ND	Coal Creek	6030	1	2926
NE	Lon D Wright Power Plant	2240	8	99
NE	North Omaha	2291	1	120
NE	Gerald Whelan Energy Center	60	1	147
NE	North Omaha	2291	3	158
NE	North Omaha	2291	2	168
NE	Platte	59	1	172
NE	Sheldon	2277	1	200
NE	Sheldon	2277	2	203
NE	North Omaha	2291	4	212
NE	North Omaha	2291	5	283
NE	Nebraska City	6096	1	1093
NE	Gerald Gentleman Station	6077	2	1210
NE	Gerald Gentleman Station	6077	1	1216
NH	Schiller	2367	6	65
NH	Schiller	2367	5	71
NH	Schiller	2367	4	74
NH	Merrimack	2364	1	182
NH	Merrimack	2364	2	418
NJ	Carneys Point	10566	1002	89
NJ	Deepwater	2384	8	94
NJ	Carneys Point	10566	1001	105
NJ	B L England	2378	1	136
NJ	Logan Generating Plant	10043	1001	162
NJ	B L England	2378	2	167
NJ	Mercer Generating Station	2408	2	277
NJ	Mercer Generating Station	2408	1	291
NJ	Hudson	2403	2	600
NM	Four Corners	2442	1	362
NM	Four Corners	2442	2	369
NM	Four Corners	2442	3	457
NM	Prewitt Escalante Generating Statio	87	1	492
NM	San Juan	2451	1	637
NM	San Juan	2451	2	650
NM	San Juan	2451	3	990
NM	San Juan	2451	4	1014
NM	Four Corners	2442	4	1346
NM	Four Corners	2442	5	1375
NV	Reid Gardner	2324	3	185
NV	Reid Gardner	2324	1	186
NV	Reid Gardner	2324	2	192
NV	North Valmy	8224	1	324
NV	Reid Gardner	2324	4	395
NV	North Valmy	8224	2	407
NV	Mohave	2341	1	910
NV	Mohave	2341	2	971
NY	AES Hickling	2529	2	9
NY	AES Hickling	2529	1	10
NY	AES Jennison	2531	2	10
NY	AES Jennison	2531	1	10
NY	S A Carlson	2682	11	11
NY	S A Carlson	2682	10	12
NY	S A Carlson	2682	9	14
NY	AES Jennison	2531	3	17
NY	AES Jennison	2531	4	17
NY	S A Carlson	2682	12	21
NY	Black River Power Generation	10464	E0001	30
NY	Black River Power Generation	10464	E0002	30
NY	Black River Power Generation	10464	E0003	30

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
NY	AES Hickling	2529	4	32
NY	AES Hickling	2529	3	32
NY	AES Greenidge	2527	5	35
NY	AES Greenidge	2527	4	35
NY	AES Westover (Goudey)	2526	12	35
NY	AES Westover (Goudey)	2526	11	36
NY	Rochester 7—Russell Station	2642	1	55
NY	WPS Empire State, Inc Niagara Falls	50202	1	58
NY	Rochester 3—Beebee Station	2640	12	67
NY	Rochester 7—Russell Station	2642	2	72
NY	Rochester 7—Russell Station	2642	3	72
NY	Huntley Power	2549	63	78
NY	Huntley Power	2549	64	90
NY	Huntley Power	2549	65	97
NY	Rochester 7—Russell Station	2642	4	99
NY	Huntley Power	2549	66	106
NY	AES Westover (Goudey)	2526	13	120
NY	Dunkirk	2554	1	132
NY	Dunkirk	2554	2	142
NY	AES Greenidge	2527	6	155
NY	Dynegy Danskammer	2480	3	157
NY	Dunkirk	2554	3	211
NY	Lovett	2629	4	212
NY	Lovett	2629	5	219
NY	AES Cayuga (Milliken)	2535	2	229
NY	AES Cayuga (Milliken)	2535	1	231
NY	Dunkirk	2554	4	233
NY	Huntley Power	2549	67	246
NY	Huntley Power	2549	68	259
NY	Dynegy Danskammer	2480	4	327
NY	AES Somerset (Kintigh)	6082	1	943
OH	R E Burger	2864	6	11
OH	R E Burger	2864	5	11
OH	Ashtabula	2835	8	13
OH	O H Hutchings	2848	H–1	16
OH	Ashtabula	2835	10	16
OH	O H Hutchings	2848	H–2	16
OH	Ashtabula	2835	11	23
OH	Miami Fort	2832	5–2	36
OH	Miami Fort	2832	5–1	36
OH	O H Hutchings	2848	H–5	38
OH	O H Hutchings	2848	H–4	38
OH	O H Hutchings	2848	H–3	38
OH	O H Hutchings	2848	H–6	40
OH	Hamilton Municipal Power Plant	2917	9	58
OH	Richard Gorsuch	7286	1	85
OH	Richard Gorsuch	7286	2	86
OH	Avon Lake Power Plant	2836	10	89
OH	Richard Gorsuch	7286	4	90
OH	Richard Gorsuch	7286	3	91
OH	Picway	2843	9	93
OH	Conesville	2840	1	124
OH	Conesville	2840	2	124
OH	Niles	2861	2	125
OH	Eastlake	2837	1	127
OH	Walter C Beckjord	2830	2	129
OH	Walter C Beckjord	2830	1	130
OH	Eastlake	2837	2	131
OH	Eastlake	2837	3	136
OH	Conesville	2840	3	136
OH	Lake Shore	2838	18	137
OH	Niles	2861	1	137
OH	R E Burger	2864	8	172
OH	Bay Shore	2878	3	177
OH	Muskingum River	2872	2	177
OH	Bay Shore	2878	1	181
OH	Bay Shore	2878	2	183
OH	Walter C Beckjord	2830	3	184
OH	R E Burger	2864	7	198
OH	Muskingum River	2872	1	201
OH	Muskingum River	2872	3	206
OH	Muskingum River	2872	4	207

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
OH	Walter C Beckjord	2830	4	223
OH	Eastlake	2837	4	225
OH	W H Sammis	2866	2	241
OH	W H Sammis	2866	1	244
OH	W H Sammis	2866	3	247
OH	Ashtabula	2835	7	248
OH	Miami Fort	2832	6	250
OH	W H Sammis	2866	4	251
OH	Kyger Creek	2876	5	269
OH	Kyger Creek	2876	2	271
OH	Kyger Creek	2876	4	273
OH	Kyger Creek	2876	3	273
OH	Kyger Creek	2876	1	281
OH	Bay Shore	2878	4	283
OH	Walter C Beckjord	2830	5	288
OH	W H Sammis	2866	5	374
OH	Conesville	2840	5	432
OH	Conesville	2840	6	435
OH	Walter C Beckjord	2830	6	532
OH	Cardinal	2828	1	562
OH	Eastlake	2837	5	591
OH	Cardinal	2828	2	630
OH	J M Stuart	2850	3	646
OH	Miami Fort	2832	8	646
OH	Avon Lake Power Plant	2836	12	680
OH	Miami Fort	2832	7	680
OH	Muskingum River	2872	5	689
OH	Cardinal	2828	3	695
OH	J M Stuart	2850	4	707
OH	J M Stuart	2850	1	711
OH	J M Stuart	2850	2	722
OH	W H Sammis	2866	7	726
OH	Conesville	2840	4	727
OH	W H Sammis	2866	6	766
OH	Killen Station	6031	2	919
OH	Gen J M Gavin	8102	1	1573
OH	W H Zimmer	6019	1	1667
OH	Gen J M Gavin	8102	2	1700
OK	Aes Shady Point, Inc	10671	GEN2	254
OK	Aes Shady Point, Inc	10671	GEN1	260
OK	Hugo	6772	1	732
OK	Muskogee	2952	4	796
OK	Grand River Dam Authority	165	1	834
OK	Sooner	6095	2	843
OK	Muskogee	2952	6	861
OK	Northeastern	2963	3314	878
OK	Muskogee	2952	5	883
OK	Grand River Dam Authority	165	2	902
OK	Northeastern	2963	3313	924
OK	Sooner	6095	1	952
OR	Boardman	6106	1SG	948
PA	Seward	3130	12	24
PA	Willamette Industries	54638	040	28
PA	Willamette Industries	54638	041	28
PA	Seward	3130	14	30
PA	AES Beaver Valley Partners	10676	035	41
PA	Piney Creek Power Plant	54144	031	55
PA	Johnsonburg Mill	54638	54638	56
PA	Sunbury	3152	2A	59
PA	Sunbury	3152	1B	61
PA	Sunbury	3152	2B	62
PA	Westwood	50611	031	62
PA	Hunlock Power Station	3176	6	67
PA	Sunbury	3152	1A	68
PA	Panther Creek Energy Facility	50776	1	72
PA	Panther Creek Energy Facility	50776	2	72
PA	AES Beaver Valley Partners	10676	033	72
PA	AES Beaver Valley Partners	10676	034	74
PA	Gilberton Power Company	10113	031	75
PA	Gilberton Power Company	10113	032	75
PA	Scrubgrass Generating Plant	50974	1	76
PA	Scrubgrass Generating Plant	50974	2	76

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
PA	Cambria Cogen	10641	1	76
PA	Cambria Cogen	10641	2	76
PA	Titus	3115	2	81
PA	Titus	3115	3	84
PA	Titus	3115	1	84
PA	Foster Wheeler Mt. Carmel	10343	SG–101	84
PA	AES Beaver Valley Partners	10676	032	86
PA	Wheelabrator—Frackville	50879	GEN1	91
PA	Northeastern Power Company	50039	031	96
PA	Ebensburg Power Company	10603	031	98
PA	New Castle	3138	3	108
PA	Elrama	3098	3	110
PA	Elrama	3098	1	113
PA	New Castle	3138	4	116
PA	Elrama	3098	2	122
PA	Martins Creek	3148	1	139
PA	Martins Creek	3148	2	141
PA	Sunbury	3152	3	141
PA	Sunbury	3152	4	143
PA	Colver Power Project	10143	AAB01	146
PA	Portland	3113	1	150
PA	Shawville	3131	1	151
PA	New Castle	3138	5	152
PA	Northampton Generating Plant	50888	NGC01	154
PA	Shawville	3131	2	160
PA	Seward	3130	15	172
PA	St. Nicholas Cogeneration Project	54634	1	173
PA	Cromby	3159	1	194
PA	Shawville	3131	3	203
PA	Armstrong	3178	2	209
PA	Portland	3113	2	211
PA	Shawville	3131	4	212
PA	Armstrong	3178	1	213
PA	Elrama	3098	4	295
PA	Mitchell	3181	33	311
PA	Brunner Island	3140	1	313
PA	Eddystone	3161	1	322
PA	Eddystone	3161	2	346
PA	Brunner Island	3140	2	389
PA	Hatfields Ferry	3179	2	592
PA	Hatfields Ferry	3179	1	628
PA	Hatfields Ferry	3179	3	660
PA	Cheswick	8226	1	665
PA	Homer City	3122	2	795
PA	Brunner Island	3140	3	804
PA	Homer City	3122	3	821
PA	Montour	3149	2	825
PA	Montour	3149	1	856
PA	Homer City	3122	1	859
PA	Bruce Mansfield	6094	2	922
PA	Bruce Mansfield	6094	1	928
PA	Bruce Mansfield	6094	3	950
PA	Keystone	3136	1	1147
PA	Keystone	3136	2	1168
PA	Conemaugh	3118	2	1194
PA	Conemaugh	3118	1	1202
SC	W S Lee	3264	1	60
SC	W S Lee	3264	2	68
SC	Urquhart	3295	URQ1	76
SC	Urquhart	3295	URQ2	80
SC	Dolphus M Grainger	3317	2	84
SC	Dolphus M Grainger	3317	1	91
SC	Urquhart	3295	URQ3	116
SC	W S Lee	3264	3	117
SC	Canadys Steam	3280	CAN1	123
SC	Canadys Steam	3280	CAN2	129
SC	McMeekin	3287	MCM1	161
SC	Canadys Steam	3280	CAN3	163
SC	McMeekin	3287	MCM2	165
SC	H B Robinson	3251	1	184
SC	Jefferies	3319	3	186
SC	Jefferies	3319	4	195

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
SC	Winyah	6249	1	361
SC	Winyah	6249	2	371
SC	Winyah	6249	4	373
SC	Wateree	3297	WAT1	387
SC	Wateree	3297	WAT2	389
SC	Winyah	6249	3	403
SC	Cope Station	7210	COP1	575
SC	Cross	130	1	729
SC	Cross	130	2	810
SC	Williams	3298	WIL1	841
SD	Big Stone	6098	1	899
TN	Johnsonville	3406	5	149
TN	Johnsonville	3406	6	151
TN	Johnsonville	3406	3	161
TN	Johnsonville	3406	10	162
TN	Johnsonville	3406	4	163
TN	Johnsonville	3406	1	164
TN	Johnsonville	3406	7	166
TN	Johnsonville	3406	2	168
TN	Kingston	3407	1	179
TN	Johnsonville	3406	8	181
TN	Johnsonville	3406	9	185
TN	Kingston	3407	3	189
TN	Kingston	3407	2	190
TN	Kingston	3407	4	191
TN	John Sevier	3405	1	239
TN	Kingston	3407	7	240
TN	John Sevier	3405	2	242
TN	Kingston	3407	9	245
TN	Kingston	3407	6	251
TN	Kingston	3407	8	253
TN	Kingston	3407	5	259
TN	John Sevier	3405	4	263
TN	John Sevier	3405	3	267
TN	Allen	3393	1	299
TN	Allen	3393	3	327
TN	Allen	3393	2	332
TN	Gallatin	3403	2	368
TN	Gallatin	3403	1	371
TN	Gallatin	3403	3	408
TN	Gallatin	3403	4	422
TN	Bull Run	3396	1	1034
TN	Cumberland	3399	1	1825
TN	Cumberland	3399	2	2042
TX	TNP One	7030	U1	675
TX	Harrington Station	6193	061B	711
TX	Harrington Station	6193	062B	716
TX	Harrington Station	6193	063B	735
TX	TNP One	7030	U2	738
TX	Gibbons Creek	6136	1	745
TX	J T Deely	6181	1	767
TX	J T Deely	6181	2	778
TX	Sam Seymour	6179	3	823
TX	Coleto Creek	6178	1	903
TX	Welsh Power Plant	6139	3	955
TX	Tolk Station	6194	171B	966
TX	Sam Seymour	6179	1	970
TX	Tolk Station	6194	172B	984
TX	Welsh Power Plant	6139	1	987
TX	Welsh Power Plant	6139	2	990
TX	J K Spruce	7097	**1	1006
TX	Sam Seymour	6179	2	1014
TX	W A Parish	3470	WAP8	1050
TX	W A Parish	3470	WAP7	1086
TX	W A Parish	3470	WAP6	1276
TX	W A Parish	3470	WAP5	1301
TX	Oklaunion Power Station	127	1	1353
TX	San Miguel	6183	SM–1	2040
TX	Monticello	6147	1	2434
TX	Big Brown	3497	2	2435
TX	Monticello	6147	2	2545
TX	Big Brown	3497	1	2596

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
TX	Monticello	6147	3	2599
TX	H W Pirkey Power Plant	7902	1	2694
TX	Sandow	6648	4	2871
TX	Limestone	298	LIM2	3260
TX	Martin Lake	6146	1	3337
TX	Martin Lake	6146	2	3433
TX	Martin Lake	6146	3	3490
TX	Limestone	298	LIM1	3525
UT	Sunnyside Cogeneration Associates	50951	GEN1	90
UT	Carbon	3644	1	119
UT	Carbon	3644	2	175
UT	Hunter (Emery)	6165	3	634
UT	Huntington	8069	1	642
UT	Hunter (Emery)	6165	1	646
UT	Huntington	8069	2	657
UT	Hunter (Emery)	6165	2	678
UT	Bonanza	7790	1–1	746
UT	Intermountain	6481	1SGA	1339
UT	Intermountain	6481	2SGA	1429
VA	Hopewell Power Station	10771	1	9
VA	Hopewell Power Station	10771	2	9
VA	Altavista Power Station	10773	1	28
VA	Altavista Power Station	10773	2	28
VA	Cogentrix of Richmond	54081	BLR04B	31
VA	Cogentrix of Richmond	54081	BLR03B	31
VA	Southampton Power Station	10774	1	32
VA	Cogentrix of Richmond	54081	BLR04A	32
VA	Southampton Power Station	10774	2	32
VA	Cogentrix of Richmond	54081	BLR03A	33
VA	Cogentrix of Richmond	54081	BLR01B	44
VA	Cogentrix of Richmond	54081	BLR01A	44
VA	Cogentrix of Richmond	54081	BLR02A	45
VA	Cogentrix of Richmond	54081	BLR02B	45
VA	Mecklenburg Cogeneration Facility	52007	1	55
VA	Glen Lyn	3776	51	57
VA	Glen Lyn	3776	52	63
VA	Mecklenburg Cogeneration Facility	52007	2	69
VA	Potomac River	3788	1	79
VA	Potomac River	3788	2	81
VA	Bremo	3796	3	99
VA	Potomac River	3788	5	121
VA	Potomac River	3788	4	130
VA	Possum Point Power Station	3804	3	131
VA	Potomac River	3788	3	133
VA	Chesterfield	3797	3	133
VA	Chesapeake	3803	1	170
VA	Chesapeake	3803	2	175
VA	Birchwood Power Facility	54304	01	182
VA	Bremo	3796	4	203
VA	Yorktown	3809	1	203
VA	Chesterfield	3797	4	211
VA	Chesapeake	3803	3	214
VA	Yorktown	3809	2	219
VA	Clinch River	3775	2	280
VA	Glen Lyn	3776	6	281
VA	Clinch River	3775	1	281
VA	Possum Point Power Station	3804	4	282
VA	Clinch River	3775	3	307
VA	Chesapeake	3803	4	310
VA	Chesterfield	3797	5	406
VA	Clover Power Station	7213	1	651
VA	Clover Power Station	7213	2	668
VA	Chesterfield	3797	6	837
WA	Centralia	3845	BW21	1224
WA	Centralia	3845	BW22	1243
WI	Stoneman	4146	B1	5
WI	Stoneman	4146	B2	5
WI	Alma	4140	B2	10
WI	Alma	4140	B1	11
WI	Alma	4140	B3	12
WI	Manitowoc	4125	7	20
WI	Blount Street	3992	7	20

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
WI	Manitowoc	4125	6	20
WI	Manitowoc	4125	8	26
WI	Bay Front	3982	5	30
WI	Pulliam	4072	3	31
WI	Blount Street	3992	8	42
WI	Pulliam	4072	4	43
WI	Blount Street	3992	9	50
WI	Alma	4140	B4	57
WI	Port Washington	4040	1	69
WI	Port Washington	4040	4	73
WI	Port Washington	4040	2	76
WI	Alma	4140	B5	77
WI	Valley (Wepco)	4042	1	77
WI	Port Washington	4040	3	78
WI	Valley (Wepco)	4042	2	78
WI	Rock River	4057	1	79
WI	Valley (Wepco)	4042	3	87
WI	Valley (Wepco)	4042	4	88
WI	Rock River	4057	2	88
WI	Pulliam	4072	5	88
WI	Weston	4078	1	104
WI	Edgewater (4050)	4050	3	115
WI	Pulliam	4072	6	135
WI	Weston	4078	2	160
WI	Pulliam	4072	7	166
WI	Nelson Dewey	4054	1	169
WI	Nelson Dewey	4054	2	172
WI	Pulliam	4072	8	246
WI	South Oak Creek	4041	5	317
WI	South Oak Creek	4041	6	332
WI	Genoa	4143	1	411
WI	Edgewater (4050)	4050	4	449
WI	South Oak Creek	4041	8	461
WI	South Oak Creek	4041	7	466
WI	J P Madgett	4271	B1	575
WI	Weston	4078	3	676
WI	Edgewater (4050)	4050	5	680
WI	Columbia	8023	1	963
WI	Columbia	8023	2	979
WI	Pleasant Prairie	6170	2	1164
WI	Pleasant Prairie	6170	1	1206
WV	Rivesville	3945	7	28
WV	North Branch Power Station	7537	1B	41
WV	North Branch Power Station	7537	1A	42
WV	Morgantown Energy Facility	10743	1	53
WV	Morgantown Energy Facility	10743	2	53
WV	Albright	3942	2	70
WV	Albright	3942	1	71
WV	Willow Island	3946	1	79
WV	Grant Town Power Plant	10151	1A	82
WV	Grant Town Power Plant	10151	1B	82
WV	Rivesville	3945	8	84
WV	Phil Sporn	3938	21	160
WV	Phil Sporn	3938	31	170
WV	Phil Sporn	3938	11	171
WV	Phil Sporn	3938	41	178
WV	Albright	3942	3	183
WV	Willow Island	3946	2	211
WV	Kanawha River	3936	1	238
WV	Kanawha River	3936	2	240
WV	Kammer	3947	1	252
WV	Kammer	3947	2	258
WV	Kammer	3947	3	262
WV	Phil Sporn	3938	51	443
WV	Fort Martin	3943	2	680
WV	Fort Martin	3943	1	698
WV	Pleasants	6004	2	742
WV	Mount Storm Power Station	3954	2	761
WV	Pleasants	6004	1	768
WV	Mount Storm Power Station	3954	3	798
WV	Mitchell	3948	1	810
WV	Mount Storm Power Station	3954	1	849

State	Facility name	Plant ID	Unit ID	Phase II Hg allocation (ounces)
WV	Mitchell	3948	2	861
WV	John E Amos	3935	2	888
WV	Harrison	3944	2	893
WV	John E Amos	3935	1	904
WV	Harrison	3944	1	910
WV	Harrison	3944	3	942
WV	John E Amos	3935	3	1313
WV	Mountaineer (1301)	6264	1	1447
WY	Neil Simpson II	7504	001	210
WY	Dave Johnston	4158	BW42	246
WY	Dave Johnston	4158	BW41	247
WY	Naughton	4162	1	343
WY	Naughton	4162	2	430
WY	Dave Johnston	4158	BW43	503
WY	Naughton	4162	3	669
WY	Dave Johnston	4158	BW44	835
WY	Wyodak	6101	BW91	869
WY	Jim Bridger	8066	BW73	1049
WY	Jim Bridger	8066	BW74	1057
WY	Laramie River	6204	2	1063
WY	Jim Bridger	8066	BW71	1089
WY	Laramie River	6204	1	1095
WY	Jim Bridger	8066	BW72	1149
WY	Laramie River	6204	3	1161

List of Subjects

40 CFR Part 60

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

40 CFR Part 72 and 75

Air pollution control, carbon dioxide, Continuous emissions monitors, Electric utilities, Environmental protection, Incorporation by reference, Mercury, Nitrogen oxides, Reporting and recordkeeping requirements, Sulfur dioxide.

For the reasons set forth in the preamble, parts 60, 72, and 75 of chapter 1 of title 40 of the Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7426, and 7601.

2. Section 60.21 is amended by revising paragraph (f) and adding paragraph (k) to read as follows:

§ 60.21 Definitions.

* * * * *

(f) *Emission standard* means a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, establishing an allowance system or prescribing equipment specifications for control of air pollution emissions.

* * * * *

(k) *Allowance system* means a control program under which the owner or operator of each designated facility is required to hold an authorization for each specified unit of designated pollutant emitted from that facility during a specified period.

3–4. Section 60.24(b)(1) is revised to read as follows:

§ 60.24 Emission standards and compliance schedules.

* * * * *

(b) * * *

(1) *Emission standards* shall either be based on an allowance system or prescribe allowable rates of emissions except when it is clearly impracticable.

* * * * *

5. Subpart HHHH is added to read as follows:

Subpart HHHH—Emission Guidelines and Compliance Times for Coal-Fired Elextric Steam Generating Units

Hg Budget Trading Program General Provisions

Sec.
60.4101 Purpose.
60.4102 Definitions.
60.4103 Measurements, abbreviations, and acronyms.
60.4104 Applicability.
60.4105 Retired unit exemption.
60.4106 Standard requirements.
60.4107 Computation of time.

Hg Authorized Account Representative for Hg Budget Sources

60.4110 Authorization and responsibilities of Hg authorized account representative.
60.4111 Alternate Hg authorized account representative.
60.4112 Changing Hg authorized account representative and alternate Hg authorized account representative; changes in owners and operators.
60.4113 Account certificate of representation.
60.4114 Objections concerning Hg authorized account representative.

Permits

60.4120 General Hg Budget Trading Program permit requirements.
60.4121 Submission of Hg Budget permit applications.
60.4122 Information requirements for Hg Budget permit applications.
60.4123 Hg Budget permit contents.
60.4124 Hg Budget permit revisions.

Compliance Certification

60.4130 Compliance certification report.
60.4131 Administrator's action on compliance certifications.

Hg Allowance Allocations

60.4140 State trading program budget.
60.4141 Timing requirements for Hg allowance allocations.
60.4142 Hg allowance allocations.
60.4143 Hg safety valve provisions.

Hg Allowance Tracking System

60.4150 Hg Allowance Tracking System accounts.
60.4151 Establishment of accounts.
60.4152 Hg Allowance Tracking System responsibilities of Hg authorized account representative.
60.4153 Recordation of Hg allowance allocations.
60.4154 Compliance.
60.4155 Banking.
60.4156 Account error.
60.4157 Closing of general accounts.

Hg Allowance Transfers

60.4160 Submission of Hg allowance transfers.

60.4161 EPA recordation.
60.4162 Notification.

Monitoring and Reporting

60.4170 General requirements.
60.4171 Initial certification and recertification procedures.
60.4172 Out of control periods.
60.4173 Notifications.
60.4174 Recordkeeping and reporting.
60.4175 Petitions.
60.4176 Additional requirements to provide heat input data.

Subpart HHHH—Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units

Hg Budget Trading Program General Provisions

§ 60.4101 Purpose.

This subpart establishes the model rule comprising general provisions and the applicability, permitting, allowance, excess emissions, and monitoring for the state Hg Budget Trading Program, under section 111 of the CAA and § 52.34 of this chapter, as a means of reducing national mercury emissions.

§ 60.4102 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each Hg Allowance Tracking System account.

Adjusted baseline heat input means, with regard to a unit, the unit's baseline heat input multiplied by:

(1) 1.0, for the portion of the baseline heat input that is the unit's average annual combustion of bituminous during the years on which the unit's baseline heat input is based;

(2) 3.0, for the portion of the baseline heat input that is the unit's average annual combustion of lignite during the years on which the unit's baseline heat input is based;

(3) 1.25, for the portion of the baseline heat input that is the unit's average annual combustion of subbituminous during the years on which the unit's baseline heat input is based;

(4) 1.0, for the portion of the baseline heat input that is not covered by paragraphs (1), (2), or (3) of this definition or for the entire baseline heat input if such baseline heat input is not based on the unit's heat input in specified years; and

(5) 1.0, for the portion of the baseline heat input that is the new unit's average annual combustion during the years on which the new unit's baseline heat input is based.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or *allocation* means, with regard to Hg allowances, the determination by the Administrator of the number of Hg allowances to be initially credited to a Hg Budget unit or an allocation set-aside.

Automated data acquisition and handling system or *DAHS* means that component of the CEMS, or other emissions monitoring system approved for use under §§ 60.4170 through 60.4176, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by §§ 60.4170 through 60.4176.

Boiler means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Clean Air Act means the Clean Air Act, 42 U.S.C. 7401, *et seq.,* as amended by Pub. L. 101–549 (November 15, 1990).

Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.

Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.

Coal-fired with regard to a unit means, combusting coal or any coal-derived fuel alone or in combination with any amount of any other fuel in any year.

Combustion unit means a coal-fired stationary boiler or combustion turbine.

Commence commercial operation means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in § 60.4105 of, for a unit that is a Hg Budget unit under § 60.4104(a) on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in § 60.4105, for a unit that is not a Hg Budget unit under § 60.4104(a) on the date the unit commences commercial operation, the date the unit becomes a Hg Budget unit under § 60.4104(a) shall be the unit's date of commencement of commercial operation.

Commence operation means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in § 60.4105 for a unit that is a Hg Budget unit under § 60.4104(a) on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in § 60.4105, for a unit that is not a Hg Budget unit under § 60.4104(a) on the date of commencement of operation, the date the unit becomes a Hg Budget unit under § 60.4104(a) shall be the unit's date of commencement of operation.

Common stack means a single flue through which emissions from two or more units are exhausted.

Compliance account means a Hg Allowance Tracking System account, established by the Administrator for a Hg Budget source under §§ 60.4150 through 60.4157, in which the Hg allowance allocations for the source are initially recorded and in which are held Hg allowances available for use by the source for a control period for the purpose of meeting the source's Hg Budget emissions limitation.

Continuous emission monitoring system or *CEMS* means the equipment required under §§ 60.4170 through 60.4176 to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of mercury (Hg) emissions, stack gas volumetric flow rate or stack gas moisture content, in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under §§ 60.4170 through 60.4176:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated DAHS. A flow monitoring system provides a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh);

(2) A Hg concentration monitoring system, consisting of a Hg pollutant concentration monitor and an automated DAHS. A Hg concentration monitoring system provides a permanent, continuous record of Hg emissions in units of micrograms per dry standard cubic meter (μg/dscm);

(3) A Hg emission rate (or Hg-diluent) monitoring system, consisting of a Hg pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated DAHS. A Hg-diluent

monitoring system provides a permanent, continuous record of: Hg concentration in units of μg/dscm, diluent gas concentration in units of percent CO_2 or O_2 (percent CO_2 or O_2), and Hg emission rate in units of pounds per trillion British thermal units (lbs/10^{12} Btu); and

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter. A moisture monitoring system provides a permanent, continuous record of the stack gas moisture content, in units of percent H_2O (% H_2O).

Control period means the period beginning January 1 of a year and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the Hg authorized account representative and as determined by the Administrator in accordance with §§ 60.4170 through 60.4176.

Energy Information Administration means the Energy Information Administration of the United States Department of Energy.

Excess emissions means any ounces of mercury emitted by the Hg Budget units at a Hg Budget source during a control period that exceeds the Hg Budget emissions limitation for the source.

General account means a Hg Allowance Tracking System account, established under this subpart, that is not a compliance account.

Generator means a device that produces electricity.

Heat input means, with regard to a specified period to time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the Hg authorized account representative and as determined by the Administrator in accordance with this subpart. Heat input does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Hg allowance means a limited authorization by the Administrator under the Hg Budget Trading Program to emit up to one ounce of mercury during the control period of the specified year or of any year thereafter. No provision of the Hg Budget Trading Program, the Hg Budget permit application, the Hg Budget permit, or an exemption under § 60.4105 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization, which does not constitute a property right.

Hg allowance deduction or *deduct Hg allowances* means the permanent withdrawal of Hg allowances by the Administrator from a Hg Allowance Tracking System compliance account to account for the number of ounces of Hg emissions from all Hg Budget units at a Hg Budget source for a control period, determined in accordance with §§ 60.4150 through 60.4157 and §§ 60.4170 through 60.4176.

Hg allowances held or *hold Hg allowances* means the Hg allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with §§ 60.4150 through 60.4162, in a Hg Allowance Tracking System account.

Hg Allowance Tracking System (MATS) means the system by which the Administrator records allocations, deductions, and transfers of Hg allowances under the Hg Budget Trading Program.

Hg Allowance Tracking System account means an account in the Hg Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of Hg allowances.

Hg allowance transfer deadline means midnight of March 1 or, if March 1 is not a business day, midnight of the first business day thereafter and is the deadline by which Hg allowances must be submitted for recordation in a Hg Budget source's compliance account, in order to meet the source's Hg Budget emissions limitation for the control period immediately preceding such deadline.

Hg authorized account representative means, for a Hg Budget source or Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all Hg Budget units at the source, in accordance with this subpart, to represent and legally bind each owner and operator in matters pertaining to the Hg Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with this subpart, to transfer or otherwise dispose of Hg allowances held in the general account.

Hg Budget emissions limitation means, for a Hg Budget source, the ounce equivalent of the Hg allowances available for compliance deduction for the source under § 60.4154(a) and (b) in a control period adjusted by deductions of such Hg allowances to account for actual heat input under § 60.4142(e) for the control period or to account for excess emissions for a prior control period under § 60.4154(d).

Hg Budget permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under this part, including any permit revisions, specifying the Hg Budget Trading Program requirements applicable to a Hg Budget source, to each Hg Budget unit at the Hg Budget source, and to the owners and operators and the Hg authorized account representative of the Hg Budget source and each Hg Budget unit.

Hg Budget source means a source that includes one or more Hg Budget units.

Hg Budget Trading Program means a multi-state mercury air pollution control and emission reduction program established by the Administrator in accordance with this part and pursuant to § 51.XX of this chapter, as a means of reducing national mercury emissions.

Hg Budget unit means a unit that is subject to the Hg Budget Trading Program emissions limitation under § 60.4104.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the ability of a unit to combust a stated maximum amount of fuel per hour (in mmBtu/hr) on a steady state basis, as specified by the manufacturer of the unit as of the unit's initial installation and based on the physical design and physical characteristics of the unit.

Maximum potential Hg emission rate means the emission rate of mercury (in lb /10^{12} Btu) calculated in accordance with section 2.1.7.1(b) of appendix A to part 75 of this chapter, using the maximum potential concentration of Hg under section 2.1.7.1 of appendix A to part 75 of this chapter, and either the maximum oxygen concentration (in percent O_2) or the minimum carbon dioxide concentration (in percent CO_2), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

Maximum potential hourly heat input means an hourly heat input (in mmBtu/hr) used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of part 75 of this chapter to report heat input, this value should be calculated, in accordance with part 75 of this chapter, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with part 75 of this chapter, using the maximum potential flowrate and either the maximum carbon dioxide concentration (in percent CO_2) or the minimum oxygen concentration (in percent O_2).

Maximum rated hourly heat input means a unit specific maximum hourly heat input (in mmBtu/hr) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

Monitoring system means any monitoring system that meets the requirements of this subpart, including a continuous emissions monitoring system or an alternative monitoring system.

Nameplate capacity means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as specified by the manufacturer as of the initial installation of the unit or, if the unit is subsequently modified, reconstructed, or repowered resulting in an increase in maximum heat input, as specified by the person conducting the modification, reconstruction, or repowering.

Operator means any person who operates, controls, or supervises a Hg Budget unit or a Hg Budget source is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Ounce means 2.8×10^7 micrograms. For the purpose of determining compliance with the Hg Budget emissions limitation, total ounces for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emissions rates) in accordance with this part, with any remaining fraction of an ounce equal to or greater than 0.50 ounce deemed to equal one ounce and any fraction of an ounce less than 0.50 ounce deemed to equal zero ounces.

Owner means any of the following persons:

(1) Any holder of any portion of the legal or equitable title in a Hg Budget unit; or

(2) Any holder of a leasehold interest in a Hg Budget unit; or

(3) Any purchaser of power from a Hg Budget unit under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the Hg Budget unit; or

(4) With respect to any general account, any person who has an ownership interest with respect to the Hg allowances held in the general account and who is subject to the binding agreement for the Hg authorized account representative to represent that person's ownership interest with respect to Hg allowances.

Percent monitor data availability means, for purposes of § 60.4143(a)(1), total unit operating hours for which quality-assured data were recorded under §§ 60.4170 through 60.4176 in a control period, divided by the total number of unit operating hours in the control period, and multiplied by 100 percent.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the Hg Budget Trading Program in accordance with §§ 60.4120 through 60.4124.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or recorded means, with regard to Hg allowances, the movement of Hg allowances by the Administrator from one Hg Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Serial number means, when referring to Hg allowances, the unique identification number assigned to each Hg allowance by the Administrator, under § 60.4153(f).

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a ''source,'' including a ''source'' with multiple units, shall be considered a single ''facility.''

State means one of the 50 States or the District of Columbia that is specified in this part.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any ''submission,'' ''service,'' or ''mailing'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or *hour of unit operation* means any hour (or fraction of an hour) during which a unit combusts any fuel.

§ 60.4103 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu—British thermal unit.
CO_2—carbon dioxide.
Hg—mercury.
hr—hour.
kW—kilowatt electrical.
kWh—kilowatt hour.

mmBtu—million Btu.
MWe—megawatt electrical.
O_2—oxygen.

§ 60.4104 Applicability.

The following units in a State shall be Hg Budget units, and any source that includes one or more such units shall be a Hg Budget source, subject to the requirements of this part:

(a) A coal-fired combustion unit that serves a generator of more than 25 MW that produces electricity for sale.

(b) A coal-fired combustion unit that cogenerates steam and serves a generator that supplies more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale.

§ 60.4105 Retired unit exemption.

(a) This section applies to any Hg Budget unit that is permanently retired.

(b)(1) Any Hg Budget unit, that is permanently retired shall be exempt from the Hg Budget Trading Program, except for the provisions of this section, § 60.4102, § 60.4103, § 60.4104, § 60.4107, and §§ 60.4130 through 60.4162.

(2) The exemption under paragraph (b)(1) of this section shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the Hg authorized account representative shall submit a statement to the permitting authority otherwise responsible for administering any Hg Budget permit for the unit. The Hg authorized account representative shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit is permanently retired and will comply with the requirements of paragraph (c) of this section.

(3) After receipt of the notice under paragraph (b)(2) of this section, the permitting authority will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (b)(1) and (c) of this section.

(c) *Special provisions.* (1) A unit exempt under this section shall not emit any mercury, starting on the date that the exemption takes effect.

(2) The Permitting Authority will allocate Hg allowances under §§ 60.4140 through 60.4142 to a unit exempt under this section.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the Hg authorized account representative of a unit exempt under this section shall comply with the requirements of the Hg Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the Hg authorized account representative of the source submits a complete Hg Budget permit application under § 60.4122 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (b) of this section shall lose its exemption:

(i) The date on which the Hg authorized account representative submits a Hg Budget permit application under paragraph (c)(5) of this section;

(ii) The date on which the Hg authorized account representative is required under paragraph (c)(5) of this section to submit a Hg Budget permit application; or

(iii) The date on which the unit resumes operation, if the Hg authorized account representative is not required to submit a Hg Budget permit application for the unit.

(7) For the purpose of applying monitoring requirements under §§ 60.4170 through 60.4176 of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

§ 60.4106 Standard requirements.

(a) *Permit requirements.* (1) The Hg authorized account representative of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete Hg Budget permit application under § 60.4122 in accordance with the deadlines specified in § 60.4121(b) and (c);

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a Hg Budget permit application and issue or deny a Hg Budget permit.

(2) The owners and operators of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source shall have a Hg Budget permit issued by the permitting authority and operate the unit in compliance with such Hg Budget permit.

(3) The owners and operators of a Hg Budget source that is not otherwise required to have a title V operating permit are not required to submit a Hg Budget permit application, and to have a Hg Budget permit, under §§ 60.4120 through 60.4124 for such Hg Budget source.

(b) *Monitoring requirements.* (1) The owners and operators and, to the extent applicable, the Hg authorized account representative of each Hg Budget source and each Hg Budget unit at the source shall comply with the monitoring requirements of §§ 60.4170 through 60.4176.

(2) The emissions measurements recorded and reported in accordance with §§ 60.4170 through 60.4176 shall be used to determine compliance by the unit with the Hg Budget emissions limitation under paragraph (c) of this section.

(c) *Mercury emission requirements.* (1) As of the Hg allowance transfer deadline for a control period, the owners and operators of each Hg Budget source and each Hg Budget unit at the source shall hold Hg allowances available for compliance deductions under § 60.4154(a) and(b) as of the Hg allowance transfer deadline, in the source's compliance account in an amount not less than the total Hg emissions for the control period from all Hg Budget units at the source, as determined in accordance with this subpart, plus any amount necessary to account for actual heat input under § 60.4142(e) for the control period or to account for excess emissions for a prior control period under § 60.4154(d).

(2) Each ounce of mercury emitted in excess of the Hg Budget emissions limitation shall constitute a separate violation of this part, the Clean Air Act, and applicable State law.

(3) A Hg Budget unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of January 1, 2010 or the date on which the unit commences operation.

(4) Hg allowances shall be held in, deducted from, or transferred among Hg Allowance Tracking System accounts in accordance with §§ 60.4140 through 60.4162.

(5) A Hg allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1) of this section, for a control period in a year prior to the year for which the Hg allowance was allocated.

(6) A Hg allowance allocated by the Administrator under the Hg Budget Trading Program is a limited authorization to emit one ounce of mercury in accordance with the Hg Budget Trading Program. No provision of the Hg Budget Trading Program, the Hg Budget permit application, the Hg Budget permit and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

(7) A Hg allowance allocated by the Administrator under the Hg Budget Trading Program does not constitute a property right.

(8) Upon recordation by the Administrator under §§ 60.4150 through 60.4162, every allocation, transfer, or deduction of a Hg allowance to or from a Hg Budget unit's compliance account is incorporated automatically in any Hg Budget permit of the Hg Budget unit.

(d) *Excess emissions requirements.* (1) The owners and operators of a Hg Budget unit that has excess emissions in any control period shall:

(i) Surrender the Hg allowances required for deduction under § 60.4154(d)(1); and

(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under § 60.4154(d)(3).

(e) *Recordkeeping and reporting requirements.* (1) Unless otherwise provided, the owners and operators of the Hg Budget source and each Hg Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The account certificate of representation under § 60.4113 for the Hg authorized account representative for the source and each Hg Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new account certificate of representation under § 60.4113 changing the Hg authorized account representative.

(ii) All emissions monitoring information, in accordance with §§ 60.4170 through 60.4176; provided that to the extent that §§ 60.4170 through 60.4176 of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Hg Budget Trading Program.

(iv) Copies of all documents used to complete a Hg Budget permit application and any other submission under the Hg Budget Trading Program or to demonstrate compliance with the requirements of the Hg Budget Trading Program.

(2) The Hg authorized account representative of a Hg Budget source and each Hg Budget unit at the source shall submit the reports and compliance certifications required under the Hg Budget Trading Program, including those under §§ 60.4130 through 60.4131 and §§ 60.4170 through 60.4176.

(f) *Liability.* (1) Any person who knowingly violates any requirement or prohibition of the Hg Budget Trading Program, a Hg Budget permit, or an exemption under § 60.4105 shall be subject to enforcement pursuant to applicable State or Federal law.

(2) Any person who knowingly makes a false material statement in any record, submission, or report under the Hg Budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.

(3) No permit revision shall excuse any violation of the requirements of the Hg Budget Trading Program that occurs prior to the date that the revision takes effect.

(4) Each Hg Budget source and each Hg Budget unit shall meet the requirements of the Hg Budget Trading Program.

(5) Any provision of the Hg Budget Trading Program that applies to a Hg Budget source or the Hg authorized account representative of a Hg Budget source shall also apply to the owners and operators of such source and of the Hg Budget units at the source.

(6) Any provision of the Hg Budget Trading Program that applies to a Hg Budget unit or the Hg authorized account representative of a Hg budget unit shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under §§ 60.4170 through 60.4176, the owners and operators and the Hg authorized account representative of one Hg Budget unit shall not be liable for any violation by any other Hg Budget unit of which they are not owners or operators or the Hg authorized account representative and that is located at a source of which they are not owners or operators or the Hg authorized account representative.

(g) *Effect on other authorities.* No provision of the Hg Budget Trading Program, a Hg Budget permit application, a Hg Budget permit, or an exemption under § 60.4105 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the Hg authorized account representative of a Hg Budget source or Hg Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 60.4107 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the Hg Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the Hg Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the Hg Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

Hg Authorized Account Representative for Hg Budget Sources

§ 60.4110 Authorization and responsibilities of Hg authorized account representative.

(a) Except as provided under § 60.4111, each Hg Budget source, including all Hg Budget units at the source, shall have one and only one Hg authorized account representative, with regard to all matters under the Hg Budget Trading Program concerning the source or any Hg Budget unit at the source.

(b) The Hg authorized account representative of the Hg Budget source shall be selected by an agreement binding on the owners and operators of the source and all Hg Budget units at the source.

(c) Upon receipt by the Administrator of a complete account certificate of representation under § 60.4113, the Hg authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the Hg Budget source

represented and each Hg Budget unit at the source in all matters pertaining to the Hg Budget Trading Program, not withstanding any agreement between the Hg authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the Hg authorized account representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No Hg Budget permit shall be issued, and no Hg Allowance Tracking System account shall be established for a Hg Budget unit at a source, until the Administrator has received a complete account certificate of representation under § 60.4113 for a Hg authorized account representative of the source and the Hg Budget units at the source.

(e)(1) Each submission under the Hg Budget Trading Program shall be submitted, signed, and certified by the Hg authorized account representative for each Hg Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the Hg authorized account representative: ''I am authorized to make this submission on behalf of the owners and operators of the Hg Budget sources or Hg Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a Hg Budget source or a Hg Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 60.4111 Alternate Hg authorized account representative.

(a) An account certificate of representation may designate one and only one alternate Hg authorized account representative who may act on behalf of the Hg authorized account representative. The agreement by which the alternate Hg authorized account representative is selected shall include a procedure for authorizing the alternate Hg authorized account representative to act in lieu of the Hg authorized account representative.

(b) Upon receipt by the Administrator of a complete account certificate of representation under § 60.4113, any representation, action, inaction, or submission by the alternate Hg authorized account representative shall be deemed to be a representation, action, inaction, or submission by the Hg authorized account representative.

(c) Except in this section and §§ 60.4110(a), 60.4112, 60.4113, and 60.4151, whenever the term ''Hg authorized account representative'' is used in this subpart, the term shall be construed to include the alternate Hg authorized account representative.

§ 60.4112 Changing Hg authorized account representative and alternate Hg authorized account representative; changes in owners and operators.

(a) *Changing Hg authorized account representative.* The Hg authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under § 60.4113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new Hg authorized account representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.

(b) *Changing alternate Hg authorized account representative.* The alternate Hg authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under § 60.4113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new alternate Hg authorized account representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.

(c) *Changes in owners and operators.* (1) In the event a new owner or operator of a Hg Budget source or a Hg Budget unit is not included in the list of owners and operators submitted in the account certificate of representation under § 60.4113, such new owner or operator shall be deemed to be subject to and bound by the account certificate of representation, the representations, actions, inactions, and submissions of the Hg authorized account representative and any alternate Hg authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the permitting authority or the Administrator, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a Hg Budget source or a Hg Budget unit, including the addition of a new owner or operator, the Hg authorized account representative or alternate Hg authorized account representative shall submit a revision to the account certificate of representation under § 60.4113 amending the list of owners and operators to include the change.

§ 60.4113 Account certificate of representation.

(a) A complete account certificate of representation for a Hg authorized account representative or an alternate Hg authorized account representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the Hg Budget source and each Hg Budget unit at the source for which the account certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the Hg authorized account representative and any alternate Hg authorized account representative.

(3) A list of the owners and operators of the Hg Budget source and of each Hg Budget unit at the source.

(4) The following certification statement by the Hg authorized account representative and any alternate Hg authorized account representative: ''I certify that I was selected as the Hg authorized account representative or alternate Hg authorized account representative, as applicable, by an agreement binding on the owners and operators of the Hg Budget source and each Hg Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg Budget Trading Program on behalf of the owners and operators of the Hg Budget source and of each Hg Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the permitting

authority, the Administrator, or a court regarding the source or unit.''

(5) The signature of the Hg authorized account representative and any alternate Hg authorized account representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 60.4114 Objections concerning Hg authorized account representative.

(a) Once a complete account certificate of representation under § 60.4113 has been submitted and received, the permitting authority and the Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under § 60.4113 is received by the Administrator.

(b) Except as provided in § 60.4112(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the Hg authorized account representative shall affect any representation, action, inaction, or submission of the Hg authorized account representative or the finality of any decision or order by the permitting authority or the Administrator under the Hg Budget Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any Hg authorized account representative, including private legal disputes concerning the proceeds of Hg allowance transfers.

Permits

§ 60.4120 General Hg Budget Trading Program permit requirements.

(a) For each Hg Budget source required to have a title V operating permit, such permit shall include a Hg Budget permit administered by the permitting authority for the title V operating permit. The Hg Budget portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this subpart or subpart I of this part.

(b) Each Hg Budget permit shall contain all applicable Hg Budget Trading Program requirements and shall be a complete and segregable portion of the title V operating permit under paragraph (a) of this section.

§ 60.4121 Submission of Hg Budget permit applications.

(a) *Duty to apply.* The Hg authorized account representative of any Hg Budget source required to have a title V operating permit shall submit to the permitting authority a complete Hg Budget permit application under § 60.4122 by the applicable deadline in paragraph (b) of this section.

(b) *Application deadline.* (1) For any source, with one or more Hg Budget units under § 60.4104(a) that commence operation before [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], the Hg authorized account representative shall submit a complete Hg Budget permit application under § 60.4122 covering such Hg Budget units to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before January 1, 2010.

(2) For any source, with any Hg Budget unit under § 60.4104(a) that commences operation on or after [DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], the Hg authorized account representative shall submit a complete Hg Budget permit application under § 60.4122 covering such Hg Budget unit to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the Hg Budget unit commences operation.

(c) *Duty to Reapply.* For a Hg Budget source required to have a title V operating permit, the Hg authorized account representative shall submit a complete Hg Budget permit application under § 60.4122 for the Hg Budget source covering the Hg Budget units at the source in accordance with the permitting authority's title V operating permits regulations addressing operating permit renewal.

§ 60.4122 Information requirements for Hg Budget permit applications.

A complete Hg Budget permit application shall include the following elements concerning the Hg Budget source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the Hg Budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

(b) Identification of each Hg Budget unit at the Hg Budget source and whether it is a Hg Budget unit under § 60.4104(a); and

(c) The standard requirements under § 60.4106.

§ 60.4123 Hg Budget permit contents.

(a) Each Hg Budget permit will contain, in a format prescribed by the permitting authority, all elements required for a complete Hg Budget permit application under § 60.4122.

(b) Each Hg Budget permit is deemed to incorporate automatically the definitions of terms under § 60.4102 and, upon recordation by the Administrator under §§ 60.4150 through 60.4162, every allocation, transfer, or deduction of a Hg allowance to or from the compliance accounts of the Hg Budget units covered by the permit.

§ 60.4124 Hg Budget permit revisions.

Except as provided in § 60.4123(b), the permitting authority will revise the Hg Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

Compliance Certification

§ 60.4130 Compliance certification report.

(a) *Applicability and deadline.* For each control period in which one or more Hg Budget units at a source are subject to the Hg Budget emissions limitation, the Hg authorized account representative of the source shall submit to the permitting authority and the Administrator by March 1 of the immediately following control period, a compliance certification report for each source covering all such units.

(b) *Contents of report.* The Hg authorized account representative shall include in the compliance certification report under paragraph (a) of this section the following elements, in a format prescribed by the Administrator, concerning each unit at the source and subject to the Hg Budget emissions limitation for the control period covered by the report:

(1) Identification of each Hg Budget unit;

(2) At the Hg authorized account representative's option, the serial numbers of the Hg allowances that are to be deducted from each source's compliance account under § 60.4154 for the control period; and

(3) The compliance certification under paragraph (c) of this section.

(c) *Compliance certification.* In the compliance certification report under

paragraph (a) of this section, the Hg authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the Hg Budget units at the source in compliance with the Hg Budget Trading Program, whether each Hg Budget unit for which the compliance certification is submitted was operated during the control period covered by the report in compliance with the requirements of the Hg Budget Trading Program applicable to the unit, including:

(1) Whether the unit was operated in compliance with the Hg Budget emissions limitation;

(2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit and contains all information necessary to attribute Hg emissions to the unit, in accordance with §§ 60.4170 through 60.4176;

(3) Whether all the Hg emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with §§ 60.4170 through 60.4176. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;

(4) Whether the facts that form the basis for certification under this subpart of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under this subpart, if any, have changed; and

(5) If a change is required to be reported under paragraph (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

§ 60.4131 Administrator's action on compliance certifications.

(a) The Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the Hg Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) The Administrator may deduct Hg allowances from or transfer Hg allowances to a source's compliance account based on the information in the compliance certifications or other submissions, as adjusted under paragraph (a) of this section.

Hg Allowance Allocations

§ 60.4140 State trading program budget.

(a) For each state listed in paragraph (b) of this section, the state plan required under subpart B, 40 CFR part 60, and this section shall limit total annual Hg emissions from Hg Budget units to the amounts specified in paragraph (b) of this section.

(b) The state-by-state trading program budgets for annual allocations for 2010 through 2017 and for 2018 and thereafter are respectively as follows:

State	Budget (tons)	
	2010–2017	2018 and thereafter
Alabama		0.506
Alaska		0.002
Arizona		0.289
Arkansas		0.202
California		0.016
Colorado		0.277
Connecticut		0.023
Delaware		0.029
District of Columbia		0.000
Florida		0.491
Georgia		0.483
Hawaii		0.009
Idaho		0.000
Illinois		0.635
Indiana		0.833
Iowa		0.284
Kansas		0.281
Kentucky		0.605
Louisiana		0.236
Maine		0.001
Maryland		0.186
Massachusetts		0.070
Michigan		0.517
Minnesota		0.274
Mississippi		0.114
Missouri		0.545
Montana		0.148
Nebraska		0.165
Nevada		0.112
New Hampshire		0.025
New Jersey		0.060
New Mexico		0.240
New York		0.157
North Carolina		0.451
North Dakota		0.614
Ohio		0.810
Oklahoma		0.285
Oregon		0.030
Pennsylvania		0.710
Rhode Island		0.000
South Carolina		0.226
South Dakota		0.028
Tennessee		0.378
Texas		1.837
Utah		0.224
Vermont		0.000
Virginia		0.234
Washington		0.077
West Virginia		0.554
Wisconsin		0.353
Wyoming		0.375

§ 60.4141 Timing requirements for Hg allowance allocations.

(a) By October 31, 2006, the permitting authority will submit to the Administrator the Hg allowance allocations, in format prescribed by the Administrator and in accordance with § 60.4142, for the control periods in 2010, 2011, 2012, 2013, and 2014. If the permitting authority fails to submit to the Administrator the Hg allowance allocations in accordance with this paragraph (a), the Administrator will allocate Hg allowances for the applicable control periods, in accordance with § 60.4142, within 60 days of the deadline for submission by the permitting authority.

(b) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with § 60.4142, for the control period in the year that is 6 years after the year of the applicable deadline for submission under this paragraph (b). If the permitting authority fails to submit to the Administrator the Hg allowance allocations in accordance with this paragraph (b), the Administrator will allocate Hg allowances for the applicable control period, in accordance with § 60.4142, within 60 days of the applicable deadline for submission by the permitting authority.

§ 60.4142 Hg allowance allocations.

(a)(1) The baseline heat input (in mmBtu) used for calculating Hg allowance allocations for each Hg Budget unit under § 60.4104 will be:

(i) For units that commenced operation before January 1, 2000 the average of the three highest amounts of the unit's annual heat input for 1998 through 2002 and multiplied by:

(A) 3.0, for the portion of such average heat input that equals the unit's average annual combustion of lignite during 1999,

(B) 1.25, for the portion of such average heat input that equals the unit's average annual combustion of subbituminous coal during 1999,

(C) 1.0, for the portion of such average heat input that is not covered by

paragraph (a)(1)(i)(A) or (B) of this section.

(ii) For units that commence operation on or after January 1, 2000 and operate during five years or more, the average of the three highest amounts of the unit's total converted annual heat input over the first five years during which the unit operates.

(2)(i) A unit's annual heat input for a year specified under paragraph (a)(1)(i) of this section will be determined in accordance with part 75 of this chapter, if the Hg Budget unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(ii) A unit's converted annual heat input for a year specified under paragraph (a)(1)(ii) of this section equals the gross electrical output of the generator or generators served by the unit multiplied by 8,000 Btu/kWh, plus, for a cogeneration unit, one half of the unit's gross process steam output multiplied by 8,000 Btu/kWh. If the generator is served by two or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's heat input.

(b) For each control period under § 60.4141, the permitting authority will allocate to all Hg Budget units under § 60.4104 in the State that have operated for at least five years a total amount of Hg allowances equal to 98 percent of the ounces of Hg emissions in the State trading program budget under § 60.4140 (except as provided in § 60.4143) in accordance with the following procedures:

(1) The permitting authority will allocate Hg allowances to each Hg Budget unit in an amount determined by multiplying the allocation amount in State trading budget by the ratio of the baseline heat input of such unit to the total amount of baseline heat input of all affected units in the State (as calculated in § 60.4142(a)(1))

(2) If the initial total number of Hg allowances allocated to all Hg Budget units in the State for a control period under paragraph (b)(1) of this section does not equal 98 percent of the amount of ounces of Hg emissions in the State trading program budget, the permitting authority will adjust the total amount of Hg allowances allocated to all such Hg Budget units for the control period under paragraph (b)(1) of this section so that the total amount of Hg allowances allocated equals 98 percent of the amount of ounces of Hg emissions in the State trading program budget. This adjustment will be made by: Multiplying each unit's allocation by the total amount of Hg allowances allocated under paragraph (b)(1) of this section divided by 98 percent of the amount of ounces of Hg emissions in the State trading program budget, and rounding to the nearest whole allowance as appropriate.

(c) For each control period under § 60.4141, the permitting authority will allocate Hg allowances to Hg Budget units under § 60.4104 in the State that commenced operation on or after January 1, 2000 and have operated or operate during less than five years, in accordance with the following procedures:

(1) The permitting authority will establish a separate allocation set-aside for each control period. Each allocation set-aside will be allocated Hg allowances equal to 2 percent of the amount of ounces of Hg emissions in the State trading program budget under § 60.4140.

(2) The Hg authorized account representative of a Hg Budget unit under paragraph (c) of this section may submit to the permitting authority a request, in writing or in a format specified by the permitting authority, to be allocated Hg allowances for no more than five consecutive control periods under § 60.4141, starting with the control period during which the Hg Budget unit is projected to commence operation. The Hg allowance allocation request must be submitted prior to January 1 of the first control period for which the Hg allowance allocation is requested and after the date on which the permitting authority issues a permit to construct the Hg Budget unit.

(3) In a Hg allowance allocation request under paragraph (c)(2) of this section, the Hg authorized account representative may request for a control period Hg allowances in an amount that does not exceed the unit's mercury emissions rate limitation under § 60.45a of this chapter (in lb/GWh) multiplied by the Hg Budget unit's maximum design output (in GW) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit is projected to operate multiplied by 0.90.

(4) The permitting authority will review, and allocate Hg allowances pursuant to, Hg allowance allocation requests under paragraph (c)(2) of this section in the order that the requests are received by the permitting authority.

(i) Upon receipt of a Hg allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, the control period and the amount of allowances specified are consistent with the requirements of paragraphs (c)(2) and (3) of this section.

(ii) If the allocation set-aside for the control period for which Hg allowances are requested has an amount of Hg allowances not less than the amount requested (as adjusted under paragraph (c)(4)(i) of this section), the permitting authority will allocate the full, adjusted amount of the Hg allowances requested to the Hg Budget unit.

(iii) If the allocation set-aside for the control period for which Hg allowances are requested has a smaller amount of Hg allowances than the amount requested (as adjusted under paragraph (b)(4)(i) of this section), the permitting authority will deny in part the request and allocate only the remaining amount of Hg allowances in the allocation set-aside to the Hg Budget unit.

(iv) Once an allocation set-aside for a control period has been depleted of all Hg allowances, the permitting authority will deny, and will not allocate any Hg allowances pursuant to, any Hg allowance allocation requests under which Hg allowances have not already been allocated for the control period.

(5) Within 60 days of receipt of a Hg allowance allocation request, the permitting authority will take appropriate action under paragraph (c)(4) of this section and notify the Hg authorized account representative that submitted the request and the Administrator of the amount of Hg allowances (if any) allocated for the control period to the Hg Budget unit.

(d) For a Hg Budget unit that is allocated Hg allowances under paragraph (c) of this section for a control period, the Administrator will deduct Hg allowances under § 60.4154(b) to account for the actual utilization of the unit during the control period, using the following formula, provided that the amount of Hg allowances to be deducted shall be zero if the amount calculated is less than zero:

Unit's Hg allowances deducted for actual utilization = (Unit's Hg allowances allocated for control period) − (Unit's actual control period utilization × Unit's mercury emission rate limitation under § 60.45a of this chapter)

Where:

''Unit's Hg allowances allocated for control period'' is the amount of Hg allowances allocated to the unit for the control period under paragraph (c) of this section.

''Unit's actual control period utilization'' is the utilization (in kwh), as defined in § 60.4102, of the unit during the control period.

(e) The permitting authority will reallocate any Hg allowances deducted by the Administrator in accordance with paragraph (d) of this section, pursuant to any Hg allowance allocation requests that were originally denied in whole or in part under paragraph (c)(4)(iii) or (iv) of this section as follows:

(1) Such Hg allowance allocation requests will be considered in the order that they were received by the permitting authority.

(2) The amount of Hg allowances reallocated pursuant to each such Hg allowance allocation request will equal the unit's actual control period utilization multiplied by the unit's mercury emission rate limitation under § 60.45a of this chapter, except as provided under paragraph (e)(3) of this section.

(3) As each such Hg allowance request is considered for reallocation, if fewer Hg allowances remain available for reallocation pursuant to an Hg allowance allocation request than the amount of Hg allowances under paragraph (e)(2) of this section, then all of the Hg allowances remaining available for reallocation will be reallocated pursuant to such Hg allowance allocation request.

(4) The permitting authority will notify the Hg authorized account representative that submitted the request and the Administrator of the amount of Hg allowances (if any) allocated under this paragraph.

(f) If, after completion of the procedures under paragraphs (c) and (e) of this section, there are remaining unallocated Hg allowances from the allocation set-aside for a control period remain, the permitting authority shall reallocate to each Hg Budget unit that was allocated Hg allowances under paragraph (b) an amount of Hg allowances equal to the total amount of such remaining unallocated Hg allowances multiplied by the unit's allocation under paragraph (b) of this section divided by 98 percent of the amount of ounces of Hg emissions in the State trading program budget and rounding to the nearest whole allowance as appropriate.

§ 60.4143 Hg safety valve provisions.

(a) Any person may purchase Hg allowances from the permitting authority during any control period. Each mercury allowance shall be sold for $2,187.50, with such price adjusted for inflation based on the Consumer Price Index on the January 1, 2004 and annually thereafter.

(b) The proceeds from any sales of Hg allowances under paragraph (a) of this section shall be deposited in the State Treasury.

(c) Each Hg allowance purchased under paragraph (a) of this section shall be taken from, and reduce, the total amount of Hg allowances available for allocation under § 60.4142 (b) for the first control period after the control period during which such Hg allowance is purchased and for which Hg allowances have not already been allocated under § 60.4142 (b).

(d) Notwithstanding paragraph (c) of this section, each Hg allowance purchased under paragraph (a) of this section shall be treated as being allocated for the control period during which such Hg allowance was purchased or for the immediately preceding control period.

Hg Allowance Tracking System

§ 60.4150 Hg Allowance Tracking System accounts.

(a) *Nature and function of compliance accounts.* Consistent with § 60.4151(a), the Administrator will establish one compliance account for each Hg Budget source with one or more Hg Budget units. Allocations of Hg allowances pursuant to this subpart, and deductions or transfers of Hg allowances pursuant to § 60.4131, § 60.4154, § 60.4156, or §§ 60.4160 through 60.4162 will be recorded in compliance accounts in accordance with §§ 60.4151 through 60.4157.

(b) *Nature and function of general accounts.* Consistent with § 60.4151(b), the Administrator will establish, upon request, a general account for any person. Transfers of allowances pursuant to §§ 60.4160 through 60.4162 will be recorded in general accounts in accordance with this subpart.

§ 60.4151 Establishment of accounts.

(a) *Compliance accounts.* Upon receipt of a complete account certificate of representation under § 60.4113, the Administrator will establish a compliance account for each Hg Budget source for which the account certificate of representation was submitted.

(b) *General accounts.*

(1) *Application for general account.*

(i) Any person may apply to open a general account for the purpose of holding and transferring allowances. An application for a general account may designate one and only one Hg authorized account representative and one and only one alternate Hg authorized account representative who may act on behalf of the Hg authorized account representative. The agreement by which the alternate Hg authorized account representative is selected shall include a procedure for authorizing the alternate Hg authorized account representative to act in lieu of the Hg authorized account representative. A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the Hg authorized account representative and any alternate Hg authorized account representative;

(B) At the option of the Hg authorized account representative, organization name and type of organization;

(C) A list of all persons subject to a binding agreement for the Hg authorized account representative and any alternate Hg authorized account representative to represent their ownership interest with respect to the allowances held in the general account;

(D) The following certification statement by the Hg authorized account representative and any alternate Hg authorized account representative: ''I certify that I was selected as the Hg authorized account representative or the Hg alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.''

(E) The signature of the Hg authorized account representative and any alternate Hg authorized account representative and the dates signed.

(ii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) *Authorization of Hg authorized account representative.* Upon receipt by the Administrator of a complete

application for a general account under paragraph (b)(1) of this section:

(i) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(ii) The Hg authorized account representative and any alternate Hg authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to Hg allowances held in the general account in all matters pertaining to the Hg Budget Trading Program, not withstanding any agreement between the Hg authorized account representative or any alternate Hg authorized account representative and such person. Any such person shall be bound by any order or decision issued to the Hg authorized account representative or any alternate Hg authorized account representative by the Administrator or a court regarding the general account.

(iii) Any representation, action, inaction, or submission by any alternate Hg authorized account representative shall be deemed to be a representation, action, inaction, or submission by the Hg authorized account representative.

(iv) Each submission concerning the general account shall be submitted, signed, and certified by the Hg authorized account representative or any alternate Hg authorized account representative for the persons having an ownership interest with respect to Hg allowances held in the general account. Each such submission shall include the following certification statement by the Hg authorized account representative or any alternate Hg authorizing account representative: ''I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the Hg allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''

(v) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(iv) of this section.

(3) *Changing Hg authorized account representative and alternate Hg authorized account representative; changes in persons with ownership interest.*

(i) The Hg authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.

(ii) The alternate Hg authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.

(iii) (A) In the event a new person having an ownership interest with respect to Hg allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the Hg authorized account representative and any alternate Hg authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the Administrator, as if the new person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to Hg allowances in the general account, including the addition of persons, the Hg authorized account representative or any alternate Hg authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the Hg allowances in the general account to include the change.

(4) *Objections concerning Hg authorized account representative.*

(i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the Hg authorized account representative or any alternative Hg authorized account representative for a general account shall affect any representation, action, inaction, or submission of the Hg authorized account representative or any alternative Hg authorized account representative or the finality of any decision or order by the Administrator under the Hg Budget Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the Hg authorized account representative or any alternative Hg authorized account representative for a general account, including private legal disputes concerning the proceeds of Hg allowance transfers.

(c) *Account identification.* The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 60.4152 Hg Allowance Tracking System responsibilities of Hg authorized account representative.

(a) Following the establishment of a Hg Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of Hg allowances in the account, shall be made only by the Hg authorized account representative for the account.

(b) *Authorized account representative identification.* The Administrator will assign a unique identifying number to each Hg authorized account representative.

§ 60.4153 Recordation of Hg allowance allocations.

(a) The Administrator will record the Hg allowances for 2010 for a Hg Budget unit allocated under §§ 60.4140 through 60.4142 in the source's compliance account.

(b) By January 1, 2008, the Administrator will record the Hg allowances for 2011 for a Hg Budget unit allocated under §§ 60.4140 through 60.4142 in the unit's compliance account.

(c) By January 1, 2009, the Administrator will record the Hg allowances for 2012 for a Hg Budget unit allocated under §§ 60.4140 through 60.4142 in the unit's compliance account.

(d) By January 1, 2010, the Administrator will record the Hg allowances for 2013 for a Hg Budget unit allocated under §§ 60.4140 through 60.4142 in the unit's compliance account.

(e) Each year starting with 2011, after the Administrator has made all deductions from a Hg Budget unit's compliance account pursuant to § 60.4154 (except deductions pursuant to § 60.4154(d)(2)), the Administrator will record:

(1) Hg allowances, in the compliance account, as allocated to the unit under §§ 60.4140 through 60.4142 for the third year after the year of the control period for which such deductions were or could have been made; and

(2) Hg allowances, in the general account specified by the owners and operators of the unit, as allocated under § 60.4105(c)(2) for the third year after the year of the control period for which such deductions are or could have been made.

(f) *Serial numbers for allocated Hg allowances.* When allocating Hg allowances to a Hg Budget unit and recording them in an account, the Administrator will assign each Hg allowance a unique identification number that will include digits identifying the year for which the Hg allowance is allocated.

§ 60.4154 Compliance.

(a) *Hg allowance transfer deadline.* The Hg allowances are available to be deducted for compliance with a source's Hg Budget emissions limitation for a control period in a given year only if the Hg allowances:

(1) Were allocated for a control period in a prior year or the same year; and

(2) Are held in the source's compliance account as of the Hg allowance transfer deadline for that control period or are transferred into the compliance account by a Hg allowance transfer correctly submitted for recordation under § 60.4160 by the Hg allowance transfer deadline for that control period.

(b) *Deductions for compliance.* (1) Following the recordation, in accordance with § 60.4161, of Hg allowance transfers submitted for recordation in a source's compliance account by the Hg allowance transfer deadline for a control period, the Administrator will deduct from the compliance account Hg allowances available under paragraph (a) of this section first to account for actual heat input under § 60.4142, and then to cover the total Hg emissions of all Hg Budget units at the source (as determined in §§ 60.4170 through 60.4176), for the control period.

(2) The Administrator will deduct Hg allowances from the source's compliance account under paragraph (b)(1) of this section:

(i) Until the number of Hg allowances deducted for the control period equals the number of ounces of total Hg emissions, determined in accordance with §§ 60.4170 through 60.4176, from all Hg Budget units at the source for the control period for which compliance is being determined, plus the number of Hg allowances required for deduction to account for actual heat input under § 60.4142(e) for the control period; or

(ii) Until no more Hg allowances available under paragraph (a) of this section remain in the compliance account.

(c)(1) *Identification of Hg allowances by serial number.* The Hg authorized account representative for each compliance account may identify by serial number the Hg allowances to be deducted from the source's compliance account under paragraph (b) or (d) of this section. Such identification shall be made in the compliance certification report submitted in accordance with § 60.4130.

(2) *First-in, first-out.* The Administrator will deduct Hg allowances for a control period from the source's compliance account, in the absence of an identification or in the case of a partial identification of Hg allowances by serial number under paragraph (c)(1) of this section on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Those Hg allowances that were allocated in the order of recordation to the units at the source under §§ 60.4140 through 60.4142;

(ii) Those Hg allowances that were allocated for the control period to any unit and transferred and recorded in the compliance account pursuant to §§ 60.4160 through 60.4162 in order of their date of recordation;

(d) *Deductions for excess emissions.* (1) After making the deductions for compliance under paragraph (b) of this section, the Administrator will deduct from the source's compliance account a number of Hg allowances, allocated for a control period after the control period in which the source has excess emissions, equal to three times the number of the source's excess emissions.

(2) If the compliance account does not contain sufficient Hg allowances, the Administrator will deduct the required number of Hg allowances, regardless of the control period for which they were allocated, whenever Hg allowances are recorded in the compliance account.

(3) Any allowance deduction required under paragraph (d) of this section shall not affect the liability of the owners and operators of the Hg Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:

(i) For purposes of determining the number of days of violation, if a Hg Budget source has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the source demonstrate that a lesser number of days should be considered.

(ii) Each ounce of excess emissions is a separate violation.

(e) *Recordation of deductions.* The Administrator will record in the appropriate compliance account all deductions from such an account pursuant to paragraphs (b) or (d), of this section.

§ 60.4155 Banking.

Hg allowances may be banked for future use or transfer in a compliance account or a general account, as follows: any Hg allowance that is held in a compliance account or a general account will remain in such account unless and until the Hg allowance is deducted or transferred under § 60.4131, § 60.4154, § 60.4156, or §§ 60.4160 through 60.4162.

§ 60.4156 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Hg Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify

the Hg authorized account representative for the account.

§ 60.4157 Closing of general accounts.

(a) The Hg authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement requesting deletion of the account from the Hg Allowance Tracking System and by correctly submitting for recordation under § 60.4160 an allowance transfer of all Hg allowances in the account to one or more other Hg Allowance Tracking System accounts.

(b) If a general account shows no activity for a period of a year or more and does not contain any Hg allowances, the Administrator may notify the Hg authorized account representative for the account that the account will be closed and deleted from the Hg Allowance Tracking System following 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the Administrator receives a correctly submitted transfer of Hg allowances into the account under § 60.4160 or a statement submitted by the Hg authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Hg Allowance Transfers

§ 60.4160 Submission of Hg allowance transfers.

A Hg authorized account representative seeking recordation of a Hg allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the Hg allowance transfer shall include the following elements in a format specified by the Administrator:

(a) The numbers identifying both the transferor and transferee accounts;

(b) A specification by serial number of each Hg allowance to be transferred; and

(c) The printed name and signature of the Hg authorized account representative of the transferor account and the date signed.

§ 60.4161 EPA recordation.

(a) Within 5 business days of receiving a Hg allowance transfer, except as provided in paragraph (b) of this section, the Administrator will record a Hg allowance transfer by moving each Hg allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 60.4160; and

(2) The transferor account includes each Hg allowance identified by serial number in the transfer.

(b) A Hg allowance transfer that is submitted for recordation following the Hg allowance transfer deadline and that includes any Hg allowances allocated for a control period in a prior year or the same year as the Hg allowance transfer deadline will not be recorded until after the Administrator completes the recordation of Hg allowance allocations under § 60.4153 for the control period in the fourth year after the control period to which the Hg allowance transfer deadline applies.

(c) Where a Hg allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 60.4162 Notification.

(a) *Notification of recordation.* Within 5 business days of recordation of a Hg allowance transfer under § 60.4161, the Administrator will notify the Hg authorized account representatives of both the transferor and transferee accounts.

(b) *Notification of non-recordation.* Within 10 business days of receipt of a Hg allowance transfer that fails to meet the requirements of § 60.4161(a), the Administrator will notify the Hg authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a Hg allowance transfer for recordation following notification of non-recordation.

Monitoring and Reporting

§ 60.4170 General Requirements.

The owners and operators, and to the extent applicable, the Hg authorized account representative of a Hg Budget unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this section and §§ 60.4171 through 60.4176 and in subpart I of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 60.4102 and in § 72.2 of this chapter shall apply, and the terms ''affected unit,'' ''designated representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') in part 75 of this chapter shall be deemed to refer to the terms ''Hg Budget unit,'' ''Hg authorized account representative,'' and ''continuous emission monitoring system'' (or ''CEMS'') respectively, as defined in § 60.4102. The owner or operator of a unit that is not a Hg Budget unit but that is monitored under § 75.82(b)(2)(i) of this chapter shall comply with the monitoring, recordkeeping, and reporting requirements for a Hg Budget unit under this part.

(a) *Requirements for installation, certification, and data accounting.* The owner or operator of each Hg Budget unit shall meet the following requirements:

(1) Install all monitoring systems required under this subpart for monitoring Hg mass emissions. This includes all systems required to monitor Hg emission rate, Hg concentration, heat input rate, moisture, and stack flow rate, in accordance with §§ 75.81 and 75.82 of this chapter.

(2) Successfully complete all certification tests required under § 60.4171 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section.

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) *Compliance deadlines.* The owner or operator shall meet the certification and other requirements of paragraphs (a)(1) and (a)(2) of this section on or before the following dates. The owner or operator shall record, report and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a Hg Budget unit that commences operation before July 1, 2008, by January 1, 2009.

(2) For the owner or operator of a Hg Budget unit that commences operation on or after July 1, 2008, by the later of the following dates:

(i) January 1, 2009; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of a Hg Budget unit that has a new stack or flue for which construction is completed after the applicable deadline under paragraph (b)(1) or (b)(2) of this section, by the earlier of 90 unit operating days or 180 calendar days after the date on which emissions first exit to the atmosphere through the new stack or flue.

(c) *Reporting data prior to initial certification.* The owner or operator of a Hg Budget unit that does not meet the applicable compliance date set forth in paragraph (b) of this section shall determine, record and report Hg mass

emissions, heat input rate, and any other values required to determine Hg mass emissions (*e.g.*, Hg emission rate and heat input rate, or Hg concentration and stack flow rate) in accordance with § 75.80(g) of this chapter.

(d) *Prohibitions.*

(1) No owner or operator of a Hg Budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with § 60.4175.

(2) No owner or operator of a Hg Budget unit shall operate the unit so as to discharge, or allow to be discharged, Hg emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a Hg Budget unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording Hg mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a Hg Budget unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 60.4105 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The Hg authorized account representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 60.4171(c)(2).

§ 60.4171 Initial certification and recertification procedures.

(a) *Requirements for initial certification.* The owner or operator shall ensure that each monitoring system required by subpart I of part 75 of this chapter (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 60.4170(b).

(b) *Requirements for recertification.* Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system required by subpart I of part 75 of this chapter that may significantly affect the ability of the system to accurately measure or record Hg mass emissions or heat input rate or to meet the requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify the continuous emission monitoring system in accordance with § 75.20(b) of this chapter. Examples of changes that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.

(c) *Certification approval process for initial certification and recertification.*

(1) *Notification of certification.* The Hg authorized account representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification in accordance with § 60.4173.

(2) *Certification application.* The Hg authorized account representative shall submit to the permitting authority a certification application for each monitoring system required under subpart I of part 75 of this chapter. A complete certification application shall include the information specified in subpart I of part 75 of this chapter. Notwithstanding this requirement, a certification application is not required by subpart I if the system has been previously certified under the Acid Rain Program or under an applicable State or Federal NO_X mass emission reduction program that adopts the requirements of subpart H of part 75 of this chapter.

(3) *Provisional certification date.* The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the Hg Budget Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under paragraph (c)(2) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the permitting authority.

(4) *Certification application formal approval process.* The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (c)(2) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the Hg Budget Trading Program.

(i) *Approval notice.* If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(ii) *Incomplete application notice.* A certification application will be considered complete when all of the applicable information required to be submitted under paragraph (c)(2) of this section has been received by the permitting authority. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the Hg authorized account representative must submit the additional information required to complete the certification application. If the Hg authorized account representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (c)(4)(iii) of this section. The 120-day review period shall not begin prior to receipt of a complete certification application.

(iii) *Disapproval notice.* If the certification application shows that any

monitoring system does not meet the performance requirements of this part, or if the certification application is incomplete and the requirement for disapproval under paragraph (c)(4)(ii) of this section has been met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (c)(5) of this section for each monitoring system that is disapproved for initial certification.

(iv) *Audit decertification.* The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with § 60.4172(b).

(5) *Procedures for loss of certification.* If the Permitting authority issues a notice of disapproval of a certification application under paragraph (c)(4)(iii) of this section or a notice of disapproval of certification status under paragraph (c)(4)(iv) of this section, then:

(i) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(b)(5), or § 75.21(e) of this chapter and continuing until the date and hour specified under § 75.20(a)(5)(i) of this chapter:

(A) For units that the owner or operator monitors for Hg emission rate and heat input rate, the maximum potential Hg emission rate and the maximum potential hourly heat input of the unit; and

(B) For units that the owner or operator monitors for Hg mass emissions using a Hg pollutant concentration monitor and a flow monitor, the maximum potential concentration of Hg and the maximum potential flow rate under section 2.1.4 of appendix A of part 75 of this chapter.

(ii) The Hg authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (c)(1) and (c)(2) of this section.

(iii) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(d) *Certification/recertification procedures for alternative monitoring systems.* The Hg authorized account representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the applicable certification procedures of paragraph (a) of this section before using the system under the Hg Budget Trading Program. The Hg authorized account representative shall also comply with the applicable recertification procedures of paragraph (b) of this section. Section 75.20(f) of this chapter shall apply to such alternative monitoring system.

(e) *Hg Budget units subject to other programs.* For Hg Budget units that are also subject to the Acid Rain Program or an applicable State or Federal NO_X mass emission reduction program that adopts the requirements of subpart H of part 75 of this chapter, the owner or operator shall meet the applicable initial certification and recertification requirements of these programs, in addition to the requirements of this section.

§ 60.4172 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality assurance or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable procedures in subpart D of part 75 of this chapter.

(b) *Audit decertification.* Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 60.4171 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority will issue a notice of disapproval of the certification status of such system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the system. The data measured and recorded by the system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the system.

§ 60.4173 Notifications.

The Hg authorized account representative for a Hg Budget unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

§ 60.4174 Recordkeeping and reporting.

(a) *General provisions.*

(1) The Hg authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements of § 60.4110(e)(1).

(2) If a Hg Budget unit is subject to an Acid Rain emission limitation or an applicable State or Federal NO_X mass emission reduction program that adopts the requirements of subpart H of part 75 of this chapter, and the Hg authorized account representative who signed and certified any submission that is made under subpart F or G of part 75 of this chapter and that includes data and information required under this subpart or subpart I of part 75 of this chapter is not the same person as the designated representative, the alternative designated representative, or the NO_X authorized account representative for the unit under parts 72 or 75 of this chapter, then the submission must also be signed by the designated representative or the alternative designated representative, and the NO_X authorized account representative, as applicable.

(b) *Monitoring plans.*

(1) The owner or operator of a Hg Budget unit shall comply with requirements of § 75.62 of this chapter, except that the monitoring plan is only required to include the information required by subpart I of part 75 of this chapter.

(2) For Hg Budget units that are also subject to the Acid Rain Program or an applicable State or Federal NO_X mass emission reduction program that adopts the requirements of subpart H of part 75 of this chapter, the owner or operator shall comply with requirements of §§ 75.62 or 75.73(c), as applicable, of this chapter, except that the monitoring plan shall also include all of the information required by subpart I of part 75 of this chapter.

(c) *Certification applications.* The Hg authorized account representative shall

submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 60.4171 including the information required under subpart I of part 75 of this chapter.

(d) *Quarterly reports.* The Hg authorized account representative shall submit quarterly reports, as follows:

(1) The Hg authorized account representative shall submit a quarterly report for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009. Data shall be reported from the first hour on January 1, 2009; or

(ii) For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the relevant deadline for initial certification under § 60.4170(b), unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009. Data shall be reported from the later of the date and hour corresponding to the date and hour of provisional certification or the first hour on January 1, 2009.

(2) The Hg authorized account representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart I of part 75 of this chapter and § 75.64 of this chapter.

(i) For Hg Budget units that are also subject to an Acid Rain emissions limitation, quarterly reports shall include the data and information required in subpart I of 40 CFR part 75 of this chapter and the data and information required in subpart G of 40 CFR part 75 of this chapter.

(ii) For Hg Budget units that are also subject to an applicable State or Federal NO_X mass emission reduction program that adopts the requirements of subpart H of 40 CFR part 75 of this chapter, quarterly reports shall include the data and information required in subpart H of 40 CFR part 75 of this chapter and the information and data required in subpart I of 40 CFR part 75 of this chapter.

(iii) For Hg Budget units not subject to an Acid Rain emissions limitation or an applicable State or Federal NO_X mass emission reduction program that adopts the requirements of subpart H of 40 CFR part 75 of this chapter, quarterly reports shall only include the data and information required in subpart I of part 75 of this chapter.

(3) *Compliance certification.* The Hg authorized account representative shall submit to the Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(i) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(ii) For a unit with add-on Hg emission controls or that has an installed flue gas desulfurization system, for all hours where Hg data are substituted in accordance with § 75.38(b) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B of 40 CFR part 75 of this chapter and the substitute values do not systematically underestimate Hg emissions.

§ 60.4175 Petitions.

(a) The Hg authorized account representative of a Hg Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart.

(1) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved by the Administrator, in consultation with the permitting authority.

(2) Notwithstanding paragraph (a)(1) of this section, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of § 75.82 of this chapter, the petition is governed by paragraph (b) of this section.

(b) The Hg authorized account representative of a Hg Budget unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart.

(1) The Hg authorized account representative of a Hg Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of § 75.82 of this chapter or a Hg emission rate (or Hg-diluent) monitoring system, a Hg concentration monitoring system, or a carbon canister monitoring system, as applicable, used under § 75.81 of this chapter.

(2) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved by both the permitting authority and the Administrator.

§ 60.4176 Additional requirements to provide heat input data.

The owner or operator of a Hg Budget unit that monitors and reports Hg mass emissions using a Hg concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

PART 72—PERMITS REGULATION

1. The authority citation for Part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et. seq.*

2. Section 72.2 is amended in the definition of ''Continuous emission monitoring system or CEMS'' by revising the introductory text and adding paragraphs (7) and (8); and by adding, in alphabetical order, a new definition for ''sorbent trap monitoring system'', to read as follows:

§ 72.2 Definitions.

* * * * *

Continuous emission monitoring system or CEMS means the equipment required by part 75 of this chapter used to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of SO_2, NO_X, or CO_2 emissions or stack gas volumetric flow rate. The following are the principal types of continuous emission monitoring systems required under part 75 of this chapter. Sections 75.10 through 75.18, § 75.71(a), and § 75.81 of this chapter indicate which type(s) of CEMS is required for specific applications:

* * *

(7) A mercury (Hg) emission rate (or Hg-diluent) monitoring system, consisting of a Hg pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated

DAHS. A Hg-diluent monitoring system provides a permanent, continuous record of: Hg concentration in units of micrograms per dry standard cubic meter (μg/dscm), diluent gas concentration in units of percent O_2 or CO_2 (% O_2 or CO_2), and Hg emission rate in units of pounds per trillion British thermal units (lb/10^{12} Btu);

(8) A Hg concentration monitoring system, consisting of a Hg pollutant concentration monitor and an automated DAHS. A Hg concentration monitoring system provides a permanent, continuous record of Hg emissions in units of micrograms per dry standard cubic meter (μg/dscm).

* * * * *

Sorbent trap monitoring system means the equipment required by part 75 of this chapter for the continuous monitoring of Hg emissions, using paired sorbent traps containing iodinized charcoal (IC) or other suitable reagent(s). The monitoring system consists of a probe, the paired sorbent traps, a heated umbilical line, moisture removal components, an air-tight sample pump, a dry gas meter, and an automated data acquisition and handling system. The monitoring system samples the stack gas at a rate proportional to the stack gas volumetric flow rate. The sampling is a batch process. The sorbent traps can be used for a time period ranging from hours to weeks in length, depending upon the Hg concentration in the stack. Using the sample volume measured by the dry gas meter and the results of laboratory analysis of the sorbent traps, the Hg concentration in the stack gas is determined, in units of micrograms per dry standard cubic meter (μg/dscm). Mercury mass emissions for each hour in the sampling period are calculated using the higher of the two average Hg concentrations for that period in conjunction with contemporaneous measurements of stack gas flow rate.

* * * * *

PART 75—CONTINUOUS EMISSION MONITORING

3. The authority citation for Part 75 continues to read as follows:

Authority: 42 U.S.C. 7601, 7651k, and 7651k note.

4. Section 75.2 is amended by adding paragraph (d) to read as follows:

§ 75.2 Applicability.

* * * * *

(d) The provisions of this part apply to sources subject to a State or Federal mercury (Hg) mass emission reduction program, to the extent that these provisions are adopted as requirements under such a program.

5. Section 75.10 is amended by revising the second sentence of paragraph (d)(1) and revising the first two sentences of paragraph (d)(3) to read as follows:

§ 75.10 General operating requirements.

* * * * *

(d) * * *

(1) * * * The owner or operator shall reduce all SO_2 concentrations, volumetric flow, SO_2 mass emissions, CO_2 concentration, O_2 concentration, CO_2 mass emissions (if applicable), NO_X concentration, NO_X emission rate, Hg concentration, and Hg emission rate data collected by the monitors to hourly averages.

* * * * *

(3) Failure of an SO_2, CO_2, or O_2 pollutant concentration monitor, NO_X concentration monitor, Hg concentration monitor, flow monitor, moisture monitor, NO_X-diluent continuous emission monitoring system, or Hg-diluent continuous emission monitoring system to acquire the minimum number of data points for calculation of an hourly average in paragraph (d)(1) of this section shall result in the failure to obtain a valid hour of data and the loss of such component data for the entire hour. For a NO_X-diluent monitoring system or for a Hg-diluent monitoring system, hourly average NO_X (or Hg) emission rate in lb/mmBtu (or lb/10^{12} Btu) is valid only if the minimum number of data points is acquired by both the NO_X (or Hg) pollutant concentration monitor and the diluent monitor (CO_2 or O_2). * * *

* * * * *

6. Section 75.15 is added to read as follows:

§ 75.15 Special provisions for measuring Hg mass emissions with sorbent trap monitoring systems.

For an affected coal-fired unit under a State or Federal Hg mass emission reduction program that adopts the provisions of subpart I of this part, if the owner or operator elects to use sorbent trap monitoring systems (as defined in § 72.2 of this chapter) to quantify Hg mass emissions:

(a) For sorbent trap monitoring system (whether primary or redundant backup), the use of paired sorbent traps, as described in Method 324 in appendix B to part 63 of this chapter, is required;

(b) Each sorbent trap shall have both a main portion and a backup portion;

(c) A certified flow monitoring system is required;

(d) Correction for stack gas moisture content is required, and in some cases, a certified O_2 or CO_2 monitoring system is required (*see* § 75.81(b));

(e) Each sorbent trap monitoring system shall be installed and operated in accordance with EPA Method 324. The Hg sampling shall be proportional to the stack gas volumetric flow rate. Use an intermediate sampling rate of 0.3 to 0.5 liters per minute through each sorbent trap when the unit is operating at the normal (*i.e.,* most frequently-used) load level, as defined in section 6.5.2.1(d) of appendix A to this part. Increase or decrease the sampling rate by 0.1 liters/min when the unit operates at the other two load levels. For example, if mid load level is normal and the sampling rate is set at 0.4 liters/min, decrease the sampling rate to 0.3 liters/min when the unit is operating at low load and increase it to 0.5 liters/min when the unit operates at high load.

(f) At the beginning and end of each sample collection period, record the dry gas meter readings, for the purposes of determining the total volume of dry gas sampled during the collection period.

(g) After each sample collection period, the mass of Hg adsorbed in each sorbent trap (both the main and backup portions) shall be determined according to Method 324.

(h) The hourly Hg mass emissions for each collection period are determined using the results of the Method 324 analyses in conjunction with contemporaneous data recorded by the stack flow monitor. For each pair of sorbent traps analyzed, the higher of the two Hg concentrations shall be used for reporting purposes under § 75.84(f).

(i) All unit operating hours for which valid Hg concentration data are obtained with the primary sorbent trap monitoring system (as verified using the quality assurance procedures in section 8.3 of Method 324) shall be reported in the electronic quarterly report under § 75.84(f). For hours in which data from the primary monitoring system are invalid, the owner or operator may report valid Hg concentration data from a certified redundant backup monitoring system or from the applicable reference method under § 75.22. If no quality-assured Hg concentration are available for a particular hour, the owner or operator shall report the appropriate substitute data value in accordance with § 75.39.

(j) Initial certification requirements and additional quality-assurance requirements for the sorbent trap monitoring systems are found in § 75.20(c)(9), in section 6.5.7 of appendix A to this part and in sections 1.5 and 2.3 of appendix B to this part.

7. Section 75.20 is amended by:

a. Revising paragraph (a)(5)(i);

b. Revising the first sentence of paragraph (b) introductory text;

c. Revising paragraph (c)(1);

d. Redesignating existing paragraphs (c)(9) and (c)(10) as paragraphs (c)(10) and (c)(11), respectively;

e. Adding a new paragraph (c)(9); and

f. Revising paragraph (d)(2)(v).

The revisions and additions read as follows:

§ 75.20 Initial certification and recertification procedures.

(a) * * *

(5) * * *

(i) Until such time, date, and hour as the continuous emission monitoring system can be adjusted, repaired, or replaced and certification tests successfully completed (or, if the conditional data validation procedures in paragraphs (b)(3)(ii) through (b)(3)(ix) of this section are used, until a probationary calibration error test is passed following corrective actions in accordance with paragraph (b)(3)(ii) of this section), the owner or operator shall substitute the following values, as applicable, for each hour of unit operation during the period of invalid data specified in paragraph (a)(4)(iii) of this section or in § 75.21: The maximum potential concentration of SO_2, as defined in section 2.1.1.1 of appendix A to this part, to report SO_2 concentration; the maximum potential NO_X emission rate, as defined in § 72.2 of this chapter, to report NO_X emissions in lb/mmBtu; the maximum potential concentration of NO_X, as defined in section 2.1.2.1 of appendix A to this part, to report NO_X emissions in ppm (when a NO_X concentration monitoring system is used to determine NO_X mass emissions, as defined under § 75.71(a)(2)); the maximum potential Hg emission rate, as defined in section 2.1.7 of appendix A to this part, to report Hg emissions in lb/10^{12} Btu; the maximum potential concentration of Hg, as defined in section 2.1.7 of appendix A to this part, to report Hg emissions in μg/dcsm (when a Hg concentration monitoring system or a sorbent trap monitoring system is used to determine Hg mass emissions, as defined under § 75.81(b)); the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part, to report volumetric flow; the maximum potential concentration of CO_2, as defined in section 2.1.3.1 of appendix A to this part, to report CO_2 concentration data; and either the minimum potential moisture percentage, as defined in section 2.1.5 of appendix A to this part or, if Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to determine NO_X emission rate, the maximum potential moisture percentage, as defined in section 2.1.6 of appendix A to this part; and

* * * * *

(b) *Recertification approval process.* Whenever the owner or operator makes a replacement, modification, or change in a certified continuous emission monitoring system or continuous opacity monitoring system that may significantly affect the ability of the system to accurately measure or record the SO_2 or CO_2 concentration, stack gas volumetric flow rate, NO_X emission rate, NO_X concentration, Hg concentration, Hg emission rate, percent moisture, or opacity, or to meet the requirements of § 75.21 or appendix B to this part, the owner or operator shall recertify the continuous emission monitoring system or continuous opacity monitoring system, according to the procedures in this paragraph. * * *

* * * * *

(c) * * *

(1) For each SO_2 pollutant concentration monitor, each NO_X concentration monitoring system used to determine NO_X mass emissions, as defined under § 75.71(a)(2), each Hg concentration monitoring system, each NO_X-diluent continuous emission monitoring system, and each Hg-diluent monitoring system:

(i) A 7-day calibration error test, where, for the NO_X-diluent and Hg-diluent continuous emission monitoring systems, the test is performed separately on the NO_X (or Hg) pollutant concentration monitor and the diluent gas monitor;

(ii) A linearity check, where, for the NO_X-diluent and Hg-diluent continuous emission monitoring systems, the test is performed separately on the NO_X (or Hg) pollutant concentration monitor and the diluent gas monitor;

(iii) A relative accuracy test audit. For the NO_X-diluent continuous emission monitoring system, the RATA shall be done on a system basis, in units of lb/mmBtu. For the NO_X concentration monitoring system, the RATA shall be done on a ppm basis. For the Hg concentration monitoring system, the RATA shall be done on a μg/dscm basis. For the Hg-diluent monitoring system, the RATA shall be done on a lb/10^{12} Btu basis;

(iv) A bias test;

(v) A cycle time test; and

(vi) For Hg monitors only, a 3-point check of the converter, using $HgCl_2$ standards, as described in sections 8.3 and 13.1 of Performance Specification 12A in appendix B to part 60 of this chapter.

* * * * *

(9) For each sorbent trap monitoring system, perform a RATA, on a μg/dscm basis, and a bias test.

* * * * *

(d) * * *

(2) * * *

(v) For each parameter monitored (*i.e.*, SO_2, CO_2, O_2, NO_X, Hg or flow rate) at each unit or stack, a regular non-redundant backup CEMS may not be used to report data at that affected unit or common stack for more than 720 hours in any one calendar year (or 720 hours in any ozone season, for sources that report emission data only during the ozone season, in accordance with § 75.74(c)), unless the CEMS passes a RATA at that unit or stack. For each parameter monitored at each unit or stack, the use of a like-kind replacement non-redundant backup analyzer (or analyzers) is restricted to 720 cumulative hours per calendar year (or ozone season, as applicable), unless the owner or operator redesignates the like-kind replacement analyzer(s) as component(s) of regular non-redundant backup CEMS and each redesignated CEMS passes a RATA at that unit or stack.

* * * * *

8. Section 75.21 is amended by revising paragraph (a)(3) to read as follows:

§ 75.21 Quality assurance and quality control requirements.

(a) * * *

(3) The owner or operator shall perform quality assurance upon a reference method backup monitoring system according to the requirements of method 2, 6C, 7E, or 3A in appendix A of part 60 of this chapter (supplemented, as necessary, by guidance from the Administrator), or the Ontario Hydro method, as applicable, instead of the procedures specified in appendix B of this part.

* * * * *

9. Section 75.22 is amended by adding new paragraphs (a)(7) and (b)(5) to read as follows:

§ 75.22 Reference methods.

(a) * * *

(7) ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound, and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (also known as the Ontario Hydro Method) is the reference method for determining Hg concentration.

(b) * * *

(5) ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle-Bound, and Total Mercury in Flue Gas Generated from Coal-Fired

Stationary Sources (also known as the Ontario Hydro Method) for determining Hg concentration.

* * * * *

10. Section 75.24 is amended by revising paragraph (d) to read as follows:

§ 75.24 Out-of-control periods and adjustment for system bias.

* * * * *

(d) When the bias test indicates that an SO_2 monitor, a flow monitor, a NO_X-diluent continuous emission monitoring system, a Hg-diluent monitoring system, a NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2), a Hg concentration monitoring system or a sorbent trap monitoring system is biased low (*i.e.*, the arithmetic mean of the differences between the reference method value and the monitor or monitoring system measurements in a relative accuracy test audit exceed the bias statistic in section 7 of appendix A to this part), the owner or operator shall adjust the monitor or continuous emission monitoring system to eliminate the cause of bias such that it passes the bias test or calculate and use the bias adjustment factor as specified in section 2.3.4 of appendix B to this part.

* * * * *

11. Section 75.31 is amended by:

a. Revising the first sentence of paragraph (a);

b. Revising paragraph (b) introductory text; and

c. Revising paragraphs (b)(1) and (b)(2).

The revisions read as follows:

§ 75.31 Initial missing data procedures.

(a) During the first 720 quality-assured monitor operating hours following initial certification of the required SO_2, CO_2, O_2, Hg concentration, Hg-diluent, or moisture monitoring system(s) at a particular unit or stack location * * *

(b) *SO_2, CO_2, or O_2 concentration data, Hg concentration data, Hg emission rate data, and moisture data.* For each hour of missing SO_2, Hg or CO_2 pollutant concentration data (including CO_2 data converted from O_2 data using the procedures in appendix F of this part), missing Hg emission rate data, or missing O_2 or CO_2 diluent concentration data used to calculate heat input, or missing moisture data, the owner or operator shall calculate the substitute data as follows:

(1) Whenever prior quality-assured data exist, the owner or operator shall substitute, by means of the data acquisition and handling system, for each hour of missing data, the average of the hourly SO_2, CO_2 , Hg or O_2 concentrations, Hg emission rates, or moisture percentages recorded by a certified monitor for the unit operating hour immediately before and the unit operating hour immediately after the missing data period.

(2) Whenever no prior quality assured SO_2, Hg, CO_2 or O_2 concentration data, Hg emission rate data, or moisture data exist, the owner or operator shall substitute, as applicable, for each hour of missing data, the maximum potential S_O concentration or the maximum potential CO_2 concentration or the minimum potential O_2 concentration or (unless Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to determine NO_X emission rate) the minimum potential moisture percentage, or the maximum potential Hg concentration, or the maximum potential Hg emission rate, as specified, respectively, in sections 2.1.1.1, 2.1.3.1, 2.1.3.2, 2.1.5, and 2.1.7 of appendix A to this part. If Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used to determine NO_X emission rate, substitute the maximum potential moisture percentage, as specified in section 2.1.6 of appendix A to this part.

* * * * *

12. Section 75.32 is amended by revising the first sentence of paragraph (a) introductory text to read as follows:

§ 75.32 Determination of monitor data availability for standard missing data procedures.

(a) Following initial certification of the required SO_2, CO_2, O_2 , Hg concentration, Hg-diluent, or moisture monitoring system(s) at a particular unit or stack location * * *

* * * * *

13. Table 1 in section 75.33 is revised as follows:

§ 75.33 Standard missing data procedures for SO_2, NO_X and flow rate.

TABLE 1.—MISSING DATA PROCEDURE FOR SO_2 CEMS, CO_2 CEMS, MOISTURE CEMS, HG CEMS, AND DILUENT (CO_2 OR O_2) MONITORS FOR HEAT INPUT DETERMINATION

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [2]	Method	Lookback period
95 or more	N ≤ 24	Average	HB/HA
	N > 24	For SO_2, CO_2, Hg, and H_2O**, the greater of:	
		Average	HB/HA
		90th percentile	720 hours*
		For O_2 and H_2O^x, the lesser of:	
		Average	HB/HA
		10th percentile	720 hours*
90 or more, but below 95	N ≤ 8	Average	HB/HA
	N > 8	For SO_2, CO_2, Hg, and H_2O**, the greater of:	
		Average	HB/HA
		95th percentile	720 hours*
		For O_2 and H_2O^x, the lesser of:	
		Average	HB/HA
		5th percentile	720 hours*
80 or more, but below 90	N > 0	For SO_2, CO_2, Hg, and H_2O**, Maximum value [1].	720 hours*
		For O_2 and H_2O^x: Minimum value [1]	720 hours*

TABLE 1.—MISSING DATA PROCEDURE FOR SO_2 CEMS, CO_2 CEMS, MOISTURE CEMS, HG CEMS, AND DILUENT (CO_2 OR O_2) MONITORS FOR HEAT INPUT DETERMINATION—Continued

Trigger conditions		Calculation routines	
Monitor data availability (percent)	Duration (N) of CEMS outage (hours) [2]	Method	Lookback period
Below 80	N > 0	Maximum potential concentration or % (for SO_2, CO_2, , Hg, and H_2O**). or Minimum potential concentration or % (for O_2 and H_2O[x])	None

HB/HA = hour before and hour after the CEMS outage.

* Quality-assured, monitor operating hours, during unit operation. May be either fuel-specific or non-fuel-specific. For units that report data only for the ozone season, include only quality assured monitor operating hours within the ozone season in the lookback period. Use data from no earlier than 3 years prior to the missing data period.

[1] Where a unit with add-on SO_2 emission controls can demonstrate that the controls are operating properly, as provided in § 75.34, the unit may, upon approval, use the maximum controlled emission rate from the previous 720 operating hours.

[2] During unit operating hours.

[x] Use this algorithm for moisture except when Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used for NO_X emission rate.

** Use this algorithm for moisture only when Equation 19–3, 19–4 or 19–8 in Method 19 in appendix A to part 60 of this chapter is used for NO_X emission rate.

* * * * *

14. Subpart D is further amended by adding two new sections, § 75.38 and § 75.39 to read as follows:

§ 75.38 Standard missing data procedures for Hg CEMS

(a) Upon completion of 720 quality assured monitor operating hours using the initial missing data procedures of § 75.31(b), the owner or operator shall provide substitute data for Hg concentration or for Hg emission rate (as applicable), in accordance with the procedures in § 75.33(b)(1) through (b)(4), except that the term ''Hg concentration'' or ''Hg emission rate'' shall apply rather than ''SO_2 concentration,'' the term ''Hg concentration monitoring system'' or ''Hg-diluent monitoring system'' shall apply rather than ''SO_2 pollutant concentration monitor,'' and the term ''maximum potential Hg concentration, as defined in section 2.1.7 of appendix A to this part'' or ''maximum potential Hg emission rate, as defined in section 2.1.7 of appendix A to this part'' shall apply, rather than ''maximum potential SO_2 concentration.''

(b) For a unit equipped with a flue gas desulfurization (FGD) system that significantly reduces the concentration of Hg emitted to the atmosphere (including circulating fluidized bed units that use limestone injection), or for a unit equipped with add-on Hg emission controls (*e.g.*, carbon injection), the standard missing data procedures in paragraph (a) of this section may only be used for hours in which the SO_2 or Hg emission controls are documented to be operating properly, as described in § 75.58(b)(3). For any hour(s) in the missing data period for which this documentation is unavailable, the owner or operator shall report, as applicable, the maximum potential Hg concentration, as defined in section 2.1.7 of appendix A to this part or the maximum potential Hg emission rate, as defined in section 2.1.7 of appendix A to this part. In addition, under § 75.64(c), the designated representative shall submit as part of each electronic quarterly report, a certification statement, verifying the proper operation of the SO_2 or Hg emission controls for each missing data period in which the procedures in paragraph (a) of this section are applied.

(c) For units with FGD systems or add-on Hg controls, when the percent monitor data availability is less than 90.0 percent, and a missing data period occurs, the owner or operator may petition to report the maximum controlled Hg concentration or emission rate in the previous 720 quality-assured monitor operating hours, consistent with § 75.34(a)(3).

§ 75.39 Missing data procedures for sorbent trap monitoring systems.

(a) If a sorbent trap monitoring system has not been certified by the applicable compliance date specified under a State or Federal Hg mass emission reduction program that adopts the requirements of subpart I of this part, the owner or operator shall report the maximum potential Hg concentration, as defined in section 2.1.7 of appendix A to this part, until the system is certified.

(b) For a certified sorbent trap system, a missing data period will occur whenever:

(1) A gas sample is not extracted from the stack (*e.g.,* during a monitoring system malfunction or when the system undergoes maintenance); or

(2) The results of the Hg analysis for either one (or both) of the paired sorbent traps are missing or invalid (as determined using the quality assurance procedures in section 8.3 of Method 324). The missing data period begins with the hour in which the paired sorbent traps for which the Hg analysis is missing or invalid were put into service. The missing data period ends at the first hour in which valid Hg concentration data are obtained with another pair of sorbent traps.

(c) *Initial missing data procedures.* Use these missing data procedures until 720 hours of quality-assured data have been collected with the sorbent trap monitoring system(s), following initial certification. For each hour of the missing data period, the substitute data value for Hg concentration shall be the average Hg concentration from all valid sorbent trap analyses to date, including data from the initial certification test runs.

(d) *Standard missing data procedures.* Once 720 quality-assured hours of data have been obtained with the sorbent trap system(s), begin reporting the percent monitor data availability in accordance with § 75.32 and switch from the initial missing data procedures in paragraph (c) of this section to the following standard missing data procedures:

(1) If the percent monitor data availability (PMA) at the end of the missing data period is ≥ 95.0%, report the average Hg concentration for all valid sorbent trap analyses in the previous 12 months.

(2) If the PMA at the end of the missing data period is ≥90.0%, but

<95.0%, report the highest Hg concentration obtained from all of the valid sorbent trap analyses in the previous 12 months.

(3) If the PMA at the end of the missing data period is ≥ 80.0%, but <90.0%, report 1.5 times the highest Hg concentration obtained from all of the valid sorbent trap analyses in the previous 12 months.

(4) If the PMA at the end of the missing data period is <80.0%, report the maximum potential Hg concentration, as defined in section 2.1.7 of appendix A to this part.

(5) For the purposes of paragraphs (d)(1), (d)(2), and (d)(3) of this section, if fewer than 12 months have elapsed since initial certification, use whatever valid sorbent trap analyses are available to determine the appropriate substitute data values.

(e) Notwithstanding the requirements of paragraphs (c) and (d) of this section, if the unit has add-on Hg emission controls or is equipped with a flue gas desulfurization system that significantly reduces Hg emissions, the owner or operator shall report the maximum potential Hg concentration, as defined in section 2.1.7 of appendix A to this part, for any hour(s) in the missing data period for which proper operation of the Hg emission controls or FGD system is not documented according to § 75.58(b)(3).

15. Section 75.53 is amended by:

a. Revising paragraph (e)(1)(i)(E);

b. Revising paragraph (e)(1)(iv) introductory text; and

c. Revising paragraph (e)(1)(x).

The revisions read as follows:

§ 75.53 Monitoring plan.

* * * * *

(e) * * *

(1) * * *

(i) * * *

(E) Type(s) of emission controls for SO_2, NO_X, Hg, and particulates installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process; control equipment code, installation date, and optimization date; control equipment retirement date (if applicable); primary/secondary controls indicator; and an indicator for whether the controls are an original installation;

* * * * *

(iv) Identification and description of each monitoring component (including each monitor and its identifiable components, such as analyzer and/or probe) in the CEMS (*e.g.*, SO_2 pollutant concentration monitor, flow monitor, moisture monitor; NO_X pollutant concentration monitor, Hg monitor, and diluent gas monitor), the continuous opacity monitoring system, or the excepted monitoring system (*e.g.*, fuel flowmeter, data acquisition and handling system), including:

* * * * *

(x) For each parameter monitored: scale, maximum potential concentration (and method of calculation), maximum expected concentration (if applicable) (and method of calculation), maximum potential flow rate (and method of calculation), maximum potential NO_X emission rate, maximum potential Hg emission rate, span value, full-scale range, daily calibration units of measure, span effective date/hour, span inactivation date/hour, indication of whether dual spans are required, default high range value, flow rate span, and flow rate span value and full scale value (in scfh) for each unit or stack using SO_2, NO_X, CO_2, O_2, Hg, or flow component monitors.

* * * * *

16. Section 75.57 is amended by adding new paragraphs (i) and (j) to read as follows:

§ 75.57 General recordkeeping provisions.

* * * * *

(i) *Hg emission record provisions (CEMS).* The owner or operator shall record for each hour the information required by this paragraph for each affected unit using Hg CEMS in combination with flow rate, moisture, and (in certain cases) diluent gas monitors, to determine Hg mass emissions under a State or Federal Hg mass emissions reduction program that adopts the requirements of subpart I of this part.

(1) For Hg concentration during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(i) Component-system identification code, as provided in § 75.53;

(ii) Date and hour;

(iii) Hourly average Hg concentration (μg/dscm, rounded to the nearest tenth);

(iv) For Hg concentration monitoring systems only, record the bias-adjusted hourly average Hg concentration (μg/dscm, rounded to the nearest tenth) if a bias adjustment factor is required, as provided in § 75.24(d);

(v) Method of determination for hourly average Hg concentration using Codes 1–55 in Table 4a of this section; and

(vi) For Hg concentration monitoring systems only, record the percent monitor data availability (to the nearest tenth of a percent), calculated pursuant to § 75.32.

(2) For flue gas moisture content during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination (except where a default moisture value is used in accordance with § 75.11(b), § 75.12(b), or approved under § 75.66):

(i) Component-system identification code, as provided in § 75.53;

(ii) Date and hour;

(iii) Hourly average moisture content of flue gas (percent, rounded to the nearest tenth). If the continuous moisture monitoring system consists of wet- and dry-basis oxygen analyzers, also record both the wet- and dry-basis oxygen hourly averages (in percent O_2, rounded to the nearest tenth);

(iv) Percent monitor data availability (recorded to the nearest tenth of a percent) for the moisture monitoring system, calculated pursuant to § 75.32; and

(v) Method of determination for hourly average moisture percentage, using Codes 1–55 in Table 4a of this section.

(3) For diluent gas (O_2 or CO_2) concentration during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(i) Component-system identification code, as provided in § 75.53;

(ii) Date and hour;

(iii) Hourly average diluent gas (O_2 or CO_2) concentration (in percent, rounded to the nearest tenth);

(iv) Method of determination code for diluent gas (O_2 or CO_2) concentration data using Codes 1–55, in Table 4a of this section; and

(v) If the diluent monitor is used only for heat input rate determination, record the percent monitor data availability (to the nearest tenth of a percent) for the O_2 or CO_2 monitoring system, calculated pursuant to § 75.32.

(4) For stack gas volumetric flow rate during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination, record the information required under paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

(5) For Hg emission rate during unit operation, as measured and reported from each certified primary Hg-diluent monitoring system, certified back-up monitoring system, or other approved method of emissions determination:

(i) Monitoring system identification code, as provided in § 75.53;

(ii) Date and hour;

(iii) Hourly average Hg emission rate (in units of lb/10^{12} Btu, rounded to three decimal places);

(iv) Hourly average Hg emission rate (in units of lb/10^{12} Btu, rounded to three decimal places), adjusted for bias if a bias adjustment factor is required, as provided in § 75.24(d);

(v) Percent monitor data availability (recorded to the nearest tenth of a percent), calculated pursuant to § 75.32;

(vi) Method of determination for hourly average Hg emission rate, using Codes 1–55 in Table 4a of this section;

(vii) Identification codes for emissions formulas used to derive hourly average Hg emission rate and total Hg mass emissions, as provided in § 75.53; and

(viii) The F-factor used to convert Hg concentrations into emission rates.

(6) For Hg mass emissions during unit operation, as measured and reported from the certified primary monitoring system(s), certified redundant or non-redundant back-up monitoring system(s), or other approved method(s) of emissions determination:

(i) Date and hour;

(ii) Hourly Hg mass emissions (ounces, rounded to one decimal place);

(iii) Hourly Hg mass emissions (ounces, rounded to one decimal place), adjusted for bias if a bias adjustment factor is required, as provided in § 75.24(d); and

(iv) Identification code for emissions formula used to derive hourly Hg mass emissions from Hg concentration, flow rate and moisture data, as provided in § 75.53.

(j) *Hg emission record provisions (sorbent trap systems).* The owner or operator shall record for each hour the information required by this paragraph, for each affected unit using sorbent trap monitoring systems in combination with flow rate, moisture, and (in certain cases) diluent gas monitors, to determine Hg mass emissions under a State or Federal Hg mass emissions reduction program that adopts the requirements of subpart I of this part.

(1) For Hg concentration during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination:

(i) Component-system identification code, as provided in § 75.53;

(ii) Date and hour;

(iii) Hourly average Hg concentration (μg/dscm, rounded to the nearest tenth);

(iv) The bias-adjusted hourly average Hg concentration (μg/dscm, rounded to the nearest tenth) if a bias adjustment factor is required, as provided in § 75.24(d);

(v) Method of determination for hourly average Hg concentration using Codes 1–55 in Table 4a of this section; and

(vi) Percent monitor data availability (recorded to the nearest tenth of a percent), calculated pursuant to § 75.32;

(2) For flue gas moisture content during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination (except where a default moisture value is used in accordance with § 75.11(b), § 75.12(b), or approved under § 75.66):

(i) Component-system identification code, as provided in § 75.53;

(ii) Date and hour;

(iii) Hourly average moisture content of flue gas (percent, rounded to the nearest tenth). If the continuous moisture monitoring system consists of wet- and dry-basis oxygen analyzers, also record both the wet- and dry-basis oxygen hourly averages (in percent O_2, rounded to the nearest tenth);

(iv) Percent monitor data availability (recorded to the nearest tenth of a percent) for the moisture monitoring system, calculated pursuant to § 75.32; and

(v) Method of determination for hourly average moisture percentage, using Codes 1–55 in Table 4a of this section.

(3) For diluent gas (O_2 or CO_2) concentration during unit operation (if required for heat input determination), record the information required under paragraph (g) of this section.

(4) For stack gas volumetric flow rate during unit operation, as measured and reported from each certified primary monitor, certified back-up monitor, or other approved method of emissions determination, record the information required under paragraphs (c)(2)(i) through (c)(2)(vi) of this section.

(5) For Hg mass emissions during unit operation, as measured and reported from the certified primary monitoring system(s), certified redundant or non-redundant back-up monitoring system(s), or other approved method(s) of emissions determination, record the information required under paragraph (i)(6) of this section.

(6) Record the average flow rate of stack gas through each sorbent trap (in liters per minute, rounded to the nearest tenth), and the unit or stack operating level (*i.e.*, low, mid, or high, as defined in section 6.5.2.1 of appendix A to this part) during the hour.

17. Section 75.58 is amended by revising paragraphs (b)(3) introductory text, (b)(3)(i), and (b)(3)(ii) to read as follows:

§ 75.58 General recordkeeping provisions for specific situations.

* * * * *

(b) * * *

(3) Except as otherwise provided in § 75.34(d), for units with add-on SO_2 or NO_X emission controls following the provisions of § 75.34(a)(1), (a)(2) or (a)(3), or for units with add-on Hg emission controls, the owner or operator shall record:

(i) Parametric data which demonstrate, for each hour of missing SO_2, Hg, or NO_X emission data, the proper operation of the add-on emission controls, as described in the quality assurance/quality control program for the unit. The parametric data shall be maintained on site and shall be submitted, upon request, to the Administrator, EPA Regional office, State, or local agency;

(ii) A flag indicating, for each hour of missing SO_2, Hg, or NO_X emission data, either that the add-on emission controls are operating properly, as evidenced by all parameters being within the ranges specified in the quality assurance/quality control program, or that the add-on emission controls are not operating properly;

* * * * *

18. Section 75.59 is amended by:

a. Revising the introductory text of paragraphs (a)(1), (a)(3),(a)(5), (a)(5)(ii), (a)(6), and (a)(9);

b. Adding paragraphs (a)(7)(vii) and (a)(14);

c. Revising paragraph (a)(9)(vi); and

d. Revising the introductory text of paragraph (c).

The revisions read as follows:

§ 75.59 Certification, quality assurance, and quality control record provisions.

* * * * *

(a) * * *

(1) For each SO_2 or NO_X pollutant concentration monitor, flow monitor, CO_2 pollutant concentration monitor (including O_2 monitors used to determine CO_2 emissions), Hg monitor, or diluent gas monitor (including wet- and dry-basis O_2 monitors used to determine percent moisture), the owner or operator shall record the following for all daily and 7-day calibration error tests and all off-line calibration demonstrations, including any follow-up tests after corrective action:

* * * * *

(3) For each SO_2 or NO_X pollutant concentration monitor, CO_2 pollutant concentration monitor (including O_2 monitors used to determine CO_2 emissions), Hg concentration monitor, or diluent gas monitor (including wet- and dry-basis O_2 monitors used to determine percent moisture), the owner

or operator shall record the following for the initial and all subsequent linearity check(s) and converter checks (Hg monitors, only), including any follow-up tests after corrective action:

* * * * *

[For Alternative # 1 in Section II.B.3 of Appendix A to the Preamble]:

(5) For each SO_2 pollutant concentration monitor, flow monitor, each CO_2 pollutant concentration monitor (including any O_2 concentration monitor used to determine CO_2 mass emissions or heat input), each NO_X-diluent continuous emission monitoring system, each NO_X concentration monitoring system, each diluent gas (O_2 or CO_2) monitor used to determine heat input, each moisture monitoring system, each Hg concentration monitoring system, each Hg-diluent monitoring system, each sorbent trap monitoring system, and each approved alternative monitoring system, the owner or operator shall record the following information for the initial and all subsequent relative accuracy test audits:

[For Alternative # 2 in Section II.B.3 of Appendix A to the Preamble]:

(5) For each SO_2 pollutant concentration monitor, flow monitor, each CO_2 pollutant concentration monitor (including any O_2 concentration monitor used to determine CO_2 mass emissions or heat input), each NO_X-diluent continuous emission monitoring system, each NO_X concentration monitoring system, each diluent gas (O_2 or CO_2) monitor used to determine heat input, each moisture monitoring system, each Hg concentration monitoring system, each Hg-diluent monitoring system, each sorbent trap monitoring system, and each approved alternative monitoring system, the owner or operator shall record the following information for the initial and all subsequent relative accuracy test audits. Also record the applicable information for all periodic relative accuracy audits (RAAs) of sorbent trap monitoring systems:

* * * * *

(ii) Individual test run data from the relative accuracy test audit for the SO_2 concentration monitor, flow monitor, CO_2 pollutant concentration monitor, NO_X-diluent continuous emission monitoring system, SO_2-diluent continuous emission monitoring system, diluent gas (O_2 or CO_2) monitor used to determine heat input, NO_X concentration monitoring system, moisture monitoring system, Hg concentration monitoring system, Hg-diluent monitoring system, sorbent trap monitoring system, or approved alternative monitoring system, including:

* * * * *

(6) For each SO_2, NO_X, Hg, or CO_2 pollutant concentration monitor, NO_X-diluent continuous emission monitoring system, Hg-diluent continuous emission monitoring system, NO_X concentration monitoring system, or diluent gas (O_2 or CO_2) monitor used to determine heat input, the owner or operator shall record the following information for the cycle time test:

* * * * *

(7) * * *

(vii) For each RATA run using the Ontario Hydro method to determine Hg concentration:

(A) Percent CO_2 and O_2 in the stack gas, dry basis;

(B) Moisture content of the stack gas (percent H_2O);

(C) Average stack temperature (°F);

(D) Dry gas volume metered (dscm);

(E) Percent isokinetic;

(F) Particle-bound Hg collected by the filter, blank, and probe rinse (μg);

(G) Oxidized Hg collected by the KCl impingers (μg)

(H) Elemental Hg collected in the HNO_3/H_2O_2 impinger and in the $KMnO4/H_2SO_4$ impingers (μg);

(I) Total Hg, including particle-bound Hg (μg); and

(J) Total Hg, excluding particle-bound Hg (μg)

* * * * *

(9) When hardcopy relative accuracy test reports, certification reports, recertification reports, or semiannual or annual reports for gas or flow rate CEMS, Hg CEMS, or sorbent trap monitoring systems are required or requested under § 75.60(b)(6) or § 75.63, the reports shall include, at a minimum, the following elements (as applicable to the type(s) of test(s) performed:

* * * * *

(vi) Laboratory calibrations of the source sampling equipment. For sorbent trap monitoring systems, the laboratory analyses of all sorbent traps, and information documenting the results of all Method 324 leak checks and other quality control procedures.

* * * * *

(14) For the sorbent traps used in sorbent trap monitoring systems to quantify Hg concentration under subpart I of this part (including sorbent traps used for relative accuracy testing), the owner or operator shall keep records of the following:

(i) The ID number of the monitoring system in which each sorbent trap was used to collect Hg;

(ii) The unique identification number of each sorbent trap;

(iii) The beginning and ending dates and hours of the data collection period for each sorbent trap;

(iv) The average Hg concentration (in μg/dscm) for the data collection period;

(v) Information documenting the results of the required Method 324 leak checks;

(vi) The Method 324 laboratory analysis of the Hg collected by each sorbent trap; and

(vii) Information documenting the results of the applicable quality control procedures in section 8.3 of Method 324.

* * * * *

(c) For units with add-on SO_2 or NO_X emission controls following the provisions of § 75.34(a)(1) or (a)(2), and for units with add-on Hg emission controls, the owner or operator shall keep the following records on-site in the quality assurance/quality control plan required by section 1 of appendix B to this part: * * *

* * * * *

19. Part 75 is amended by adding Subpart I to read as follows:

Subpart I—Hg Mass Emission Provisions

Sec.
75.80 General provisions.
75.81 Monitoring of Hg mass emissions and heat input at the unit level.
75.82 Monitoring of Hg mass emissions and heat input at common and multiple stacks.
75.83 Calculation of Hg mass emissions and heat input rate.
75.84 Recordkeeping and reporting.

§ 75.80 General provisions.

(a) *Applicability.* The owner or operator of a unit shall comply with the requirements of this subpart to the extent that compliance is required by an applicable State or Federal Hg mass emission reduction program that incorporates by reference, or otherwise adopts the provisions of, this subpart.

(1) For purposes of this subpart, the term ''affected unit'' shall mean any coal-fired unit (as defined in § 72.2 of this chapter) that is subject to a State or Federal Hg mass emission reduction program requiring compliance with this subpart. The term ''non-affected unit'' shall mean any unit that is not subject to such a program, the term ''permitting authority'' shall mean the permitting authority under an applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart, and the term ''designated representative'' shall mean the responsible party under the applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart.

(2) In addition, the provisions of subparts A, C, D, E, F, and G and appendices A through G of this part applicable to Hg concentration, flow rate, Hg emission rate and heat input, as set forth and referenced in this subpart, shall apply to the owner or operator of a unit required to meet the requirements of this subpart by a State or Federal Hg mass emission reduction program. The requirements of this part for SO_2, NO_X, CO_2 and opacity monitoring, recordkeeping and reporting do not apply to units that are subject only to a State or Federal Hg mass emission reduction program that adopts the requirements of this subpart, but are not affected units under the Acid Rain Program or under a State or Federal NO_X mass emission reduction program that adopts the requirements of subpart H of this part.

(b) *Compliance dates.* The owner or operator of an affected unit shall meet the compliance deadlines established by an applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart.

(c) *Prohibitions.*

(1) No owner or operator of an affected unit or a non-affected unit under § 75.82(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with paragraph (h) of this section.

(2) No owner or operator of an affected unit or a non-affected unit under § 75.82(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged emissions of Hg to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this part.

(3) No owner or operator of an affected unit or a non-affected unit under § 75.82(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording Hg mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the provisions of this part applicable to monitoring systems under § 75.81.

(4) No owner or operator of an affected unit or a non-affected unit under § 75.82(b)(2)(ii) shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this part, except under any one of the following circumstances:

(i) During the period that the unit is covered by a retired unit exemption that is in effect under the State or Federal Hg mass emission reduction program that adopts the requirements of this subpart; or

(ii) The owner or operator is monitoring Hg mass emissions from the affected unit with another certified monitoring system approved, in accordance with the provisions of paragraph (d) of this section; or

(iii) The designated representative submits notification of the date of certification testing of a replacement monitoring system in accordance with § 75.61.

(d) *Initial certification and recertification procedures.*

(1) The owner or operator of an affected unit that is subject to the Acid Rain Program or to a State or Federal NO_X mass emission reduction program that adopts the requirements of subpart H of this part shall comply with the applicable initial certification and recertification procedures in § 75.20 and § 75.70(d), except that the owner or operator shall meet any additional requirements for Hg-diluent continuous emission monitoring systems, Hg concentration monitoring systems, sorbent trap monitoring systems (as defined in § 72.2 of this chapter), flow monitors, CO_2 monitors, O_2 monitors, or moisture monitors, as set forth under § 75.81, under the common stack provisions in § 75.82, or under an applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart.

(2) The owner or operator of an affected unit that is not subject to the Acid Rain Program or to a State or Federal NO_X mass emission reduction program that adopts the requirements of subpart H of this part shall comply with the initial certification and recertification procedures established by an applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart.

(e) *Quality assurance and quality control requirements.* For units that use continuous emission monitoring systems to account for Hg mass emissions, the owner or operator shall meet the applicable quality assurance and quality control requirements in § 75.21 and appendix B to this part for the Hg-diluent continuous emission monitoring systems, flow monitoring systems, Hg concentration monitoring systems, moisture monitoring systems, and diluent monitors required under § 75.81. Units using sorbent trap monitoring systems shall meet the applicable quality assurance requirements of Method 324 and section 2.3 of appendix B to this part.

(f) *Missing data procedures.* Except as provided in § 75.38(b) and paragraph (g) of this section, the owner or operator shall provide substitute data from monitoring systems required under § 75.81 for each affected unit as follows:

(1) For an owner or operator using continuous emissions monitoring systems, substitute for missing data in accordance with the applicable missing data procedures in '75.31 through § 75.38 whenever the unit combusts fuel and:

(i) A valid, quality-assured hour of Hg emission rate data (in lb/10_{12} Btu) has not been measured and recorded for a unit, either by a certified Hg-diluent continuous emission monitoring system, by an appropriate EPA reference method under § 75.22, or by an approved monitoring system under subpart E of this part; or

(ii) A valid, quality-assured hour of flow rate data (in scfh) has not been measured and recorded for a unit either by a certified flow monitor, by an appropriate EPA reference method under § 75.22, or by an approved alternative monitoring system under subpart E of this part; or

(iii) A valid, quality-assured hour of heat input rate data (in mmBtu/hr) has not been measured and recorded for a unit, either by certified flow rate and diluent (CO_2 or O_2) monitors, by appropriate EPA reference methods under § 75.22, or by approved alternative monitoring systems under subpart E of this part, where heat input is required either for calculating Hg mass or allocating allowances under the applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart; or

(iv) A valid, quality-assured hour of Hg concentration data (in micrograms per dry standard cubic meter) has not been measured and recorded, either by a certified Hg concentration monitoring system, by an appropriate EPA reference method under § 75.22, or by an approved alternative monitoring method under subpart E of this part, where the owner or operator chooses to use a Hg concentration monitoring system with a flow monitor to calculate Hg mass emissions; or

(v) A valid, quality-assured hour of moisture data (in percent H_2O) has not been measured or recorded for an affected unit, either by a certified moisture monitoring system, by an appropriate EPA reference method under § 75.22, or an approved alternative monitoring method under subpart E of this part. This requirement

does not apply when a default percent moisture value, as provided in § 75.11(b) or § 75.12(b), is used to account for the hourly moisture content of the stack gas.

(2) For an owner or operator using a sorbent trap monitoring system to quantify Hg mass emissions, substitute for missing data in accordance with the missing data procedures in § 75.39.

(g) *Reporting data prior to initial certification.* If, by the applicable compliance date under the State or Federal Hg mass emission reduction program that adopts the requirements of this subpart, the owner or operator of an affected unit has not successfully completed all required certification tests for any monitoring system(s), he or she shall determine, record and report hourly data prior to initial certification using one of the following procedures, for the monitoring system(s) that are uncertified:

(1) If Hg mass emissions are determined from the Hg emission rate and the heat input rate, report the maximum potential Hg emission rate (as defined in section 2.1.7 of appendix A to this part), the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part, and, for heat input rate determinations, the maximum potential CO_2 concentration, as defined in section 2.1.3.1 of appendix A to this part, the minimum potential O_2 concentration, as defined in section 2.1.3.2 of appendix A to this part, and the minimum potential percent moisture, as defined in section 2.1.5 of appendix A to this part.

(2) If Hg mass emissions are determined using a Hg concentration monitoring system or a sorbent trap monitoring system and a flow monitoring system, report the maximum potential concentration of Hg as defined in section 2.1.7 of appendix A to this part and the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part;

(3) For any unit, report data from the reference methods under § 75.22.

(4) For any unit using the procedures in paragraph (g)(2) of this section that is required to report heat input for purposes of allocating allowances, report the maximum potential flow rate, as defined in section 2.1.4.1 of appendix A to this part, the maximum potential CO_2 concentration, as defined in section 2.1.3.1 of appendix A to this part, the minimum potential O_2 concentration, as defined in section 2.1.3.2 of appendix A to this part, and the minimum potential percent moisture, as defined in section 2.1.5 of appendix A to this part.

(h) *Petitions.*

(1) The designated representative of an affected unit that is also subject to the Acid Rain Program may submit a petition to the Administrator requesting an alternative to any requirement of this subpart. Such a petition shall meet the requirements of § 75.66 and any additional requirements established by the applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart. Use of an alternative to any requirement of this subpart is in accordance with this subpart and with such State or Federal Hg mass emission reduction program only to the extent that the petition is approved by the Administrator, in consultation with the permitting authority.

(2) Notwithstanding paragraph (h)(1) of this section, petitions requesting an alternative to a requirement concerning any additional CEMS required solely to meet the common stack provisions of § 75.82 shall be submitted to the permitting authority and the Administrator and shall be governed by paragraph (h)(3) of this section. Such a petition shall meet the requirements of § 75.66 and any additional requirements established by an applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart.

(3) The designated representative of an affected unit that is not subject to the Acid Rain Program may submit a petition to the permitting authority and the Administrator requesting an alternative to any requirement of this subpart. Such a petition shall meet the requirements of § 75.66 and any additional requirements established by the applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart. Use of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that it is approved by the Administrator and by the permitting authority.

§ 75.81 Monitoring of Hg mass emissions and heat input at the unit level.

The owner or operator of the affected coal-fired unit shall either:

(a) Meet the general operating requirements in § 75.10 for the following continuous emission monitors (except as provided in accordance with subpart E of this part):

(1) A Hg-diluent continuous emission monitoring system (consisting of a Hg pollutant concentration monitor, an O_2 or CO_2 diluent gas monitor, and an automated data acquisition and handling system) to measure Hg emission rate in lb/10_{12} Btu; and

(2) A flow rate monitoring system; and

(3) An O_2 or CO_2 diluent gas monitor to measure heat input rate; and

(4) A continuous moisture monitoring system, as described in § 75.11(b) or § 75.12(b). Alternatively, the owner or operator may use the appropriate fuel-specific default moisture value provided in § 75.11 or § 75.12, or a site-specific moisture value approved by petition under § 75.66; or

(b) Meet the general operating requirements in § 75.10 for the following continuous emission monitors (except as provided in accordance with subpart E of this part):

[For Alternative # 1 in Section II.B.3 of Appendix A to the Preamble]:

(1) A Hg concentration monitoring system (consisting of a Hg pollutant concentration monitor and a n automated data acquisition and handling system) or, for affected units that qualify, a sorbent trap monitoring system (as defined in § 72.2 of this chapter) to measure Hg concentration. The use of sorbent trap monitoring systems is restricted to affected units with estimated average Hg mass emissions of 144 ounces (9 lbs) or less for the same three calendar years that are used to allocate the Hg allowances; and

[For Alternative # 2 in Section II.B.3 of Appendix A to the Preamble]:

(1) A Hg concentration monitoring system (consisting of a Hg pollutant concentration monitor and a n automated data acquisition and handling system) or, for affected units that qualify, a sorbent trap monitoring system (as defined in § 72.2 of this chapter) to measure Hg concentration; and

(2) A flow rate monitoring system; and

(3) A continuous moisture monitoring system, as described in § 75.11(b) or § 75.12(b). Alternatively, the owner or operator may use the appropriate fuel-specific default moisture value provided in § 75.11 or § 75.12, or a site-specific moisture value approved by petition under § 75.66; and

(4) If heat input is required to be reported under the applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart, the owner or operator also must meet the general operating requirements for a flow monitoring system and an O_2 or CO_2 monitoring system to measure heat input rate.

(c) Notwithstanding the provisions of paragraph (b)(1) of this section, the owner or operator shall quantify mercury mass emissions using either a mercury concentration CEMS or a

mercury-diluent CEMS for any affected unit that commences operation more than 6 months after the date of publication of a final rule implementing a State or Federal Hg mass emission reduction program that adopts the requirements of this subpart.

§ 75.82 Monitoring of Hg mass emissions and heat input at common and multiple stacks.

(a) *Unit utilizing common stack with other affected unit(s).* When an affected unit utilizes a common stack with one or more affected units, but no non-affected units, the owner or operator shall either:

(1) Install, certify, operate, and maintain the monitoring systems described in § 75.81(a) or § 75.81(b) at the common stack, record the combined Hg mass emissions for the units exhausting to the common stack, and, where unit heat input rate determination is required, determine the hourly unit heat input rates by either:

(i) Apportioning the common stack heat input rate to the individual units according to the procedures in § 75.16(e)(3); or

(ii) Installing, certifying, operating, and maintaining a flow monitoring system and diluent monitor in the duct to the common stack from each unit; or

(2) Install, certify, operate, and maintain the monitoring systems described in § 75.81(a) or § 75.81(b) in the duct to the common stack from each unit.

(b) *Unit utilizing common stack with nonaffected unit(s).* When one or more affected units utilizes a common stack with one or more nonaffected units, the owner or operator shall either:

(1) Install, certify, operate, and maintain the monitoring systems described in § 75.81(a) or § 75.81(b) in the duct to the common stack from each affected unit; or

(2) Install, certify, operate, and maintain the monitoring systems described in § 75.81(a) or § 75.81(b) in the common stack; and

(i) Install, certify, operate, and maintain the monitoring systems described in § 75.81(a) or § 75.81(b) in the common stack and in the duct to the common stack from each non-affected unit. The designated representative shall submit a petition to the permitting authority and the Administrator to allow a method of calculating and reporting the Hg mass emissions from the affected units as the difference between Hg mass emissions measured in the common stack and Hg mass emissions measured in the ducts of the non-affected units, not to be reported as an hourly value less than zero. The permitting authority and the Administrator may approve such a method whenever the designated representative demonstrates, to the satisfaction of the permitting authority and the Administrator, that the method ensures that the Hg mass emissions from the affected units are not underestimated; or

(ii) Count the combined emissions measured at the common stack as the Hg mass emissions for the affected units, for recordkeeping and compliance purposes, in accordance with paragraph (a) of this section; or

(iii) Submit a petition to the permitting authority and the Administrator to allow use of a method for apportioning Hg mass emissions measured in the common stack to each of the units using the common stack and for reporting the Hg mass emissions. The permitting authority and the Administrator may approve such a method whenever the designated representative demonstrates, to the satisfaction of the permitting authority and the Administrator, that the method ensures that the Hg mass emissions from the affected units are not underestimated.

(c) *Unit with a main stack and a bypass stack.* Whenever any portion of the flue gases from an affected unit can be routed through a bypass stack to avoid the Hg monitoring system(s) installed on the main stack, the owner and operator shall either:

(1) Install, certify, operate, and maintain the monitoring systems described in § 75.81(a) or § 75.81(b) on both the main stack and the bypass stack and calculate Hg mass emissions for the unit as the sum of the Hg mass emissions measured at the two stacks;

(2) Install, certify, operate, and maintain the monitoring systems described in § 75.81(a) or § 75.81(b) at the main stack and measure Hg mass emissions at the bypass stack using the appropriate reference methods in § 75.22(b). Calculate Hg mass emissions for the unit as the sum of the emissions recorded by the installed monitoring systems on the main stack and the emissions measured by the reference method monitoring systems; or

(3) Install, certify, operate, and maintain the monitoring systems described in § 75.81(a) or § 75.81(b) only on the main stack. If this option is chosen, it is not necessary to designate the exhaust configuration as a multiple stack configuration in the monitoring plan required under § 75.53, since only the main stack is monitored. For each unit operating hour in which the bypass stack is used, report, as applicable, the maximum potential Hg emission rate (as defined in section 2.1.7 of appendix A to this part), and the appropriate substitute data values for flow rate, CO_2 concentration, O_2 concentration, and moisture (as applicable), in accordance with the missing data procedures of § 75.31 through § 75.37.

(d) *Unit with multiple stack or duct configuration.* When the flue gases from an affected unit discharge to the atmosphere through more than one stack, or when the flue gases from an affected unit utilize two or more ducts feeding into a single stack and the owner or operator chooses to monitor in the ducts rather than in the stack, the owner or operator shall either:

(1) Install, certify, operate, and maintain the monitoring systems described in § 75.81(a) or § 75.81(b) in each of the multiple stacks and determine Hg mass emissions from the affected unit as the sum of the Hg mass emissions recorded for each stack. If another unit also exhausts flue gases into one of the monitored stacks, the owner or operator shall comply with the applicable requirements of paragraphs (a) and (b) of this section, in order to properly determine the Hg mass emissions from the units using that stack; or

(2) Install, certify, operate, and maintain the monitoring systems described in § 75.81(a) or § 75.81(b) in each of the ducts that feed into the stack, and determine Hg mass emissions from the affected unit using the sum of the Hg mass emissions measured at each duct, except that where another unit also exhausts flue gases to one or more of the stacks, the owner or operator shall also comply with the applicable requirements of paragraphs (a) and (b) of this section to determine and record Hg mass emissions from the units using that stack.

§ 75.83 Calculation of Hg mass emissions and heat input rate.

The owner or operator shall calculate Hg mass emissions and heat input rate in accordance with the procedures in sections 9.1 through 9.3 of appendix F to this part.

§ 75.84 Recordkeeping and reporting.

(a) *General recordkeeping provisions.* The owner or operator of any affected unit shall maintain for each affected unit and each non-affected unit under § 75.82(b)(2)(ii) a file of all measurements, data, reports, and other information required by this part at the source in a form suitable for inspection for at least three (3) years from the date of each record. Except for the certification data required in § 75.57(a)(4) and the initial submission

of the monitoring plan required in § 75.57(a)(5), the data shall be collected beginning with the earlier of the date of provisional certification or the compliance deadline in § 75.80(b). The certification data required in § 75.57(a)(4) shall be collected beginning with the date of the first certification test performed. The file shall contain the following information:

(1) The information required in §§ 75.57(a)(2), (a)(4), (a)(5), (a)(6), (b), (c)(2), (g) (if applicable), (h), and (i) or (j) (as applicable). For the information in § 75.57(a)(2), replace the phrase ''the deadline in § 75.4(a), (b) or (c)'' with the phrase ''the applicable certification deadline under the State or Federal Hg mass emission reduction program'';

(2) The information required in § 75.58(b)(3), for units with flue gas desulfurization systems or add-on Hg emission controls;

(3) For affected units using Hg CEMS or sorbent trap monitoring systems, for each hour when the unit is operating, record the Hg mass emissions, calculated in accordance with section 9 of appendix F to this part.

(4) Heat input and Hg methodologies for the hour; and

(5) Formulas from monitoring plan for total Hg mass emissions and heat input rate (if applicable);

(b) *Certification, quality assurance and quality control record provisions.* The owner or operator of any affected unit shall record the applicable information in § 75.59 for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.82(b)(2)(ii).

(c) *Monitoring plan recordkeeping provisions.*

(1) *General provisions.* The owner or operator of an affected unit shall prepare and maintain a monitoring plan for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.82(b)(2)(ii). The monitoring plan shall contain sufficient information on the continuous monitoring systems and the use of data derived from these systems to demonstrate that all the unit's Hg emissions are monitored and reported.

(2) *Updates.* Whenever the owner or operator makes a replacement, modification, or change in a certified continuous monitoring system or alternative monitoring system under subpart E of this part, including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan (*e.g.,* a change to a serial number for a component of a monitoring system), then the owner or operator shall update the monitoring plan.

(3) *Contents of the monitoring plan.* Each monitoring plan shall contain the information in § 75.53(e)(1) in electronic format and the information in § 75.53(e)(2) in hardcopy format.

(d) *General reporting provisions.*

(1) The designated representative for an affected unit shall comply with all reporting requirements in this section and with any additional requirements set forth in an applicable State or Federal Hg mass emission reduction program that adopts the requirements of this subpart.

(2) The designated representative for an affected unit shall submit the following for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.82(b)(2)(ii):

(i) Initial certification and recertification applications in accordance with § 75.80(d);

(ii) Monitoring plans in accordance with paragraph (e) of this section; and

(iii) Quarterly reports in accordance with paragraph (f) of this section.

(3) Other petitions and communications. The designated representative for an affected unit shall submit petitions, correspondence, application forms, and petition-related test results in accordance with the provisions in § 75.80(h).

[For Alternative # 1 in Section II.B.3 of Appendix A to the Preamble]:

(4) *Quality assurance RATA reports.* If requested by the permitting authority, the designated representative of an affected unit shall submit the quality assurance RATA report for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.82(b)(2)(ii) by the later of 45 days after completing a quality assurance RATA according to section 2.3 of appendix B to this part or 15 days of receiving the request. The designated representative shall report the hardcopy information required by § 75.59(a)(9) to the permitting authority.

[For Alternative # 2 in Section II.B.3 of Appendix A to the Preamble]:

(4) *Quality assurance RATA (or RAA) reports.* If requested by the permitting authority, the designated representative of an affected unit shall submit the quality assurance RATA or RAA report for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.82(b)(2)(ii) by the later of 45 days after completing a quality assurance RATA or RAA according to section 2.3 of appendix B to this part or 15 days of receiving the request. The designated representative shall report the hardcopy information required by § 75.59(a)(9) to the permitting authority.

(5) *Notifications.* The designated representative for an affected unit shall submit written notice to the permitting authority according to the provisions in § 75.61 for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.82(b)(2)(ii).

(e) *Monitoring plan reporting.*

(1) *Electronic submission.* The designated representative for an affected unit shall submit to the Administrator a complete, electronic, up-to-date monitoring plan file for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.82(b)(2)(ii), as follows: no later than 45 days prior to the commencement of initial certification testing; at the time of a certification or recertification application submission; and whenever an update of the electronic monitoring plan is required, either under § 75.53 or elsewhere in this part.

(2) *Hardcopy submission.* The designated representative of an affected unit shall submit all of the hardcopy information required under § 75.53, for each affected unit or group of units monitored at a common stack and each non-affected unit under § 75.82(b)(2)(ii), to the permitting authority prior to initial certification. Thereafter, the designated representative shall submit hardcopy information only if that portion of the monitoring plan is revised. The designated representative shall submit the required hardcopy information as follows: no later than 45 days prior to the commencement of initial certification testing; with any certification or recertification application, if a hardcopy monitoring plan change is associated with the recertification event; and within 30 days of any other event with which a hardcopy monitoring plan change is associated, pursuant to § 75.53(b). Electronic submittal of all monitoring plan information, including hardcopy portions, is permissible provided that a paper copy of the hardcopy portions can be furnished upon request.

(f) *Quarterly reports.*

(1) *Electronic submission.* Electronic quarterly reports shall be submitted , beginning with the calendar quarter containing the compliance date in § 75.80(b), unless otherwise specified in the final rule implementing a State or Federal Hg mass emissions reduction program that adopts the requirements of this subpart. The designated representative for an affected unit shall report the data and information in this paragraph (f)(1) and the applicable

compliance certification information in paragraph (f)(2) of this section to the Administrator quarterly. Each electronic report must be submitted to the Administrator within 30 days following the end of each calendar quarter. Each electronic report shall include the date of report generation and the following information for each affected unit or group of units monitored at a common stack:

(i) The facility information in § 75.64(a)(1); and

(ii) The information and hourly data required in paragraph (a) of this section, except for:

(A) Descriptions of adjustments, corrective action, and maintenance;

(B) Information which is incompatible with electronic reporting (*e.g.,* field data sheets, lab analyses, quality control plan);

(C) For units with flue gas desulfurization systems or with add-on Hg emission controls, the information in § 75.58(b)(3);

(D) Information required by § 75.57(h) concerning the causes of any missing data periods and the actions taken to cure such causes;

(E) Hardcopy monitoring plan information required by § 75.53 and hardcopy test data and results required by § 75.59;

(F) Records of flow polynomial equations and numerical values required by § 75.59(a)(5)(vi);

(G) Stratification test results required as part of the RATA supplementary records under § 75.59(a)(7);

[For Alternative # 1 in Section II.B.3 of Appendix A to the Preamble]:

(H) Data and results of RATAs that are aborted or invalidated due to problems with the reference method or operational problems with the unit and data and results of linearity checks that are aborted or invalidated due to operational problems with the unit; and

(I) Supplementary RATA information required under § 75.59(a)(7)(i) through § 75.59(a)(14), as applicable, except that: The data under § 75.59(a)(7)(ii)(A) through (T) and the data under § 75.59(a)(7)(iii)(A) through (M) shall, as applicable, be reported for flow RATAs in which angular compensation (measurement of pitch and/or yaw angles) is used and for flow RATAs in which a site-specific wall effects adjustment factor is determined by direct measurement; and the data under § 75.59(a)(7)(ii)(T) shall be reported for all flow RATAs in which a default wall effects adjustment factor is applied; and

[For Alternative # 2 in Section II.B.3 of Appendix A to the Preamble]:

(H) Data and results of RATAs (or RAAs) that are aborted or invalidated due to problems with the reference method or operational problems with the unit and data and results of linearity checks that are aborted or invalidated due to operational problems with the unit; and

(I) Supplementary RATA (or RAA) information required under § 75.59(a)(7)(i) through § 75.59(a)(14), as applicable, except that: The data under § 75.59(a)(7)(ii)(A) through (T) and the data under § 75.59(a)(7)(iii)(A) through (M) shall, as applicable, be reported for flow RATAs in which angular compensation (measurement of pitch and/or yaw angles) is used and for flow RATAs in which a site-specific wall effects adjustment factor is determined by direct measurement; and the data under § 75.59(a)(7)(ii)(T) shall be reported for all flow RATAs in which a default wall effects adjustment factor is applied; and

(iii) If a Hg-diluent monitoring system is used to quantify Hg mass emissions, the average Hg emission rate during the quarter (lb/10^{12} Btu, rounded to three decimal places) and the average Hg emission rate for the year-to-date; and

(iv) Ounces of Hg emitted during quarter and cumulative ounces of Hg emitted in the year-to-date (rounded to the nearest tenth); and

(v) Unit or stack operating hours for quarter, cumulative unit or stack operating hours for year-to-date; and

(vi) Reporting period heat input (if applicable) and cumulative, year-to-date heat input.

(2) *Compliance certification.*

(i) The designated representative shall certify that the monitoring plan information in each quarterly electronic report (*i.e.,* component and system identification codes, formulas, etc.) represent current operating conditions for the affected unit(s)

(ii) The designated representative shall submit and sign a compliance certification in support of each quarterly emissions monitoring report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(*1*) The monitoring data submitted were recorded in accordance with the applicable requirements of this part, including the quality assurance procedures and specifications; and

(*2*) With regard to a unit with an FGD system or with add-on Hg emission controls, that for all hours where data are substituted in accordance with § 75.38(b), the add-on emission controls were operating within the range of parameters listed in the quality-assurance plan for the unit, and that the substitute values do not systematically underestimate Hg emissions.

(3) *Additional reporting requirements.* The designated representative shall also comply with all of the quarterly reporting requirements in §§ 75.64(d), (f), and (g).

20. Appendix A to 40 CFR part 75 is amended by revising the title of section 1.1 and revising the second sentence of section 1.1 introductory text to read as follows:

Appendix A to Part 75—Specifications and Test Procedures

1. Installation and Measurement Location

1.1 Gas and Hg Monitors

* * * Select a representative measurement point or path for the monitor probe(s) (or for the path from the transmitter to the receiver) such that the SO_2, CO_2, O_2, or NO_X concentration monitoring system or NO_X-diluent continuous emission monitoring system (NO_X pollutant concentration monitor and diluent gas monitor), Hg concentration monitoring system, Hg-diluent monitoring system, or sorbent trap monitoring system will pass the relative accuracy test (*see* section 6 of this appendix).

* * * * *

Appendix A to Part 75—[Amended]

21. Appendix A to part 75 is further amended by adding new sections 2.1.7 through 2.1.7.4 and 2.2.3 to read as follows:

2. Equipment Specifications

* * * * *

2.1.7 Hg Monitors

Determine the appropriate span and range value(s) for each Hg pollutant concentration monitor, so that all expected Hg concentrations can be determined accurately.

2.1.7.1 Maximum Potential Concentration

(a) The maximum potential concentration depends upon the type of coal combusted in the unit. For the initial MPC determination, there are three options:

(1) Use one of the following default values: 9 μg/dscm for bituminous coal; 10 μg/dscm for sub-bituminous coal; 16 μg/dscm for lignite, and 1 μg/dscm for waste coal, *i.e.,* anthracite culm or bituminous gob (if different coals are blended, use the highest MPC for any fuel in the blend); or

(2) You may base the MPC on the results of site-specific emission testing using the Ontario Hydro method, if the unit does not have add-on Hg emission controls or a flue gas desulfurization system, or if you test upstream of these control devices. A minimum of 3 test runs, two hours (or more) in duration, are required, at the normal operating load. Use the highest total Hg concentration obtained in any of the tests as the MPC; or

(3) You may base the MPC on 720 or more hours of historical CEMS data, if the unit does not have add-on Hg emission controls or a flue gas desulfurization system (or if the CEMS is located upstream of these control

devices) and if the Hg CEMS that has been tested for relative accuracy against the Ontario Hydro method and has met a relative accuracy specification of 20.0% or less.

(b) If a Hg-diluent monitoring system is used to quantify Hg mass emissions, calculate (for purposes of missing data substitution) the maximum potential Hg emission rate (MER), in lb/10^{12} Btu. To determine the MER, use the appropriate emission rate equation from section 9 of appendix F to this part, substituting into the equation the MPC value, the minimum expected CO_2 concentration or maximum expected O_2 concentration during normal operation (excluding unit startup, shutdown and process upsets), the expected stack gas moisture content (if applicable), and the appropriate F-factor.

(c) For the purposes of missing data substitution, the fuel-specific or site-specific MPC values defined in paragraph (a) of this section apply to units using sorbent trap monitoring systems.

2.1.7.2 Maximum Expected Concentration

For units with FGD systems that significantly reduce Hg emissions (including fluidized bed units that use limestone injection) and for units equipped with add-on Hg emission controls (*e.g.,* carbon injection), determine the maximum expected Hg concentration (MEC) during normal, stable operation of the unit and emission controls. To calculate the MEC, substitute the MPC value from section 2.1.7.1 of this appendix into Equation A–2 in section 2.1.1.2 of this appendix. For units with add-on Hg emission controls, base the percent removal efficiency on design engineering calculations. For units with FGD systems, use the best available estimate of the Hg removal efficiency of the FGD system.

2.1.7.3 Span and Range Value(s)

(a) For each Hg monitor, determine a high span value, by rounding the MPC value from section 2.1.7.1 of this appendix upward to the next highest multiple of 10 μg/dscm.

(b) For an affected unit equipped with an FGD system or a unit with add-on Hg emission controls, if the MEC value from section 2.1.7.2 of this appendix is less than 20 percent of the high span value from paragraph (a) of this section, and if the high span value is 20 μg/dscm or greater, define a second, low span value of 10 μg/dscm.

(c) If only a high span value is required, set the full-scale range of the Hg analyzer to be greater than or equal to the span value.

(d) If two span values are required, you may either:

(1) Use two separate (high and low) measurement scales, setting the range of each scale to be greater than or equal to the high or low span value, as appropriate; or

(2) Quality-assure two segments of a single measurement scale.

2.1.7.4 Adjustment of Span and Range

For each affected unit or common stack, the owner or operator shall make a periodic evaluation of the MPC, MEC, span, and range values for each Hg monitor (at a minimum, an annual evaluation is required) and shall make any necessary span and range adjustments, with corresponding monitoring plan updates. Span and range adjustments may be required, for example, as a result of changes in the fuel supply, changes in the manner of operation of the unit, or installation or removal of emission controls. In implementing the provisions in paragraphs (a) and (b) of this section, data recorded during short-term, non-representative process operating conditions (*e.g.,* a trial burn of a different type of fuel) shall be excluded from consideration. The owner or operator shall keep the results of the most recent span and range evaluation on-site, in a format suitable for inspection. Make each required span or range adjustment no later than 45 days after the end of the quarter in which the need to adjust the span or range is identified, except that up to 90 days after the end of that quarter may be taken to implement a span adjustment if the calibration gases currently being used for daily calibration error tests and linearity checks are unsuitable for use with the new span value.

(a) The guidelines of section 2.1 of this appendix do not apply to Hg monitoring systems.

(b) Whenever a full-scale range exceedance occurs during a quarter and is not caused by a monitor out-of-control period, proceed as follows:

(1) For monitors with a single measurement scale, report 200 percent of the full-scale range as the hourly Hg concentration until the readings come back on-scale and if appropriate, make adjustments to the MPC, span, and range to prevent future full-scale exceedances; or

(2) For units with two separate measurement scales, if the low range is exceeded, no further action is required, provided that the high range is available and is not out-of-control or out-of-service for any reason. However, if the high range is not able to provide quality assured data at the time of the low range exceedance or at any time during the continuation of the exceedance, report the MPC until the readings return to the low range or until the high range is able to provide quality assured data (unless the reason that the high-scale range is not able to provide quality assured data is because the high-scale range has been exceeded; if the high-scale range is exceeded follow the procedures in paragraph (b)(1) of this section).

(c) Whenever changes are made to the MPC, MEC, full-scale range, or span value of the Hg monitor, record and report (as applicable) the new full-scale range setting, the new MPC or MEC and calculations of the adjusted span value in an updated monitoring plan. The monitoring plan update shall be made in the quarter in which the changes become effective. In addition, record and report the adjusted span as part of the records for the daily calibration error test and linearity check specified by appendix B to this part. Whenever the span value is adjusted, use calibration gas concentrations that meet the requirements of section 5.1 of this appendix, based on the adjusted span value. When a span adjustment is so significant that the calibration gases currently being used for daily calibration error tests and linearity checks are unsuitable for use with the new span value, then a diagnostic linearity test using the new calibration gases must be performed and passed. Use the data validation procedures in § 75.20(b)(3), beginning with the hour in which the span is changed.

2.2 Design for Quality Control Testing

* * * * *

2.2.3 Mercury Monitors

Design and equip each mercury monitor to permit the introduction of known concentrations of elemental Hg and $HgCl_2$ separately, at a point immediately preceding the sample extraction filtration system, such that the entire measurement system can be checked.

Appendix A to Part 75—[Amended]

22. Appendix A to part 75 is further amended by:

a. Adding a new paragraph (c) to section 3.1;

b. Revising section 3.2; and

c. Adding new sections 3.3.8 and 3.4.3.

The revisions and additions read as follows:

3. Performance Specifications

3.1 Calibration Error

* * * * *

(c) The calibration error of a Hg concentration monitor shall not deviate from the reference value of either the zero or upscale calibration gas by more than 5.0 percent of the span value, as calculated using Equation A–5 of this appendix. Alternatively, if the span value is 10 μg/dscm, the calibration error test results are also acceptable if the absolute value of the difference between the monitor response value and the reference value, $|R-A|$ in Equation A–5 of this appendix, is ≤1.0 μg/dscm.

3.2 Linearity Check

(a) For SO_2 and NO_X pollutant concentration monitors, the error in linearity for each calibration gas concentration (low-, mid-, and high-levels) shall not exceed or deviate from the reference value by more than 5.0 percent (as calculated using equation A–4 of this appendix). Linearity check results are also acceptable if the absolute value of the difference between the average of the monitor response values and the average of the reference values, $|R-A|$ in equation A–4 of this appendix, is less than or equal to 5 ppm.

(b) For CO_2 or O_2 monitors (including O_2 monitors used to measure CO_2 emissions or percent moisture):

(1) The error in linearity for each calibration gas concentration (low-, mid-, and high-levels) shall not exceed or deviate from the reference value by more than 5.0 percent as calculated using equation A–4 of this appendix; or

(2) The absolute value of the difference between the average of the monitor response values and the average of the reference values, $|R-A|$ in equation A–4 of this appendix, shall be less than or equal to 0.5

percent CO_2 or O_2, whichever is less restrictive.

(c) For Hg monitors:

(1) The error in linearity for each calibration gas concentration (low-, mid-, and high-levels) shall not exceed or deviate from the reference value by more than 10.0 percent as calculated using equation A–4 of this appendix; or

(2) The absolute value of the difference between the average of the monitor response values and the average of the reference values, |R–A| in equation A–4 of this appendix, shall be less than or equal to 1.0 µg/dscm, whichever is less restrictive.

(3) For the converter check required under § 75.20(c)(1)(vi), the measurement error shall not exceed 5.0 percent of the span value at any of the three gas levels.

3.3 Relative Accuracy

* * * * *

3.3.8 Relative Accuracy for Hg Monitoring Systems

[For Alternative #1 in Section II.B.3 of Appendix A to the Preamble]:

(a) The relative accuracy of a Hg concentration monitoring system or a sorbent trap monitoring system shall not exceed 20.0 percent. Alternatively, for affected units where the average of the reference method measurements of Hg concentration during the relative accuracy test audit is less than 5.0 µg/dscm, the test results are acceptable if the difference between the mean value of the monitor measurements and the reference method mean value does not exceed 1.0 µg/dscm, in cases where the relative accuracy specification of 20.0 percent is not achieved.

[For Alternative #2 in Section II.B.3 of Appendix A to the Preamble]:

(a) The relative accuracy of a Hg concentration monitoring system or a sorbent trap monitoring system shall not exceed 20.0 percent. Alternatively, for affected units where the average of the reference method measurements of Hg concentration during the relative accuracy test audit is less than 5.0 µg/dscm, the test results are acceptable if the difference between the mean value of the monitor measurements and the reference method mean value does not exceed 1.0 µg/dscm, in cases where the relative accuracy specification of 20.0 percent is not achieved. For sorbent trap monitoring systems, these specifications apply both to RATAs and to RAAs.

(b) The relative accuracy of a Hg-diluent continuous emission monitoring systems shall not exceed 20.0 percent. Alternatively, for affected units where the average of the reference method measurements of Hg emission rate during the relative accuracy test audit is less than 5.5 lb/10^{12} Btu, the test results are acceptable if the difference between the mean value of the continuous emission monitoring system measurements and the reference method mean value does not exceed ±1.1 lb/10^{12} Btu, in cases where the relative accuracy specification of 20.0 percent is not achieved.

3.4 Bias

* * * * *

3.4.3 Hg Monitoring Systems

Hg concentration monitoring systems, Hg-diluent monitoring systems, and sorbent trap monitoring systems shall not be biased low as determined by the test procedure in section 7.6 of this appendix.

* * * * *

Appendix A to Part 75—[Amended]

23. Appendix A to part 75 is further amended by revising the second sentence in the first paragraph of the introductory text of section 4 and revising the second paragraph of the introductory text of section 4 to read as follows:

4. Data Acquisition and Handling Systems

* * * These systems also shall have the capability of interpreting and converting the individual output signals from an SO_2 pollutant concentration monitor, a flow monitor, a CO_2 monitor, an O_2 monitor, a NO_X pollutant concentration monitor, a NO_X-diluent continuous emission monitoring system, a moisture monitoring system, a Hg concentration monitoring system, a Hg-diluent monitoring system, and a sorbent trap monitoring system, to produce a continuous readout of pollutant emission rates or pollutant mass emissions (as applicable) in the appropriate units (*e.g.*, lb/hr, lb/mmBtu, lb/10^{12} Btu, tons/hr).

Data acquisition and handling systems shall also compute and record monitor calibration error; any bias adjustments to SO_2, NO_X, and Hg pollutant concentration data, flow rate data, Hg emission rate data, or NO_X emission rate data; and all missing data procedure statistics specified in subpart D of this part.

* * * * *

Appendix A to Part 75—[Amended]

24. Appendix A to part 75 is further amended by adding new section 5.1.9 to read as follows:

5. Calibration Gas

* * * * *

5.1.9 Mercury Standards

For calibration error tests and linearity checks of Hg pollutant concentration monitors, elemental mercury standards shall be used. For the converter checks required under § 75.20(c)(1)(vi) and section 2.6 of appendix B to this part, $HgCl_2$ standards shall be used.

* * * * *

Appendix A to Part 75—[Amended]

25. Appendix A to part 75 is further amended by:

a. Revising the first sentence of the introductory text to section 6.2 ;

b. Adding new paragraph (g) to section 6.2;

c. Revising the second sentence of section 6.3.1;

d. Revising the fifteenth sentence (by replacing the words ''SO_2-diluent'' with the words ''Hg-diluent'') in section 6.4, introductory text;

e. Revising the first sentence of section 6.5;

f. Revising the first sentence of section 6.5(a) and adding a new third sentence;

g. Revising the second sentence of section 6.5(c);

h. Revising section 6.5(g);

i. Revising section 6.5.1(a);

j. Revising section 6.5.1(b);

k. Adding new paragraph (c) to section 6.5.6;

l. Revising the first sentence and adding two sentences at the end of section 6.5.7(a); and

m. Revising sections 6.5.7(b) and 6.5.10.

The revisions read as follows:

6. Certification Tests and Procedures

* * * * *

6.2 Linearity Check (General Procedures)

Check the linearity of each SO_2, NO_X, CO_2, Hg, and O_2 monitor while the unit, or group of units for a common stack, is combusting fuel at conditions of typical stack temperature and pressure; it is not necessary for the unit to be generating electricity during this test. * * *

* * * * *

(g) For Hg monitors, follow the guidelines in section 2.2.3 of this appendix in addition to the applicable procedures in this section 6.2 when conducting linearity checks using elemental mercury calibration standards and when performing the converter checks required under § 75.20(c)(1)(vi) using $HgCl_2$ calibration standards.

6.3 7-Day Calibration Error Test

6.3.1 Gas Monitor 7-day Calibration Error Test

* * * In all other cases, measure the calibration error of each SO_2 monitor, each NO_X monitor, each Hg monitor, and each CO_2 or O_2 monitor while the unit is combusting fuel (but not necessarily generating electricity) once each day for 7 consecutive operating days according to the following procedures. * * *

* * * * *

6.4 Cycle Time Test

* * * For the NO_X-diluent continuous emission monitoring system test and Hg-diluent continuous emission monitoring system test, record and report the longer cycle time of the two component analyzers as the system cycle time. * * *

* * * * *

6.5 Relative Accuracy and Bias Tests (General Procedures)

Perform the required relative accuracy test audits (RATAs) as follows for each CO_2 pollutant concentration monitor (including O_2 monitors used to determine CO_2 pollutant concentration), each SO_2 pollutant concentration monitor, each NO_X concentration monitoring system used to determine NO_X mass emissions, each flow monitor, each NO_X-diluent continuous emission monitoring system, each O_2 or CO_2 diluent monitor used to calculate heat input,

each Hg concentration monitoring system, each Hg-diluent monitoring system, each sorbent trap monitoring system, and each moisture monitoring system. * * *

(a) Except as otherwise provided in this paragraph or in § 75.21(a)(5), perform each RATA while the unit (or units, if more than one unit exhausts into the flue) is combusting the fuel that is a normal primary or backup fuel for that unit (for some units, more than one type of fuel may be considered normal, *e.g.*, a unit that combusts gas or oil on a seasonal basis). For units that co-fire fuels as the predominant mode of operation, perform the RATAs while co-firing. For Hg monitoring systems, perform the RATAs while the unit is combusting coal. When relative accuracy test audits are performed on continuous emission monitoring systems installed on bypass stacks/ducts, use the fuel normally combusted by the unit (or units, if more than one unit exhausts into the flue) when emissions exhaust through the bypass stack/ducts.

* * * * *

(c) * * * For units with add-on SO_2 or NO_X controls or add-on Hg controls that operate continuously rather than seasonally, or for units that need a dual range to record high concentration ''spikes'' during startup conditions, the low range is considered normal. * * *

* * * * *

(g) For each SO_2 or CO_2 pollutant concentration monitor, each flow monitor, each CO_2 or O_2 diluent monitor used to determine heat input, each NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2), each moisture monitoring system, each NO_X-diluent continuous emission monitoring system, each Hg concentration monitoring system, each Hg-diluent monitoring system, and each sorbent trap monitoring system, calculate the relative accuracy, in accordance with section 7.3 or 7.4 of this appendix, as applicable. In addition (except for CO_2, O_2, or moisture monitors), test for bias and determine the appropriate bias adjustment factor, in accordance with sections 7.6.4 and 7.6.5 of this appendix, using the data from the relative accuracy test audits.

6.5.1 Gas and Hg Monitoring System RATAs (Special Considerations)

(a) Perform the required relative accuracy test audits for each SO_2 or CO_2 pollutant concentration monitor, each CO_2 or O_2 diluent monitor used to determine heat input, each NO_X-diluent continuous emission monitoring system, each NO_X concentration monitoring system used to determine NO_X mass emissions, as defined in § 75.71(a)(2), each Hg concentration monitoring system, each Hg-diluent monitoring system, and each sorbent trap monitoring system at the normal load level or normal operating level for the unit (or combined units, if common stack), as defined in section 6.5.2.1 of this appendix. If two load levels or operating levels have been designated as normal, the RATAs may be done at either load level.

(b) For the initial certification of a gas or Hg monitoring system and for recertifications in which, in addition to a RATA, one or more other tests are required (*i.e.*, a linearity test, cycle time test, or 7-day calibration error test), EPA recommends that the RATA not be commenced until the other required tests of the CEMS have been passed.

* * * * *

6.5.6 Reference Method Traverse Point Selection

* * * * *

(c) For Hg monitoring systems, use the same traverse points that are used for the gas monitor RATAs.

* * * * *

6.5.7 Sampling Strategy

(a) Conduct the reference method tests so they will yield results representative of the pollutant concentration, emission rate, moisture, temperature, and flue gas flow rate from the unit and can be correlated with the pollutant concentration monitor, CO_2 or O_2 monitor, flow monitor, and SO_2, Hg, or NO_X continuous emission monitoring system measurements. * * * For Hg monitoring system RATAs using the Ontario Hydro method, the minimum acceptable time per run is 2 hours. For the RATA of a sorbent trap monitoring system, install a new pair of sorbent traps prior to each test run.

(b) To properly correlate individual SO_2, Hg, or NO_X continuous emission monitoring system data (in lb/mmBtu) and volumetric flow rate data with the reference method data, annotate the beginning and end of each reference method test run (including the exact time of day) on the individual chart recorder(s) or other permanent recording device(s).

* * * * *

6.5.10 Reference Methods

The following methods from appendix A to part 60 of this chapter or their approved alternatives are the reference methods for performing relative accuracy test audits: Method 1 or 1A for siting; Method 2 or its allowable alternatives in appendix A to part 60 of this chapter (except for Methods 2B and 2E) for stack gas velocity and volumetric flow rate; Methods 3, 3A, or 3B for O_2 or CO_2; Method 4 for moisture; Methods 6, 6A, or 6C for SO_2; Methods 7, 7A, 7C, 7D, or 7E for NO_X, excluding the exception in section 5.1.2 of Method 7E; and the Ontario Hydro method for Hg (*see* § 75.22). When using Method 7E for measuring NO_X concentration, total NO_X, both NO and NO_2, must be measured. Notwithstanding these requirements, Method 20 may be used as the reference method for relative accuracy test audits of NO_X monitoring systems installed on combustion turbines.

* * * * *

Appendix A to Part 75—[Amended]

26. Appendix A to part 75 is further amended by:

a. Revising the title of section 7.3 and the first sentence of the introductory text of section 7.3;

b. Revising the introductory text of section 7.6;

[For Alternative # 1 in Section II.B.3 of Appendix A to the Preamble]:

c. Revising the first sentence in paragraph (b) of section 7.6.5 and adding a sentence at the end of paragraph (b); and

[For Alternative # 2 in Section II.B.3 of Appendix A to the Preamble]:

c. Revising the first sentence in paragraph (b) of section 7.6.5 and adding two new sentences at the end of paragraph (b); and

d. Revising paragraph (f) in section 7.6.5.

The revisions and additions read as follows:

7. Calculations

* * * * *

7.3 Relative Accuracy for SO_2 and CO_2 Pollutant Concentration Monitors, O_2 Monitors, NO_X Concentration Monitoring Systems, Hg Monitoring Systems, and Flow Monitors

Analyze the relative accuracy test audit data from the reference method tests for SO_2 and CO_2 pollutant concentration monitors, CO_2 or O_2 monitors used only for heat input rate determination, NO_X concentration monitoring systems used to determne NO_X mass emissions under subpart H of this part, Hg monitoring systems used to determine Hg mass emissions under subpart I of this part, and flow monitors using the following procedures. * * *

* * * * *

7.6 Bias Test and Adjustment Factor

Test the following relative accuracy test audit data sets for bias: SO_2 pollutant concentration monitors; flow monitors; NO_X concentration monitoring systems used to determine NO_X mass emissions, as defined in § 75.71(a)(2); NO_X-diluent continuous emission monitoring systems, Hg concentration monitoring systems, Hg-diluent monitoring systems, and sorbent trap monitoring systems, using the procedures outlined in sections 7.6.1 through 7.6.5 of this appendix. For multiple-load flow RATAs, perform a bias test at each load level designated as normal under section 6.5.2.1 of this appendix.

* * * * *

7.6.5 Bias Adjustment

* * * * *

[For Alternative # 1 in Section II.B.3 of Appendix A to the Preamble]:

(b) For single-load RATAs of SO_2 pollutant concentration monitors, NO_X concentration monitoring systems, NO_X-diluent monitoring systems, Hg concentration monitoring systems, Hg-diluent monitoring systems, and sorbent trap monitoring systems, and for the single-load flow RATAs required or allowed under section 6.5.2 of this appendix and sections 2.3.1.3(b) and 2.3.1.3(c) of appendix B to this part, the appropriate BAF is determined directly from the RATA results at normal load, using Equation A–12. * * * Similarly, for Hg concentration and sorbent trap monitoring systems, where the average Hg concentration during the RATA is <5.0 μg/dscm, or, for Hg-diluent monitoring systems, where the average Hg emission rate

during the RATA is <5.5 lb/10^{12} Btu, if the monitoring system meets the normal or the alternative relative accuracy specification in section 3.3.8 of this appendix but fails the bias test, the owner or operator may either use the bias adjustment factor (BAF) calculated from Equation A–12 or may use a default BAF of 1.250 for reporting purposes under this part.

[For Alternative # 2 in Section II.B.3 of Appendix A to the Preamble]:

(b) For single-load RATAs of SO_2 pollutant concentration monitors, NO_X concentration monitoring systems, NO_X-diluent monitoring systems, Hg concentration monitoring systems, Hg-diluent monitoring systems, and sorbent trap monitoring systems, and for the single-load flow RATAs required or allowed under section 6.5.2 of this appendix and sections 2.3.1.3(b) and 2.3.1.3(c) of appendix B to this part, the appropriate BAF is determined directly from the RATA results at normal load, using Equation A–12. * * * Similarly, for Hg concentration and sorbent trap monitoring systems, where the average Hg concentration during the RATA is < 5.0 μg/dscm, or, for Hg-diluent monitoring systems, where the average Hg emission rate during the RATA is <5.5 lb/10^{12} Btu, if the monitoring system meets the normal or the alternative relative accuracy specification in section 3.3.8 of this appendix but fails the bias test, the owner or operator may either use the bias adjustment factor (BAF) calculated from Equation A–12 or may use a default BAF of 1.250 for reporting purposes under this part. The provisions of this paragraph (b) also apply to relative accuracy audits (RAAs) of sorbent trap monitoring systems.

* * * * *

(f) Use the bias-adjusted values in computing substitution values in the missing data procedure, as specified in subpart D of this part, and in reporting the concentration of SO_2 or Hg, the flow rate, the average NO_X emission rate, the unit heat input, and the calculated mass emissions of SO_2 and CO_2 during the quarter and calendar year, as specified in subpart G of this part. In addition, when using a NO_X concentration monitoring system and a flow monitor to calculate NO_X mass emissions under subpart H of this part, or when using a Hg concentration or sorbent trap monitoring system and a flow monitor to calculate Hg mass emissions under subpart I of this part, use bias-adjusted values for NO_X (or Hg) concentration and flow rate in the mass emission calculations and use bias-adjusted NO_X (or Hg) concentrations to compute the appropriate substitution values for NO_X (or Hg) concentration in the missing data routines under subpart D of this part.

* * * * *

27. Appendix B to part 75 is amended by adding sections 1.5 through 1.5.6 to read as follows:

Appendix B to Part 75—Quality Assurance and Quality Control Procedures

* * * * *

1.5 Requirements for Sorbent Trap Monitoring Systems

1.5.1 Sorbent Trap Identification and Tracking

Include procedures for inscribing or otherwise permanently marking a unique identification number on each sorbent trap, for tracking purposes. Keep records of the ID of the monitoring system in which each sorbent trap is used, and the dates and hours of each Hg collection period.

1.5.2 Monitoring System Integrity and Data Quality

Explain the procedures used to perform the leak checks when a sorbent trap is placed in service and removed from service. These procedures must be consistent with Method 324, Determination of Vapor-Phase Flue Gas Mercury Emissions from Stationary Sources Using Dry Sorbent Trap Sampling. Also explain the other QA procedures used to ensure system integrity and data quality, including, but not limited to, dry gas meter calibrations, verification of moisture removal, and ensuring air-tight pump operation. In addition, the QA plan must include the data acceptance and quality control criteria in section 9.0 of Method 324.

1.5.3 Hg Analysis

Explain the chain of custody employed in transporting and analyzing the sorbent traps. Keep records of all Hg analyses. The analyses shall be performed in accordance with Method 324.

1.5.4 Laboratory Certification

The QA Plan shall include documentation that the laboratory performing the Method 324 analyses on the carbon sorbent traps is certified by the International Organization for Standardization (ISO) to have a proficiency that meets the requirements of ISO 9000.

1.5.5 Data Collection Period

State, and provide the rationale for, the minimum acceptable data collection time for each sorbent trap. Include in the discussion such factors as the Hg concentration in the stack gas, the size and capacity of the sorbent traps, and the minimum mass of Hg required for the Method 324 analysis.

1.5.6 Relative Accuracy Test Audit Procedures

Keep records of the procedures and details peculiar to the sorbent trap monitoring systems that are to be followed for relative accuracy test audits, such as sampling and analysis methods.

Appendix B to Part 75—[Amended]

28. Appendix B to part 75 is further amended by:

a. Revising the first sentence in section 2.1.1 introductory text;

b. Revising paragraph (a) of section 2.1.4;

c. Revising the first sentence of section 2.2.1;

d. Revising the first sentence in paragraph (a) of section 2.3.1.1 and adding a new second sentence to paragraph (a);

e. Revising paragraph (a) of section 2.3.1.3;

f. Revising paragraph (i) of section 2.3.2;

g. Revising section 2.3.4;

h. Revising the first sentence in paragraph (b) of section 2.4;

[For Alternative # 1 in Section II.B.3 of Appendix A to the Preamble]:

i. Adding new section 2.6;

[For Alternative # 2 in Section II.B.3 of Appendix A to the Preamble]:

i. Adding new sections 2.6 and 2.7;

j. Revising Figure 1;

k. Revising Figure 2.

The revisions and additions read as follows:

2. Frequency of Testing

* * * * *

2.1.1 Calibration Error Test

Except as provided in section 2.1.1.2 of this appendix, perform the daily calibration error test of each gas and Hg monitoring system (including moisture monitoring systems consisting of wet- and dry-basis O_2 analyzers) according to the procedures in section 6.3.1 of appendix A to this part, and perform the daily calibration error test of each flow monitoring system according to the procedure in section 6.3.2 of appendix A to this part. * * *

* * * * *

2.1.4 Data Validation

(a) An out-of-control period occurs when the calibration error of an SO_2 or NO_X pollutant concentration monitor exceeds 5.0 percent of the span value, when the calibration error of a CO_2 or O_2 monitor (including O_2 monitors used to measure CO_2 emissions or percent moisture) exceeds 1.0 percent O_2 or CO_2, or when the calibration error of a flow monitor or a moisture sensor exceeds 6.0 percent of the span value, which is twice the applicable specification of appendix A to this part. Notwithstanding, a differential pressure-type flow monitor for which the calibration error exceeds 6.0 percent of the span value shall not be considered out-of-control if $|R-A|$, the absolute value of the difference between the monitor response and the reference value in Equation A–6 of appendix A to this part, is ≤ 0.02 inches of water. In addition, an SO_2 or NO_X monitor for which the calibration error exceeds 5.0 percent of the span value shall not be considered out-of-control if $|R-A|$ in Equation A–6 does not exceed 5.0 ppm (for span values ≤ 50 ppm), or if $|R-A|$ does not exceed 10.0 ppm (for span values > 50 ppm, but ≤ 200 ppm). For a Hg monitor, an out-of-control period occurs when the calibration error exceeds 7.5% of the span value. Notwithstanding, the Hg monitor shall not be considered out-of-control if $R-A$ in Equation A–6 does not exceed 1.5 μg/dscm. The out-of-control period begins upon failure of the calibration error test and ends upon completion of a successful calibration error test. Note, that if a failed calibration, corrective action, and successful calibration error test occur within the same hour, emission data for that hour recorded by the

monitor after the successful calibration error test may be used for reporting purposes, provided that two or more valid readings are obtained as required by § 75.10. A NO_X-diluent continuous emission monitoring system is considered out-of-control if the calibration error of either component monitor exceeds twice the applicable performance specification in appendix A to this part. A Hg-diluent continuous emission monitoring system is considered out-of-control if the calibration error of either component monitor exceeds the appplicable specification in this paragraph. Emission data shall not be reported from an out-of-control monitor.

* * * * *

2.2.1 Linearity Check

Unless a particular monitor (or monitoring range) is exempted under this paragraph or under section 6.2 of appendix A to this part, perform a linearity check, in accordance with the procedures in section 6.2 of appendix A to this part, for each primary and redundant backup SO_2, Hg, and NO_X pollutant concentration monitor and each primary and redundant backup CO_2 or O_2 monitor (including O_2 monitors used to measure CO_2 emissions or to continuously monitor moisture) at least once during each QA operating quarter, as defined in § 72.2 of this chapter.

* * * * *

2.3.1.1 Standard RATA Frequencies

(a) Except for Hg monitoring systems and as otherwise specified in § 75.21(a)(6) or (a)(7) or in section 2.3.1.2 of this appendix, perform relative accuracy test audits semiannually, *i.e.*, once every two successive QA operating quarters (as defined in § 72.2 of this chapter) for each primary and redundant backup SO_2 pollutant concentration monitor, flow monitor, CO_2 pollutant concentration monitor (including O_2 monitors used to determine CO_2 emissions), CO_2 or O_2 diluent monitor used to determine heat input, moisture monitoring system, NO_X concentration monitoring system, or NO_X-diluent continuous emission monitoring system. For each primary and redundant backup Hg concentration monitoring system, Hg-diluent monitoring system, and sorbent trap monitoring system, RATAs shall be performed annually, *i.e.*, once every four successive QA operating quarters (as defined in § 72.2 of this chapter).

* * * * *

2.3.1.3 RATA Load (or Operating) Levels and Additional RATA Requirements

(a) For SO_2 pollutant concentration monitors, CO_2 pollutant concentration monitors (including O_2 monitors used to determine CO_2 emissions), CO_2 or O_2 diluent monitors used to determine heat input, NO_X concentration monitoring systems, Hg concentration monitoring systems, sorbent trap monitoring systems, moisture monitoring systems, Hg-diluent monitoring systems, and NO_X-diluent monitoring systems, the required semiannual or annual RATA tests shall be done at the load level (or operating level) designated as normal under section 6.5.2.1(d) of appendix A to this part. If two load levels (or operating levels) are designated as normal, the required RATA(s) may be done at either load level (or operating level).

* * * * *

2.3.2 Data Validation

* * * * *

(i) Each time that a hands-off RATA of an SO_2 pollutant concentration monitor, a NO_X-diluent monitoring system, a NO_X concentration monitoring system, a Hg concentration monitoring system, a Hg-diluent monitoring system, a sorbent trap monitoring system, or a flow monitor is passed, perform a bias test in accordance with section 7.6.4 of appendix A to this part. Apply the appropriate bias adjustment factor to the reported SO_2, Hg, NO_X, or flow rate data, in accordance with section 7.6.5 of appendix A to this part.

* * * * *

2.3.4 Bias Adjustment Factor

Except as otherwise specified in section 7.6.5 of appendix A to this part, if an SO_2 pollutant concentration monitor, flow monitor, NO_X continuous emission monitoring system, NO_X concentration monitoring system used to calculate NO_X mass emissions, Hg concentration monitoring system, Hg-diluent monitoring system, or sorbent trap monitoring system fails the bias test specified in section 7.6 of appendix A to this part, use the bias adjustment factor given in Equations A–11 and A–12 of appendix A to this part, or the allowable alternative BAF specified in section 7.6.5(b) of appendix A to this part, to adjust the monitored data.

2.4 Recertification, Quality Assurance, RATA Frequency and Bias Adjustment Factors (Special Considerations)

* * * * *

(b) Except as provided in section 2.3.3 of this appendix, whenever a passing RATA of a gas monitor or Hg monitoring system is performed, or a passing 2-load (or 2-level) RATA or a passing 3-load (or 3-level) RATA of a flow monitor is performed (irrespective of whether the RATA is done to satisfy a recertification requirement or to meet the quality assurance requirements of this appendix, or both), the RATA frequency (semi-annual or annual) shall be established based upon the date and time of completion of the RATA and the relative accuracy percentage obtained.

* * * * *

[For Alternatives # 1 and # 2 in Section II.B.3 of Appendix A to the Preamble]:

2.6 Converter Check for Hg Monitors

For each Hg pollutant concentration monitor, perform the converter check described in § 75.20(c)(1)(vi) once in every month in which there are at least 168 unit or stack operating hours.

[For Alternative # 2 in Section II.B.3 of Appendix A to the Preamble]:

2.7 Relative Accuracy Audits (RAAs) of Sorbent Trap Monitoring Systems

For affected units with average Hg emissions > 9 lbs/yr for the 3 calendar years used to allocate the Hg allowances, if the owner or operator elects to use sorbent trap monitoring systems to quantify Hg emissions, a 3-run relative accuracy audit (RAA) of each sorbent trap monitoring system shall be performed in each QA operating quarter (as defined in § 72.2 of this chapter) following initial certification, except for a quarter in which a full RATA is performed. The load level and data validation provisions of sections 2.3.1.3 and 2.3.2 of this appendix apply to the RAAs.

[For Alternative # 1 in Section II.B.3 of Appendix A to the Preamble]:

FIGURE 1 TO APPENDIX B OF PART 75.—QUALITY ASSURANCE TEST REQUIREMENTS

Test	QA test frequency requirements				
	Daily	Monthly	Quarterly	Semiannual *	Annual
Calibration Error (2 pt.)	✔				
Interference Check (flow)	✔				
Flow-to-Load Ratio			✔		
Leak Check (DP flow monitors)			✔		
Linearity Check (3 pt.)			✔		
Converter Check (Hg monitors)		✔			
RATA (SO_2, NO_X, CO_2, O_2, H_2O) [1]				✔	
RATA (all Hg monitoring systems)					✔
RATA (flow) [1,2]				✔	

* For monitors on bypass stack/duct, ''daily'' means bypass operating days, only. ''Quarterly'' means once every QA operating quarter. ''Semi-annual'' means once every two QA operating quarters. ''Annual'' means once every four QA operating quarters.

* * * * *

FIGURE 2 TO APPENDIX B OF PART 75.—RELATIVE ACCURACY TEST FREQUENCY INCENTIVE SYSTEM

RATA	Semiannual [w] (percent)	Annual [w]
SO_2 or NO_X [y]	7.5% < RA ≤ 10.0% or ± 15.0 ppm [x]	RA ≤ 7.5% or ± 12.0 ppm [x]
NO_X -diluent	7.5% < RA ≤ 10.0% or ± 0.020	RA ≤ 7.5% or ± 0.015
Hg-diluent		RA ≤ 20.0% or ± 1.1 lb/10 [12]
Flow	7.5% < RA ≤ 10.0% or ± 1.5 fps [x]	RA ≤ 7.5%
CO_2 or O_2	7.5% < RA ≤ 10.0% or ± 1.0% CO_2/O_2 [x]	RA ≤ 7.5% or ± 0.7% CO_2/O_2 [x]
Hg		RA ≤ 20.0% or ± 1.0 μg/dscm [x]
Moisture	7.5% < RA ≤ 10.0% or ± 1.5% H_2O [x]	RA ≤ 7.5% or ± 1.0% H_2O [X]

[w] The deadline for the next RATA is the end of the second (if semiannual) or fourth (if annual) successive QA operating quarter following the quarter in which the CEMS was last tested. Exclude calendar quarters with fewer than 168 unit operating hours (or, for common stacks and bypass stacks, exclude quarters with fewer than 168 stack operating hours) in determining the RATA deadline. For SO_2 monitors, QA operating quarters in which only very low sulfur fuel as defined in § 72.2, is combusted may also be excluded. However, the exclusion of calendar quarters is limited as follows: the deadline for the next RATA shall be no more than 8 calendar quarters after the quarter in which a RATA was last performed.

[x] The difference between monitor and reference method mean values applies to moisture monitors, CO_2, and O_2 monitors, low emitters of SO_2, NO_X, or Hg, and low flow, only.

[y] A NO_X concentration monitoring system used to determine NO_X mass emissions under § 75.71.

[z] Including sorbent trap monitoring systems.

* * * * * [For Alternative # 2 in Section II.B.3 of Appendix A to the Preamble]:

FIGURE 1 TO APPENDIX B OF PART 75.—QUALITY ASSURANCE TEST REQUIREMENTS

Test	QA test frequency requirements				
	Daily	Monthly	Quarterly	Semiannual *	Annual
Calibration Error (2 pt.)	✔				
Interference Check (flow)	✔				
Flow-to-Load Ratio			✔		
Leak Check (DP flow monitors)			✔		
Linearity Check (3 pt.)			✔		
Converter Check (Hg monitors)		✔			
RATA (SO_2, NO_X, CO_2, O_2, H_2O)[1]				✔	
RATA (all Hg monitoring systems)					✔
RATA (flow) [1 2]				✔	
RAA (sorbent trap systems; Hg)			✔		

* For monitors on bypass stack/duct, ''daily'' means bypass operating days, only. ''Quarterly'' means once every QA operating quarter. ''Semiannual'' means once every two QA operating quarters. ''Annual'' means once every four QA operating quarters. For sorbent trap monitoring systems, the RAA is not required in a quarter in which a full RATA is performed.

* * * * *

FIGURE 2 TO APPENDIX B OF PART 75.—RELATIVE ACCURACY TEST FREQUENCY INCENTIVE SYSTEM

RATA	Semiannual [w] (percent)	Annual [w]
SO_2 or NO_X [y]	7.5% < RA ≤ 10.0% or ± 15.0 ppm [x]	RA ≤ 7.5% or ± 12.0 ppm [x]
NO_X-diluent	7.5% < RA ≤ 10.0% or ± 0.020	RA ≤ 7.5% or ± 0.015
Hg-diluent		RA ≤ 20.0% or ± 1.1 lb/10 [12]
Flow	7.5% < RA ≤ 10.0% or ± 1.5 fps [x]	RA ≤ 7.5%
CO_2 or O_2	7.5% < RA ≤ 10.0% or ± 1.0% CO_2/O_2 [x]	RA ≤ 7.5% or ± 0.7% CO_2/O_2 [x]
Hg		RA ≤ 20.0% or ± 1.0 μg/dscm [x]
Moisture	7.5% < RA ≤ 10.0% or ± 1.5% H_2O [x]	RA ≤ 7.5% or ± 1.0% H_2O [x]

[w] The deadline for the next RATA is the end of the second (if semiannual) or fourth (if annual) successive QA operating quarter following the quarter in which the CEMS was last tested. Exclude calendar quarters with fewer than 168 unit operating hours (or, for common stacks and bypass stacks, exclude quarters with fewer than 168 stack operating hours) in determining the RATA deadline. For SO_2 monitors, QA operating quarters in which only very low sulfur fuel as defined in § 72.2, is combusted may also be excluded. However, the exclusion of calendar quarters is limited as follows: the deadline for the next RATA shall be no more than 8 calendar quarters after the quarter in which a RATA was last performed.

[x] The difference between monitor and reference method mean values applies to moisture monitors, CO_2, and O_2 monitors, low emitters of SO_2, NO_X, or Hg, and low flow, only.

[y] A NO_X concentration monitoring system used to determine NO_X mass emissions under § 75.71.

[z] Including sorbent trap monitoring systems. Note that the RA specifications for Hg concentration also apply to the quarterly RAA tests of sorbent trap monitoring systems.

* * * * *

29. Appendix F to part 75 is amended by adding section 9 to read as follows:

Appendix F to Part 75—Conversion Procedures

* * * * *

9. Procedures for Hg Mass Emissions

9.1 Use the procedures in this section to calculate the hourly Hg mass emissions (in ounces) at each monitored location, for the affected unit or group of units that discharge through a common stack.

9.1.1 To determine the hourly Hg mass emissions when using a Hg concentration monitoring system or a sorbent trap monitoring system and a flow monitor, use the following equation:

$$M_{(Hg)_h} = \frac{K\, C_{(Hg)_h}\, Q_h\, t_h}{\left(1 - B_{ws}\right)} \qquad \text{(Eq. F-28)}$$

Where:

$M_{(Hg)h}$ = Hg mass emissions for the hour, rounded off to one decimal place (ounces).

K = 9.98 x 10^{-10} (ounces/dscf ÷ µg/dscm).

$C_{(Hg)h}$ = Hourly Hg concentration, adjusted for bias, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary (µg/dscm). For sorbent trap systems, the value of $C_{(Hg)h}$ will be the same for each hour in the data collection period. For each pair of sorbent traps, report the higher of the two measured Hg concentrations.

Q_h = Hourly stack gas volumetric flow rate, adjusted for bias, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary (scfh).

B_{ws} = Moisture fraction of the stack gas, expressed as a decimal (equal to percent H_2O ÷ 100).

t_h = Unit or stack operating time, as defined in § 72.2 (hr).

9.1.2 If a Hg-diluent monitoring system is used to determine the Hg mass emissions, first calculate the hourly Hg emission rate, in units of lb/10^{12} Btu, as follows:

(a) If the diluent gas (O_2 or CO_2) is analyzed on a dry basis, use Equation F–5 or F–6 in this appendix, with the following modifications. The value of ''K'' in these equations shall be 6.24 x 10^{-5} (lb · dscm · mmBtu / g · dscf · 10^{12} Btu), and the term ''C_h'' shall be replaced by ''$C_{(Hg)h}$'', the hourly average Hg concentration measured by the Hg monitor, in units of µg/dscm.(b) When the diluent gas is analyzed on a wet basis, the following equations in Method 19 in appendix A–7 to part 60 of this chapter shall be used, with appropriate modification: Equation 19–5 (if O_2 is the diluent gas) and Equation 19–9 (if CO_2 is the diluent gas). When using these equations, replace the term ''C_d'' with the expression ''K $C_{(Hg)h}$'', where ''K'' is 6.24 x 10^{-5} (lb · dscm · mmBtu/g · dscf · 10^{12} Btu), ''$C_{(Hg)h}$'' is the hourly average Hg concentration measured by the Hg monitor, in units of µg/dscm.

(c) Round off the calculated Hg emission rate to three decimal places.

9.1.3 Using the Hg emission rate from section 9.1.2 of this appendix, calculate the hourly Hg mass emissions using the following equation:

$$M_{(Hg)_h} = \frac{16\, E_{(Hg)_h}\, HI_h\, t_h}{10^6} \qquad \text{(Eq. F-29)}$$

Where:

$M_{(Hg)h}$ = Hg mass emissions for the hour, rounded off to one decimal place (ounces).

$E_{(Hg)h}$ = Hourly average Hg emission rate for the hour, from section 9.1.2 of this appendix, adjusted for bias, where the bias-test procedures in appendix A to this part shows a bias-adjustment factor is necessary (lb/10^{12} Btu).

HI_h = Average heat input rate for the hour (mmBtu/hr). Include bias-adjusted flow rate values, where the bias test procedures in appendix A to this part shows a bias-adjustment factor is necessary.

t_h = Unit or stack operating time, as defined in § 72.2 (hr).

16 = Conversion factor between pounds and ounces.

10^6 = Conversion factor between million (10^6) Btu and trillion (10^{12}) Btu.

9.2 Use the following equation to calculate quarterly and year-to-date Hg mass emissions in ounces:

$$M_{(Hg)_{\text{time period}}} = \sum_{h=1}^{p} M_{(Hg)_h} \qquad \text{(Eq. F-30)}$$

Where:

$M_{(Hg)time\ period}$ = Hg mass emissions for the given time period *i.e.,* quarter or year-to-date, rounded to the nearest tenth (ounces).

$M_{(Hg)h}$ = Hg mass emissions for the hour, rounded to one decimal place (ounces).

p = The number of hours in the given time period (quarter or year-to-date).

9.3 If heat input rate monitoring is required, follow the applicable procedures for heat input apportionment and summation sections 5.3, 5.6 and 5.7 of this appendix.

[FR Doc. 04–4457 Filed 3–15–04; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday,
March 16, 2004

Part III

Department of Housing and Urban Development

Public Housing Assessment System (PHAS); Physical Condition Inspection Proposed Changes to the Dictionary of Deficiency Definitions; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4896–N–01]

Public Housing Assessment System (PHAS); Physical Condition Inspection Proposed Changes to the Dictionary of Deficiency Definitions

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice provides information to public housing agencies (PHAs), multifamily owners and agents, and members of the public regarding proposed changes to the 47 definitions in the physical condition Dictionary of Deficiency Definitions that is an appendix to the PHAS notice on the physical condition scoring process. The 47 definitions proposed to be changed are those that have been identified as causing the greatest inconsistency among contract inspections. These proposed changes would affect the physical condition inspection process for both multifamily and public housing properties.

DATES: Comment Due Date: April 15, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. eastern time weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: The Office of Public and Indian Housing, Real Estate Assessment Center (PIH–REAC), Attention: Wanda Funk, Department of Housing and Urban Development, 1280 Maryland Avenue, SW., Suite 800, Washington, DC 20024–2135; telephone the PIH–REAC Technical Assistance Center at (888) 245–4860 (this is a toll free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. Additional information is available from the PIH–REAC Internet site at *http://www.hud.gov/reac/.*

SUPPLEMENTARY INFORMATION:

1. Background

This notice proposes changes to 47 definitions in the Dictionary of Deficiency Definitions that is an appendix to the PHAS Notice on the Physical Condition Scoring Process, as provided in HUD's regulations that govern the PHAS. (See 24 CFR part 902, and especially § 902.24). The 47 definitions proposed to be changed are those that have been identified as causing the greatest inconsistency among contract inspections. These proposed changes would effect the physical condition inspection process for both multifamily and public housing properties

The Conference Report 106–988 (Conference Report) accompanying HUD's Fiscal Year 2001 Appropriations Act (Pub. L. 106–377, approved October 27, 2000), directed the Department to, among other things, continue to assess the accuracy and effectiveness of the PHAS system, in particular the physical condition inspection protocol. HUD was also to perform a statistically valid test of PHAS, conduct a thorough analysis of the results, and have the methodology and results reviewed by an independent expert before taking any adverse action against a PHA based solely on its PHAS score. The Department retained the Louis Berger Group (the contractor) to conduct the review of the methodology and results of the statistically valid test.

The findings of the contractor's study concluded that the physical condition inspection protocol is repeatable and reliable. A report, entitled the ''Review and Assessment of the REAC Study of the Physical Assessment Sub-System (PASS) Process'', which addressed the issues raised in the Conference Report was provided to HUD's Committee on Appropriations on March 1, 2001. The contractor issued a final report in June 2000. The contractor also identified 47 definitions in the Dictionary of Deficiency Definitions as causing the greatest inconsistency among inspections. As noted earlier, the Dictionary of Deficiency Definitions is included as an appendix to the PHAS Notice on the Physical Condition Scoring Process. The last version of this notice, which included the Dictionary of Deficiency Definitions, was published in the **Federal Register** on June 28, 2000 (65 FR 39988). The report recommended modifications and minor changes to the 47 definitions.

2. Informal Consultations Regarding the 47 Definitions

HUD held informal meetings with multifamily and public housing industry representatives, housing advocacy representatives and governmental representatives to seek their input regarding ways to revise and improve the 47 definitions identified by the contractor. After the contractor issued its final and supplemental report in June 2001, and a HUD review team evaluated the proposed definition changes during July and August 2001, HUD issued preliminary comments that either agreed with the changes, recommended modifications, or advised leaving certain definitions unchanged. HUD and the contractor then completed the first revision to the physical inspection software based on the input from the HUD review team.

From 2001 to 2002, HUD and the contractor met with representatives from the multifamily industry, the public housing industry, and HUD's own public housing staff to hold informal discussions on proposed changes to various definitions in the Dictionary of Deficiency Definitions. Informed by these discussions, HUD drafted this proposed revision to the 47 definitions.

The proposed revisions to the 47 definitions that resulted from these meetings are now being published for public comment for a 30-day period. The revisions are included as Appendix 1 to this notice, which lists the 47 definitions identified by the contractor showing the original definition and the proposed definition.

Dated: January 12, 2004.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

Appendix 1

Definition In Question	Current Version 2.3 Definition	Proposed Definition
Building Exteriors **Walls**	**Deficiency:** The chimney, including the part that extends above the roofline, has separated from the wall or has cracks, spalling, missing pieces, or broken sections. **Level of Deficiency:** **Level 1:** N/A **Level 2:** The surface of the chimney shows surface damage on more than one piece of wall--a few bricks or a section of siding, for example. -OR- The surface of the chimney has holes that affect an area larger than 4 inches by 4 inches. **Level 3:** Part or the entire chimney has visibly separated from the adjacent wall. -OR- There are cracked or fallen pieces or sections. -OR- There is a risk that falling pieces could create a safety hazard. Comments **Level 3:** If the condition is a health and safety concern, you must record it manually as "Health and Safety: Hazards."	**Deficiency:** The chimney, including the part that extends above the roofline, has separated from the wall or has cracks, spalling, missing pieces, or broken sections **(including chimney caps)**. **Level of Deficiency:** **Level 1:** The chimney cap is either visibly loose or damaged. **Level 2:** The surface of the chimney shows surface damage on more than one piece of wall--a few bricks or a section of siding, for example. -OR- The surface of the chimney has holes that affect an area larger than 4 inches by 4 inches. **Level 3:** Part or the entire chimney has visibly separated from the adjacent wall. -OR- There are cracked or fallen pieces or sections. -OR- There is a risk that falling pieces could create a safety hazard. Comments **Level 3:** If the condition is a health and safety concern, you must record it manually as "Health and Safety: Hazards."

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Building Exteriors **Windows**	**Windows (Building Exterior)** Window systems provide light, security, and exclusion of exterior noise, dust, heat, and cold. Frame materials include wood, aluminum, vinyl, etc. **Note:** This does not include windows that have defects noted from inspection from inside the unit. This inspectable item can have the following deficiencies: Broken/Missing/Cracked Panes Damaged/Missing Screens Damaged Sills/Frames/Lintels/Trim Missing/Deteriorated Caulking/Seals/Glazing Compound Peeling/Needs Paint Security Bars Prevent Egress	**Windows (Building Exterior)** Window systems provide light, security, and exclusion of exterior noise, dust, heat, and cold. Frame materials include wood, aluminum, vinyl, etc. **Note removed**. This inspectable item can have the following deficiencies: Broken/Missing/Cracked Panes Damaged/Missing Screens Damaged Sills/Frames/Lintels/Trim Missing/Deteriorated Caulking/Seals/Glazing Compound Peeling/Needs Paint

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Building Exteriors **Security Bars Prevent Egress**	**Deficiency:** Exiting (egress) is severely limited or impossible, because security bars are damaged or improperly constructed or installed. **Note:** This does not include windows that are not intended for exiting. **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3:** The ability to exit through the window is limited by security bars that do not function properly and, therefore, pose safety risks.	**Remove deficiency from Building Exterior, but for Common Area and Unit, use the following definition:** **Deficiency:** Exiting (egress) is severely limited or impossible, because security bars are damaged or improperly constructed or installed. **Security bars that are designed to open should open. If they do not open, record a deficiency.** **Note: Inspector should verify that the security bars if opened do not activate an alarm that would alarm or summon outside authorities (police, etc.).** **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3: Exiting or egress is severely limited or impossible, because security bars are damaged, improperly constructed/installed, or security bars that are designed to open cannot be readily opened.**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Building Exteriors **Windows — Peeling/ Needs Paint**	**Deficiency:** ▪ Paint covering the window assembly or trim is cracking, flaking, or otherwise failing. -OR- ▪ The window assembly or trim is not painted or is exposed to the elements. **Note:** This does not include windows that are not intended to be painted. **Level of Deficiency:** **Level 1:** You see peeling paint or a window that needs paint. **Level 2:** N/A **Level 3:** N/A	**Definition unchanged, but without scoring.**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Building Exteriors **Windows — Missing/ Deteriorated Caulking/ Seals/ Glazing Compound**	**Deficiency:** The caulking or glazing compound that resists weather is missing or deteriorated. **Note:** 1. This also includes Thermopane or insulated windows that have failed. 2. Caulk and seals are considered to be deteriorated when two or more seals for any window have lost their elasticity. (If the seals crumble and flake when touched, they have lost their elasticity.) **Level of Deficiency:** **Level 1:** N/A **Level 2:** Most of the window shows missing or deteriorated caulk or glazing compound, but there is no evidence of damage to the window or surrounding structure. **Level 3:** There are missing or deteriorated caulk or seals--with evidence of leaks or damage to the window or surrounding structure.	**Deficiency:** The caulking or glazing compound that resists weather is missing or deteriorated. **Note:** 1. This also includes Thermopane or insulated windows that have failed. 2. Caulk and seals are considered to be deteriorated when two or more seals for any window have lost their elasticity. (If the seals crumble and flake when touched, they have lost their elasticity.) **Level of Deficiency:** **Level 1: Most of the window shows missing or deteriorated caulk or glazing compound, but there is no evidence of damage to the window frame or surrounding structure.** **Level 2: N/A** **Level 3:** There are missing or deteriorated caulk or seals--with evidence of leaks or damage to the window frame or surrounding structure.

Definition In Question	Current Version 2.3 Definition	Proposed Definition
Building Systems **Exhaust System — Roof Fans Inoperable**	**Deficiency:** The ventilation system to exhaust kitchen or bathroom air does not function. **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3:** The roof exhaust fan unit does not function.	**Deficiency:** The ventilation system to exhaust air **from building areas (such as kitchen, bathroom, etc.)** does not function. **Note:** 1. **The inspector shall determine if the fan is event activated (example: fire, timer, etc.)- if so, there is no deficiency.** 2. **"Missing" only refers to the case where there was a fan to begin with. If a fan was not included in the design do not record a deficiency for not having one.** **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3:** The roof exhaust fan unit does not function, **is damaged to the point of being inoperable, or is missing.**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
<u>Building Systems</u> **HVAC**	**HVAC (Building Systems)** Portion of the building system that provides ability to heat or cool the air within the building. Includes equipment such as boilers, burners, furnaces, fuel supply, hot water and steam distribution, and associated piping, filters, and equipment. Also includes air handling equipment and associated ventilation ducting. This inspectable item can have the following deficiencies: Boiler/Pump Leaks Fuel Supply Leaks Misaligned Chimney/ Ventilation System General Rust/Corrosion	**HVAC (Building Systems)** Portion of the building system that provides ability to heat or cool the air within the building. Includes equipment such as boilers, burners, furnaces, fuel supply, hot water and steam distribution, **centralized air conditioning systems**, and associated piping, filters, and equipment. Also includes air handling equipment and associated ventilation ducting. This inspectable item can have the following deficiencies: Boiler/Pump/**Cooling System** Leaks Fuel Supply Leaks Misaligned Chimney/Ventilation System General Rust/Corrosion

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Building Systems **HVAC - Boiler/ Pump leaks-**	**Deficiency:** Water or steam is escaping from unit casing or system piping. **Note:** 1. This does not include fuel supply leaks. See Building Systems- HVAC fuel supply leaks. 2. Do not include steam escaping from pressure relief valves. **Level of Deficiency:** **Level 1:** You see water or steam leaking in piping or pump packing. **Level 2:** N/A **Level 3:** Water or steam is leaking in piping or pump packing to the point that the system or pumps should be shut down. Comments **Level 3:** If the condition is a health and safety concern, you must record it manually as "Health and Safety: Hazards."	**Deficiency: Coolant,** water, or steam is escaping from unit casing **and/or pump packing/**system piping. **Note:** 1. This does not include fuel supply leaks. See Building Systems- HVAC fuel supply leaks. 2. Do not include steam escaping from pressure relief valves. 3. **If water containment and curb is provided, do not record as deficiency if there is standing water.** 4. **Condensation or sweating is not to be confused with leaking.** **Level of Deficiency:** **Level 1: Coolant, water, or steam is escaping from unit casing and/or pump packing/system piping.** **Level 2:** N/A **Level 3: Coolant, water, or steam is leaking in unit casing, system piping and/or pump packing to the point that the system or pumps should be shut down.** Comments **Level 3:** If the condition is a health and safety concern, you must record it manually as "Health and Safety: Hazards."

Definition In Question	Current Version 2.3 Definition	Proposed Definition
Common Areas	Items to inspect for "Common Areas" are as follows: Basement/Garage/Carport Closet/Utility/Mechanical Community Room Day Care FHEO Halls/Corridors/Stairs Kitchen Laundry Room Lobby Office Other Community Spaces Patio/Porch/Balcony Pools and Related Structures Restrooms/Pool Structures Storage Trash Collection Areas	**Definition unchanged.**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
<u>Common Areas</u> **Ceilings – Bulging/ Buckling**	**Deficiency:** A ceiling is bowed, deflected, sagging, or is no longer aligned horizontally. **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3:** You see bulging, buckling, sagging, or a lack of horizontal alignment. Comments **Level 3:** If you have any doubt about the severity of the condition, request an inspection by a structural engineer.	**Deficiency:** A ceiling is bowed, deflected, sagging, or is no longer aligned horizontally **to the extent that ceiling failure is possible.** **Level of Deficiency:** **Level 1**: N/A **Level 2**: N/A **Level 3**: You see bulging, buckling, sagging, or a lack of horizontal alignment. Comments **Level 3**: **If you as an inspector have concerns about the possibility of failure, inform the property representative that an inspection by a professional engineer is suggested.**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
<u>Common Areas</u> **Ceilings — Holes/ Missing Tiles/ Panels/ Cracks**	**Deficiency:** ▪ The ceiling surface has punctures that may or may not penetrate completely. -OR- ▪ Panels or tiles are missing or damaged. **Level of Deficiency:** **Level 1:** You see small holes that are no larger than a sheet of paper--8½ inches by 11 inches. -OR- No hole penetrates the area above. -OR- You see that no more than 3 tiles or panels are missing. **Level 2:** You see a hole that is larger than a sheet of paper--8½ inches by 11 inches--but it does not penetrate the area above. (You cannot see through it.) -OR- You see that more than 3 tiles or panels are missing. -OR- You see a crack more than 1/8 inch wide and 11 inches long. **Level 3:** You see a hole that penetrates the area above; you can see through it. Comments **Level 3:** If a hole is a health and safety concern, you must record it manually in "Health and Safety: Hazards."	**Deficiency:** ▪ The ceiling surface has punctures that may or may not penetrate completely. -OR- ▪ Panels or tiles are missing or damaged. **Level of Deficiency:** **Level 1**: You see small holes that are no larger than a sheet of paper--8½ inches by 11 inches. -OR- No hole **or crack** penetrates the area above. -OR- You see that no more than 3 tiles or panels are missing. **-OR-** **You see a crack more than 1/8 inch wide and 11 inches long.** **Level 2**: You see a hole that is larger than a sheet of paper--8½ inches by 11 inches--but it does not penetrate the area above. (You cannot see through it.) -OR- You see that more than 3 tiles or panels are missing. **Last section removed.** **Level 3**: You see a hole **or crack** that penetrates the area above; you can see through it. Comments **Level 3**: If a hole **or crack** is a health and safety concern, you must record it manually in "Health and Safety: Hazards." **If you as an inspector have concerns about the possibility of failure, inform the property representative that an inspection by a professional engineer is suggested.**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
<u>Common Areas</u> **Ceilings – Mold**	**Deficiency:** You see evidence of water infiltration, mold, or mildew that may have been caused by saturation or surface failure.	**Deficiency:** You see evidence of water infiltration, **or other moisture producing conditions causing** mold or mildew that may have been caused by saturation or surface failure.
	Level of Deficiency:	**Level of Deficiency:**
	Level 1: On one ceiling, you see evidence of a leak, mold, or mildew--such as a darkened area--over a small area (more than 1 square foot but less than 4 square feet). You estimate that less than 10% of the ceiling surface area is affected. You may or may not see water.	**Level 1:** On one ceiling, you see evidence of **mold or mildew** – such as a darkened area – **over a large area (4 square inches to 1 square foot).** You may or may not see water.
	Level 2: On one ceiling, you see evidence of a leak mold or mildew-- such as a darkened area--over a large area (more than 4 square feet). You may or may not see water. -OR- You estimate that 10-50% of the ceiling area has Level 1 damage.	**Level 2: Removed.**
	Level 3: On one ceiling, you estimate that a large portion--50% of its surface--has been substantially saturated or damaged by water, mold, or mildew. You see cracks, moist areas, mold, or mildew. The ceiling surface may have failed. -OR- You estimate that more than 50% of the ceiling area shows Level 1 damage from stains, mold, or mildew.	**Level 3:** On one ceiling, you estimate that a **very large area (more than *1* square foot)** of its surface--has been substantially saturated or damaged by **mold, or mildew.** The ceiling surface may have failed.
	Comments	**Comment removed.**
	Level 3: If the condition is a health and safety concern, you must record it manually in "Health and Safety: Air Quality."	

Definition In Question	Current Version 2.3 Definition	Proposed Definition
<u>Common Areas</u> **Hard Floor Covering — Missing Flooring/ Tiles**	**Deficiency**: You see that flooring--terrazzo, hardwood, ceramic tile, or other flooring material--is missing. **Level of Deficiency:** **Level 1:** For a single floor, you see small holes in areas of the floor surface. You estimate that 5-10% of the floors are affected, and there are no safety problems. **Level 2:** You estimate that 10-50% of the floors have small holes in areas of the floor surface, but there are no safety problems. **Level 3:** You estimate that more than 50% of the floors are affected by Level 1 holes/damage. -OR- The condition causes a safety problem. Comments **Level 3:** If you have just one concern that safety is compromised; classify the floor system as a Level 3 deficiency.	**Deficiency**: You see that hard flooring--terrazzo, hardwood, ceramic tile, **sheet vinyl, vinyl tiles**, or other **similar** flooring material--is missing **section(s), or presents a tripping or cutting hazard, associated with but not limited to holes or delamination.** **Level of Deficiency:** **Level 1:** For any single floor, you see **deficiencies** in areas of the floor surface. You estimate that 5-10% of the floor is affected, and there are no safety problems. **Level 2:** You estimate that 10-50% of **any single floor surface is affected, but there are no safety problems.** **Level 3:** You estimate that more than 50% of **any floor surface is affected by Level 1 deficiencies**. -OR- The condition causes a safety problem. Comments **Level 3:** If you have a concern that safety is compromised; classify the floor system as a Level 3 deficiency.

Definition In Question	Current Version 2.3 Definition	Proposed Definition
<u>Common Areas</u> **Soft Floor Covering Damaged-Floors.**	**Deficiency**: You see damage to carpet tiles, wood, sheet vinyl, or other floor covering. **Level of Deficiency:** **Level 1:** You estimate that only 5-10% of the floor covering has stains, surface burns, shallow cuts, small holes, tears, loose areas, or exposed seams. The covering is fully functional, and there is no safety hazard. **Level 2:** You estimate that only 10-50% of the floor covering has stains, surface burns, shallow cuts, small holes, tears, loose areas, or exposed seams. The covering is fully functional, and there is no safety hazard. **Level 3:** For a single floor, you estimate that more than 50% of the floor covering is damaged. -OR- Damage to the floor covering exposes the underlying material. Comments **Level 3:** If this condition is a health and safety concern, you must record it manually in "Health and Safety: Hazards."	**Deficiency**: You see damaged and missing carpet. **Level of Deficiency:** **Level 1:** You estimate that only 5-10% of the **carpet** has stains, surface burns, shallow cuts, small holes, tears, loose areas, or exposed seams. The covering is fully functional, and there is no safety hazard. **Level 2:** You estimate that only 10-50% of the **carpet** has stains, surface burns, shallow cuts, small holes, tears, loose areas, or exposed seams. The covering is fully functional, and there is no safety hazard. **Level 3:** You estimate that more than 50% of the **carpet** is damaged. -OR- Damage to the **carpet** exposes the underlying material. Comments **Level 3:** If this condition is a health and safety concern, you must record it manually in "Health and Safety: Hazards."

Definition In Question	Current Version 2.3 Definition	Proposed Definition
<u>Common Areas</u> **Routes Obstructed or Inaccessible to Wheelchair**	**Deficiency:** Verify that routes to all outside common areas are accessible to wheelchairs (i.e.; there are curb cuts, ramps, and sufficient (36") width) **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3:** The route is obstructed or not accessible route.	**Deficiency:** Verify that **at least one route** to all outside common areas are accessible to wheelchairs (i.e.; there are curb cuts, ramps, and sufficient (36") width) **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3:** **The common areas are either obstructed or are not accessible by wheelchairs.**

Definition In Question	Current Version 2.3 Definition	Proposed Definition
<u>Common Areas</u> **Floors — Rot/Deteriorated Subfloor**	**Deficiency:** The subfloor has decayed or is decaying. **Level of Deficiency:** **Level 1:** N/A **Level 2:** You see small areas of rot--1-4 square feet. **Level 3:** You see large areas of rot--more than 4 square feet-- and applying weight causes noticeable deflection. Comments **Level 3:** If you have any doubt about the severity of this condition, request an inspection by a structural engineer.	**Deficiency:** The subfloor has decayed or is decaying. **Note:** 1. **If there is any doubt, apply weight to detect noticeable deflection.** 2. **This type of defect typically occurs in kitchens and bathrooms.** **Level of Deficiency:** **Level 1:** N/A **Level 2:** **Evidence of** small areas of rot--1-4 square feet. **Level 3:** **Evidence** of large areas of rot--more than 4 square feet. Comments **Level 3:** If you have any **concerns about Health & Safety**, request an inspection by a structural engineer.

Definition In Question	Current Version 2.3 Definition	Proposed Definition
<u>Common Areas</u> **HVAC — Inoperable**	**Deficiency:** The heating, cooling, or ventilation system does not function. **Note:** 1. If the HVAC system is not functioning because it is not the right season, do not record this as a deficiency. 2. Statement may be validated by resident survey process. **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3:** The HVAC does not function; it does not provide the heating or cooling it should. The system does not respond when the controls are engaged. Comments **Level 3:** If this condition is a health and safety concern, you must record it manually in "Health and Safety Hazards."	**Deficiency:** The heating, cooling, or ventilation system does not function. **Note:** If the HVAC system **does not operate because of seasonal conditions**, do not record this as a deficiency. **Second note removed.** **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3:** The HVAC **system** does not function; it does not provide the heating or cooling it should. The system does not respond when the controls are engaged. Comments **Level 3:** If this condition is a health and safety concern, you must record it manually in "Health and Safety Hazards.""

Definition In Question	Current Version 2.3 Definition	Proposed Definition
<u>Common Areas</u> **HVAC- Noisy, Vibrating, Leaking**	**Deficiency:** The HVAC distribution components, including fans, are the source of abnormal noise, unusual vibrations, or leaks. **Level of Deficiency:** **Level 1:** The HVAC system shows signs of abnormal vibrations, other noise, or leaks when engaged. The system still provides enough heating or cooling to maintain a minimum temperature range in the major living areas. **Level 2:** N/A **Level 3:** N/A	**Deficiency:** The HVAC distribution components, including fans, are the source of **unusual vibrations, leaks, or abnormal noise. Examples may include, but are not limited to: screeching, squealing, banging, shaking, etc.** **Level of Deficiency:** **Level 1:** The HVAC system shows signs of abnormal vibrations, other noise, or leaks when engaged. The system still provides enough heating or cooling to maintain a minimum temperature range in the major living areas. **Level 2:** N/A **Level 3:** N/A

Definition In Question	Current Version 2.3 Definition	Proposed Definition
Common Areas **Dishwasher/ Garbage Disposal — Inoperable**	**Deficiency:** A dishwasher or garbage disposal, if provided, does not function, as it should. **Level of Deficiency:** **Level 1:** N/A **Level 2:** The dishwasher or garbage disposal does not function, as it should. **Level 3:** N/A	**Deficiency:** A dishwasher or garbage disposal, if provided, does not function. **Level of Deficiency:** **Level 1:** N/A **Level 2:** The dishwasher or garbage disposal does not function. **Level 3:** N/A

Definition In Question	Current Version 2.3 Definition	Proposed Definition
<u>Common Areas</u> **Walls — Damaged**	**Deficiency:** You see punctures in the wall surface that may or may not penetrate completely. Panels or tiles may be missing or damaged. **Note:** This does not include small holes from hanging pictures, etc. **Level of Deficiency:** **Level 1:** In a wall, you find a hole, missing tile or panel, or other damage that is between 1 inch and 8 ½ inches by 11 inches. The hole does not penetrate the adjoining room; you cannot see through it. **Level 2:** In a wall, you find a hole, missing tile or panel, or other damage that is larger than a sheet of paper—8 1/2 inches by 11 inches. -OR- You find a crack greater than 1/8 inch wide and at least 11 inches long. **Level 3:** You find a hole of any size that penetrates an adjoining room; you can see through the hole. -OR- Two or more walls have Level 2 holes.	**Deficiency:** You see **cracks and/or** punctures in the wall surface that may or may not penetrate completely. Panels or tiles may be missing or damaged. **Note:** 1. This does not include small holes from hanging pictures, etc. 2. **Control joints/construction joints should not be recorded as a deficiency.** **Level of Deficiency:** **Level 1:** In a wall, you find a hole, **crack**, missing tile or panel, or other damage that is between 1 **square** inch and 8 ½ inches by 11 inches **and** does not penetrate the adjoining room**/area**; you cannot see through it. **-OR-** **You find a crack greater than 1/8 inch wide and at least 11 inches long.** **Level 2:** In a wall, you find a hole, missing tile or panel, or other damage that is larger than a sheet of paper—8 1/2 inches by 11 inches**, and does not penetrate the adjoining room; you cannot see through it to the adjoining area.** **Level 3:** You find a hole or crack of any size that penetrates an adjoining room; you can see through the hole. -OR- Two or more walls have Level 2 holes. Comments **Level 3: If a hole or crack is a health and safety concern, you must record it manually in "Health and Safety: Hazards. If you as an inspector have concerns about the possibility of failure, inform the property representative that an inspection by a professional engineer is suggested.**

Definition In Question	Current Version 2.3 Definition	Proposed Definition
<u>Common Areas</u> **Range Hood/ Exhaust Fans —** Excessive Grease/ **Inoperable**	**Deficiency:** The apparatus that draws out cooking exhaust does not function, as it should. **Level of Deficiency:** **Level 1:** An accumulation of dirt threatens the free passage of air. **Level 2:** N/A **Level 3:** The exhaust fan does not function. -OR- You estimate that the flue may be completely blocked.	**Deficiency:** The apparatus that draws out cooking exhaust does not function **Level of Deficiency:** **Level 1:** An accumulation of dirt, **grease, or other barrier noticeably reduces** the free passage of air. **Level 2:** N/A **Level 3:** The exhaust fan does not function. -OR- You estimate that the flue may be completely blocked **Comment** **Level 3: If you think this condition is a Health and Safety concern, record it under Health and Safety: Hazards.**

Definition In Question	Current Version 2.3 Definition	Proposed Definition
<u>Common Areas</u> **Graffiti**	**Deficiency:** You see crude inscriptions or drawings scratched, painted, or sprayed on a building surface, retaining wall.	**Deficiency:** You see crude inscriptions or drawings scratched, painted, or sprayed on an interior building surface **at one location. An interior surface includes but not limited to walls, doors, ceiling, and floors. A location is defined as one general area in a building such as one hallway in a 10 story building or one floor of a stairwell in a 5 story building.**
	Note: There is a difference between art forms and graffiti. Do not consider full wall murals and other art forms as graffiti.	**Note:** There is a difference between art forms and graffiti. **If there by design in accordance with proper authorization,** do not consider full wall murals and other art forms as graffiti.
	Level of Deficiency:	**Level of Deficiency:**
	Level 1: You see graffiti in one place.	**Level 1:** You see graffiti on an **interior surface at one location in the same building.**
	Level 2: You see graffiti in 2-5 places.	**Level 2:** You see graffiti at 2-5 **locations** on interior surfaces **in the same building.**
	Level 3: You see graffiti in 6 or more places.	**Level 3:** You see graffiti at 6 or more **locations** on interior **surfaces in the same building.**

Definition In Question	Current Version 2.3 Definition	Proposed Definition
<u>Common Areas</u> **Countertops – Missing/ damaged**	**Deficiency:** A flat work surface in a kitchen often integral to lower cabinet space is missing or deteriorated. **Level of Deficiency:** **Level 1:** N/A **Level 2:** 20% or more of the countertop-working surface is missing, deteriorated, or damaged below the laminate--not a sanitary surface to prepare food. **Level 3:** N/A	**Definition unchanged.**

Definition In Question	Current Version 2.3 Definition	Proposed Definition
<u>Common Areas</u> **Cabinets — Missing/ Damaged**	**Deficiency:** Cabinets are missing or the laminate is separating. This includes cases, boxes, or pieces of furniture with drawers, shelves, or doors--primarily used for storage--mounted on walls or floors. **Level of Deficiency:** **Level 1:** N/A **Level 2:** You see that 10-50% of the cabinets, doors, or shelves are missing or the laminate is separating. **Level 3:** You see that more than 50% of the cabinets, doors, or shelves are missing or the laminate is separating.	**Definition unchanged.**

Definition In Question	Current Version 2.3 Definition	Proposed Definition
<u>Units</u> **HVAC - Convection/ Radiant Heat System Covers Missing/ Damaged**	**Deficiency:** A cover on the convection/ radiant heat system is missing or damaged, which could cause a burn or related injury. **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3:** At least one cover is missing or substantially damaged, allowing contact with heating/surface elements or associated fans. Comments **Level 3:** When the system is operational during an inspection and you see a Level 3 deficiency—a real-time hazard exists-- you must record it manually in "Health and Safety: Hazards."	**Definition unchanged.**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
<u>Units</u> **HVAC System - General Rust/ Corrosion**	**Deficiency:** You see a component of the system with deterioration from oxidation or corrosion of system parts. **Level of Deficiency:** **Level 1:** You see deterioration from rust and corrosion on the HVAC units in the dwelling unit. The system still provides enough heating or cooling. **Level 2:** N/A **Level 3:** N/A	**Deficiency:** You see a component of the system with deterioration from oxidation or corrosion of system parts. **Deterioration is defined as rust, and/or formations of metal oxides, flaking, or discoloration, or a pit or crevice.** **Level of Deficiency:** **Level 1:** You see deterioration from rust and corrosion on the HVAC units in the dwelling unit. The system still provides enough heating or cooling. **Level 2:** N/A **Level 3:** N/A

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Units **HVAC System - Inoperable**	**Deficiency:** The heating, cooling, or ventilation system does not function. **Note:** If the HVAC system does not operate because of seasonal conditions, do not record this as a deficiency. **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3:** The HVAC does not function; it does not provide the heating or cooling it should. The system does not respond when the controls are engaged. Comments **Level 3:** If this condition is a health and safety concern, you must record it manually in "Health and Safety: Hazards."	**Deficiency:** The heating, cooling, or ventilation system does not function. **Note:** If the HVAC system does not operate because of seasonal conditions, do not record this as a deficiency. **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3:** The HVAC **system** does not function; it does not provide the heating or cooling it should. The system does not respond when the controls are engaged. Comments **Level 3:** If this condition is a health and safety concern, you must record it manually in "Health and Safety: Hazards."

Definition in Question	Current Version 2.3 Definition	Proposed Definition
<u>Units</u> **HVAC - Misaligned Chimney/ Ventilation**	**Misaligned Chimney/Ventilation System (HVAC)** **Deficiency:** The exhaust system on a gas-fired unit is misaligned. **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3:** You see any misalignment that may cause improper or dangerous venting of gases.	**Misaligned Chimney/Ventilation System (HVAC)** **Deficiency:** The exhaust system on either a gas**, oil fired, or coal** unit is misaligned. **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3:** You see any misalignment that may cause improper or dangerous venting of gases.

Definition in Question	Current Version 2.3 Definition	Proposed Definition
<u>Units</u> **Range Hood/ Exhaust Fans- Excessive grease/ inoperable (Kitchen)**	**Deficiency:** The apparatus that draws out cooking exhaust does not function, as it should. **Level of Deficiency:** **Level 1:** An accumulation of dirt threatens the free passage of air. **Level 2:** N/A **Level 3:** The exhaust fan does not function. -OR- You estimate that the flue may be completely blocked	**Deficiency:** The apparatus that draws out cooking exhaust does not function. **Level of Deficiency:** **Level 1:** An accumulation of dirt**, grease, or other barrier noticeably reduces** the free passage of air. **Level 2:** N/A **Level 3:** The exhaust fan does not function. -OR- You estimate that the flue may be completely blocked **Comment** **Level 3: If you think this condition is a Health and Safety concern, record it under "Health and Safety: Hazards."**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Units **Call-for Aid — Inoperable**	**Deficiency:** The system does not function, as it should. **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3:** The system does not function, as it should.	**Deficiency:** The system does not function. **Note: Inspector should verify that the call for-Aid only alerts local entities (on-site) prior to testing.** **Level of Deficiency:** **Level 1:** N/A **Level 2:** N/A **Level 3:** The system does not function.

Definition In Question	Current Version 2.3 Definition	Proposed Definition
Site **Fencing and Gates — Holes/ Missing Sections/ Damaged/ Falling/ Leaning** **Delineated into Two Separate Criteria:** **1. Interior Fencing** **2. Exterior Fencing**	**Deficiency:** A fence or gate is rusted, deteriorated, or uprooted which may threaten security, health, or safety. **Note:** Gates for swimming pool fences are covered in another section, "Common Areas - Pools and Related Structures". **Level of Deficiency**: Deficiencies in exterior fences, security fences, and gates are a higher level than interior fences and gates. **Level 1:** N/A **Level 2:** An interior fence or gate is so damaged that it does not function, as it should. -OR- An exterior fence, security fence, or gate shows signs of deterioration, but still functions as it should, and it presents no risk to security or safety. **Level 3:** An exterior fence, security fence, or gate is no longer there. -OR- An exterior fence, security fence, or gate is damaged and does not function as it should or could threaten safety or security.	**Site - Fencing and Gates - Missing/Damaged/Falling/Leaning** **Non-security/non-safety Fences** **Deficiency: A non-security/non-safety (example: Privacy/Decorative) fence or gate is rusted, deteriorated, uprooted, missing or contains holes.** **Note:** 1. Gates for swimming pool fences are covered in another section, **"Site-Fencing and Gates- Security."** 2. **Fences designed for Security/Safety are addressed under Security Fences.** **Level of Deficiency:** **Level 1:** N/A **Level 2**: A **non-security/non-safety** fence or gate contains holes or deterioration/**damage** in greater than **25% of a fence.** **Level 3: N/A** **Comment** **Level 2: If the non-security/non-safety fence poses any danger, note this as a Health & Safety issue under "Health & Safety: Hazards."** Continued on next page...

Definition In Question	Current Version 2.3 Definition	Proposed Definition
		Security/Safety Fences **Deficiency: A security/safety (i.e.: Perimeter/Security) fence or gate is rusted, deteriorated, uprooted or missing such that it may threaten security, health or safety.** **Note:** 1. If the fence or gate is not designed **for safety/security**, such as keeping intruders out or children, do not evaluate the fence **under this item**. Refer to non-security fences. 2. **Security/Safety fences include perimeter fences that are designed to keep people in and/or out as well as fences around playgrounds, etc.** 3. **Fences less than 4 feet in height are to be addressed under non-security fences.** 4. Gates for swimming pool fences are covered in another section, "Common Areas - Pools and Related Structures". **Level of Deficiency:** **Level 1: A security/safety fence or gate contains small holes or related damage as defined above (smaller than 12 inches by 12 inches) in less than 25% of the fence.** **Level 2: A security/safety fence or gate contains small holes or related damage as defined above (smaller than 12 inches by 12 inches) in more than 25% of the fence.** **Level 3: A security/safety fence or fence section contains large holes or related damage as defined above (greater than 12 inches by 12 inches) or is missing a section.** **Note: If the fence can cause injury or allow bodily harm, record it as a "Health & Safety: Hazards."**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Site **Fencing and Gates – Holes**	**Deficiency:** There is an opening or penetration in any fence or gate designed to keep intruders out or children in. Look for holes that could allow animals to enter or could threaten the safety of children. **Note:** If the fence or gate is not designed to keep intruders out or children in - such as a rail fence - do not evaluate it for holes. **Level of Deficiency**: **Level 1:** The hole is smaller than 6 inches by 6 inches **Level 2:** N/A **Level 3:** The hole is larger than 6 inches by 6 inches.	**This definition no longer stands alone because it was included in the previous definition: Site: Fencing and Gates — Holes/ Missing Sections/ Damaged/ Falling/ Leaning.**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Site **Grounds — Ponding/ Site Drainage**	**Deficiency:** Water or ice has collected in a depression or on ground where ponding was not intended. **Note:** 1. This does not include detention/retention basins or ponding on paved areas, such as parking lots: ▪ Detention/retention basins are covered in "Site - Storm Drainage". ▪ Ponding on paved areas is covered in "Parking Lots/Driveways/Roads". 2. If there has been measurable precipitation (1/10 inch or more) during the previous 48 hours, consider the impact on the extent of the ponding. Determine that ponding has occurred only when there is clear evidence of a persistent or long-standing problem. **Level of Deficiency:** **Level 1:** N/A **Level 2:** An accumulation of water (3-5 inches deep) affects the use of a section of the grounds, but the grounds are generally usable. **Level 3:** There is an accumulation of more than 5 inches deep. -OR- Accumulation has made a large section of the grounds—more than 20%--unusable for its intended purpose. (For example, ponding has made a recreational field unusable.)	**Deficiency:** Water or ice has collected in a depression or on ground where ponding was not intended. **Note:** 1. This does not include detention/retention basins or ponding on paved areas, such as parking lots: ▪ Detention/retention basins are covered in "Site - Storm Drainage". ▪ Ponding on paved areas is covered in "Parking Lots/Driveways/Roads". 2. If there has been measurable precipitation (1/10 inch or more) during the previous 48 hours, consider the impact on the extent of the ponding. Determine that ponding has occurred only when there is clear evidence of a persistent or long-standing problem. **Level of Deficiency:** **Level 1:** N/A **Level 2:** An accumulation of water (3-5 inches deep) affects the use of **at least 100 square feet** of the grounds, but the grounds are generally usable. **Level 3:** There is an accumulation of more than 5 inches deep **over 100 square feet.** -OR- Accumulation has made a large section of the grounds—more than 20%--unusable for its intended purpose. (For example, ponding has made a recreational field unusable.)

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Site **Parking Lots/ Driveways/ Roads - Damaged Paving**	**Cracks (Parking Lots/Driveways/Roads)** **Deficiency:** There are visible faults in the pavement: longitudinal, lateral, alligator, etc. **Note:** 1. Do not include cracks on walkways/steps. For this to be a level 2 deficiencies, 5% of the parking lots must be impacted--50 out of 1,000 square feet, for example. 2. Relief joints are there by design; do not consider them cracks. 3. When observing traffic ability, consider the capacity to support people on foot, in wheelchairs, and using walkers—and the potential for problems and hazards. 4. For parking lots only, note a deficiency if you see cracks on more than 5% of the parking spaces. 5. For driveways/roads, note a deficiency if you see cracks on more than 5% of the driveways/roads. **Level of Deficiency:** **Level 1:** N/A **Level 2:** Cracks greater than ¾ inch, hinging/tilting, or missing section(s) that affect traffic ability over more than 5% of the property's parking lots/driveways/roads. **Level 3:** N/A Continued on next page...	**Cracks/Settlement/Heaving/Loose Materials/Potholes** (Parking Lots/Driveways/Roads). **Deficiency:** There are visible faults in the pavement: longitudinal, lateral, alligator, etc. **The pavement sinks or rises because of the failure of sub base materials.** **Note:** 1. Do not include cracks on walkways/steps. For this to be a level 2 deficiency, **more than 10%** of the area must be impacted--**100** out of 1,000 square feet, for example. **The 10% level does not apply to Level 3 conditions.** 2. Relief joints are there by design; do not consider them cracks. **Also repaired/sealed cracks should be considered a deficiency.** 3. When observing traffic ability, consider the capacity to support people on foot, in wheelchairs, using walkers or canes, etc.—and the potential for problems and hazards. 4. For **parking lots/driveways/roads only**, note a **Level 2** deficiency if you see cracks on more than 10% of the **paved area.** **Level of Deficiency:** **Level 1:** N/A **Level 2:** Damaged pavement as defined above greater than ¾ inch, hinging/tilting, **loose materials due to pot holes**, or missing section(s) that affect traffic ability over more than **10%** of the property's parking lots/driveways/roads. **Level 3:** **Damaged pavement as defined above has made a parking lot/driveway unusable/impassable or creates unsafe conditions for pedestrians and vehicles.** Continued on next page...

Definition in Question	Current Version 2.3 Definition	Proposed Definition
	Comments **Level 2:** If the height differential is greater than ¾ inch, consider this a safety hazard. If the condition of the surface could cause tripping or falling, you must manually record this deficiency as "Health and Safety: Hazards."	Comments **Note:** If the height differential is greater than ¾ inch, consider this a safety hazard. If the condition of the surface could cause tripping or falling, you must manually record this deficiency as "Health and Safety: Hazards."

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Site **<u>Ponding</u>**	**Ponding (Parking Lots/Driveways/Roads)** **Deficiency:** Water or ice has accumulated in a depression on an otherwise flat plane. **Note:** 1. Consider the impact of any measurable precipitation—1/10 inch or more—during the last 48 hours. Note the deficiency only if there is clear evidence that the ponding is a persistent or long-standing problem. 2. For parking lots only, note a deficiency if you see ponding on more than 5% of the parking spaces. 3. For driveways/roads, note a deficiency if you see ponding on more than 5% of the driveways/roads. **Level of Deficiency:** **Level 1:** N/A **Level 2:** Less than 3 inches of water has accumulated, affecting the use of 5% or more of a parking lot/driveway; the parking lot/driveway is passable. **Level 3:** 3 inches of water--or more--has accumulated making 5% or more of a parking lot/driveway unusable or unsafe.	**Ponding (Parking Lots/Driveways/Roads)** **Deficiency:** Water or ice has accumulated in a depression on an otherwise flat plane. **Note:** 1. Consider the impact of any measurable precipitation—1/10 inch or more—during the last 48 hours. Note the deficiency only if there is clear evidence that the ponding is a persistent or long-standing problem. 2. For parking lots**/driveways/roads,** note a deficiency if you see ponding on more than 5% of the **paved area.** **Third note removed.** **Level of Deficiency:** **Level 1:** N/A **Level 2:** **Between 1 and** 3 inches of water has accumulated, affecting the use of 5% or more of a parking lot/driveway; the parking lot/driveway is passable. **Level 3:** **More than** 3 inches of water has accumulated making 5% or more of a parking lot/driveway unusable or unsafe.

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Site **Parking Lots/ Driveways/ Roads -Potholes/ Loose Material**	**Potholes/Loose Material (Parking Lots/Driveways/Roads)** **Deficiency:** ▪ A hole caused by road surface failure -OR- ▪ Loose, freestanding aggregate material caused by deterioration **Level of Deficiency:** **Level 1:** Potholes or loose material have caused the pavement to fail, exposing the subsurface. **Level 2:** N/A **Level 3:** Potholes or loose material have made a parking lot/driveway unusable/impassable for vehicles and/or pedestrians. Comments **Level 3:** If the excessively irregular surface could cause tripping or falling, you must manually record this deficiency as "Health and Safety: Hazards."	**Definition consolidated into a new definition entitled "Damaged Paving."**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Site **Parking Lots/ Driveways/ Roads Settlement Heaving**	**Settlement/Heaving (Parking Lots/Driveways/Roads)** **Deficiency:** The pavement sinks or rises because of the failure of subbase materials. **Note:** If you see that water or ice has collected in the depression, record this under Ponding. **Level of Deficiency:** **Level 1:** Cracks and deteriorated surface material give evidence of settlement/heaving. **Level 2:** N/A **Level 3:** Settlement/heaving has made a parking lot/driveway unusable/impassable or creates unsafe conditions for pedestrians and vehicles. Comments **Level 3:** If the excessively irregular surface could cause tripping or falling, you must manually record this deficiency as "Health and Safety: Hazards."	**Definition consolidated into a new definition entitled "Damaged Paving."**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Site **Play Areas and Equipment — Damaged/ Broken Equipment**	**Deficiency:** Equipment is broken into pieces, shattered, incomplete, or inoperable. **Note:** Do not evaluate equipment that the authority state has been withdrawn from service, except when safety is still a concern-- sharp edges, dangerous leaning, etc. For example, if the authority removed the net and hoop from a basketball backboard and the backboard poses no safety hazards, it is not a deficiency. **Level of Deficiency:** **Level 1:** You see that some of the equipment -- 20-50% -- does not operate as it should, but poses no safety risk. **Level 2:** You see that most of the equipment -- more than 50% -- does not operate as it should, but poses no safety risk. **Level 3:** You see equipment that poses a threat to safety and could cause injury.	**Definition unchanged.**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Site **Retaining Walls — Damaged/ Falling/ Leaning**	**Deficiency:** A retaining wall structure is deteriorated, damaged, falling, or leaning. **Level of Deficiency:** **Level 1:** N/A **Level 2:** A retaining wall shows some signs of deterioration, but it still functions as it should, and it is not a safety risk. **Level 3:** A retaining wall is damaged and does not function as it should or is a safety risk.	**Deficiency:** A retaining wall structure is deteriorated, damaged, falling, or leaning. **Level of Deficiency:** **Level 1:** **A retaining wall shows signs of deterioration as defined, but it still functions, and it is not a safety risk.** **Level 2:** **N/A** **Level 3:** A retaining wall is damaged **as defined and has failed** or is a safety risk.

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Site **Walkways/ Steps — Cracks/ Settlement/ Heaving**	**Deficiency:** ▪ Visible faults in the pavement: longitudinal, lateral, alligator, etc. -OR- ▪ Pavement that sinks or rises because of the failure of sub base materials **Note:** 1. Do not include cracks on parking lots/driveways or roads. 2. For this to be a level 2 deficiency, 5% of the walkways must be impacted--50 out of 1,000 square feet, for example. 3. Relief joints are there by design; do not consider them cracks. 4. When observing traffic ability, consider the capacity to support pedestrians, wheelchairs, and people using walkers. **Level of Deficiency:** **Level 1:** N/A **Level 2:** Cracks greater than ¾", hinging/tilting, or missing section(s) that affect traffic ability over more than 5% of the property's walkways/steps. **Level 3:** N/A Comments **Level 2:** If the walkways or steps could cause tripping or falling, you must manually record this deficiency as "Health and Safety: Hazards."	**Deficiency:** ▪ Visible faults in the pavement: longitudinal, lateral, alligator, etc. -OR- ▪ Pavement that sinks or rises because of the failure of sub base materials **Note:** 1. Do not include cracks on parking lots/driveways or roads. 2. For this to be a level 2 deficiency, 5% of the walkways must be impacted--50 out of 1,000 square feet, for example. 3. Relief joints are there by design; do not consider them cracks. **Fourth note removed.** **Level of Deficiency:** **Level 1:** N/A **Level 2:** Damaged as defined above greater than ¾", hinging/tilting, or missing section(s) that affect over more than 5% of the property's walkways/steps. **Level 3:** N/A Comments **Level 2:** If the walkways or steps could cause tripping or falling, you must manually record this deficiency as "Health and Safety: Hazards."

Definition In Question	Current Version 2.3 Definition	Proposed Definition
Health and Safety **Air Quality - Mold and/or Mildew Observed**	**Deficiency:** You see evidence of mold or mildew, especially in bathrooms and air outlets.	**Deficiency:** You see evidence of **water infiltration or other moisture producing condition that causes** mold, or mildew **Note: If the area has at least 1 square foot of mold or mildew, record it as a deficiency.**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Health and Safety **Air Quality — Sewer Odor Detected.**	**Deficiency:** You detect sewer odors that could pose a health risk if inhaled for prolonged periods.	**Deficiency:** You detect sewer odors.

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Health and Safety **Electrical Hazards — Exposed Wires/ Open panels**	**Deficiency:** You see exposed bare wires or openings in electrical panels. **Note:** If the accompanying authority has identified abandoned wiring, capped wires do not pose a risk and should not be recorded as a deficiency.	**Deficiency:** You see exposed bare wires or openings in electrical panels. **Note:** 1. If the accompanying property representative has identified abandoned wiring, capped wires do not pose a risk and should not be recorded as a deficiency. **They must be enclosed in a junction box as defined in Note 2 below.** 2. **If the capped wires are not properly enclosed in a junction box, record as a deficiency.**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Health and Safety **Emergency/ Fire Exits** — Missing Exit Signs	**Deficiency:** ▪ Exit signs that clearly identify all emergency exits are missing. -OR- ▪ There is no illumination in the area of the sign.	**Deficiency:** ▪ Exit signs that clearly identify all emergency exits are missing. -OR- ▪ There is no **adjacent or other internal illumination in operation on or near the sign.**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Health and Safety **Flammable Materials — Improperly Stored**	**Deficiency:** Flammable materials are improperly stored, causing the potential risk of fire or explosion.	**Deficiency:** Flammable **or combustible** materials are improperly stored **near a heat or electrical source,** causing the potential risk of fire or explosion. **Note: Flammable or combustible materials may include but are not limited to Gasoline, Paint Thinners, Kerosene, Propane, paper, boxes, etc.**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Health and Safety **Garbage and Debris — Indoors/ Outdoors**	**Indoors (Garbage and Debris)** *Deficiency:* ▪ Too much garbage has gathered, more than the planned storage capacity. -OR- ▪ Garbage has gathered in an area that is not sanctioned for staging or storing garbage or debris. **Note:** This does not include garbage and debris improperly stored outside. For this deficiency, see Garbage and Debris – Outdoors **Outdoors (Garbage and Debris)** *Deficiency:* ▪ Too much garbage has gathered—more than the planned storage capacity. -OR- ▪ Garbage has gathered in an area not sanctioned for staging or storing garbage or debris. **Note:** This does not include garbage improperly stored indoors. For this deficiency, see Garbage and Debris – Indoors	**Definition unchanged.**

Definition in Question	Current Version 2.3 Definition	Proposed Definition
Health and Safety **Hazards — Tripping**	**Deficiency:** You see any physical defect that poses a tripping risk, generally in walkways or other traveled areas. **Note:** This does not include tripping hazards from elevators that do not level properly. For this deficiency, see Elevator - Tripping under Health and Safety.	**Deficiency:** You see any physical defect that poses a tripping risk, generally in walkways or other traveled areas. **Typically, the defect must present at least a three-quarter inch deviation.** **Note:** This does not include tripping hazards from elevators that do not level properly. For this deficiency, see Elevator - Tripping under Health and Safety.

[FR Doc. 04–5828 Filed 3–15–04; 8:45 am]
BILLING CODE 4210–33–C

Federal Register

Tuesday,
March 16, 2004

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 25

Electrical Equipment and Installations, Storage Battery Installation; Electronic Equipment; and Fire Protection of Electrical System Components on Transport Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2001–9634, FAA–2001–9633, FAA–2001–9638, FAA–2001–9637; Amendment No. 25–113]

RIN 2120–AI21

Electrical Equipment and Installations, Storage Battery Installation; Electronic Equipment; and Fire Protection of Electrical System Components on Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA amends the regulations governing airworthiness standards for transport category airplanes concerning: electrical equipment; nickel cadmium battery installation and storage; electrical cables; design and installation of electronic equipment; and fire protection of electrical system components. Adoption of these amendments eliminates significant regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

DATES: This amendment becomes effective April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Federal Aviation Administration, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–2315; facsimile 425–227–1320, e-mail *steve.slotte@faa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Obtain a Copy of This Final Rule?

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also request a copy from the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591 [(202) 267–9680]. Be sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within our jurisdiction. If you are a small entity and you have a question regarding this document you may contact your local FAA official or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.htm*, or by e-mailing us at *9–AWA–SBREFA@faa.gov.*

Background

This final rule responds to recommendations of the Aviation Rulemaking Advisory Committee (ARAC) submitted under the FAA's Fast Track Harmonization Program. It amends six sections of the regulations governing airworthiness standards for transport category airplanes concerning: electrical installation, nickel cadmium battery installation and storage; electrical cables; design and installation of electronic equipment; and fire protection of electrical system components. The FAA proposed these changes in four notices of proposed rulemaking (NPRM). The notices and the affected sections are listed in the table below.

Change No.	14 CFR section No.	Section title	Notice No.	Federal Register publication/publication date
1	§ 25.1353(a)	Electrical equipment and installations	01–04	66 FR 27582, 05/17/2001.
2	§ 25.1353(c)(5)	Storage batteries		
3	§ 25.1353(c)(6)	Storage batteries		
4	§ 25.1353(d)	Electrical cables and cable installations	01–03	66 FR 26942, 05/15/2001.
5	§ 25.1431(d)	Electronic equipment	01–07	66 FR 26956, 05/15/2001.
6	§ 25.869(a)(4)	Fire protection systems	01–06	66 FR 26964, 05/15/2001.

In these notices you will find a history of the problems and discussions of the safety considerations supporting our course of action. You also will find a discussion of the current requirements and why they do not adequately address the problem. We also refer to the recommendations of the ARAC we relied on in developing the proposed rule. The NPRMs also discuss each alternative that we considered and the reasons for rejecting the ones we did not adopt.

The background material in the NPRM also contains the basis and rationale for these requirements and, except where we have specifically expanded on the background elsewhere in this preamble, supports this final rule as if it were contained here. That is, any future discussions regarding the intent of the requirements may refer to the background in the NPRM as though it was in the final rule itself. It is therefore not necessary to repeat the background in this document.

History

In the United States, Title 14, Code of Federal Regulations (CFR) part 25 contains the airworthiness standards for type certification of transport category airplanes. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards.

In Europe, Joint Aviation Requirements (JAR)–25 contains the airworthiness standards for type certification of transport category airplanes. The Joint Aviation Authorities (JAA) of Europe developed these standards, which are based on part 25, to provide a common set of airworthiness standards within the European aviation community. Thirty-seven European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

Although part 25 and JAR–25 are similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25

can result in substantial added costs to manufacturers and operators. These added costs, however, often do not bring about an increase in safety.

Recognizing that a common set of standards would not only benefit the aviation industry economically but also preserve the necessary high-level of safety, the FAA and the JAA began an effort in 1988 to ''harmonize'' their respective aviation standards.

After beginning the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures was neither sufficient nor adequate to make noticeable progress towards fulfilling the harmonization goal. The FAA identified the ARAC as an ideal vehicle for helping to resolve harmonization issues, and in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

Despite the work that ARAC has undertaken to address harmonization, there remain many regulatory differences between part 25 and JAR–25. The current harmonization process is costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong desire to finish the harmonization program as quickly as possible to alleviate the drain on their resources and finally to establish one acceptable set of standards.

Recently, representatives of the FAA and JAA proposed an accelerated process to reach harmonization, the ''Fast Track Harmonization Program.'' The FAA initiated the Fast Track Harmonization Program on November 26, 1999 (64 FR 66522). This rulemaking has been identified as a ''fast track'' project.

Further details on ARAC, and its role in the harmonization rulemaking activity, and the Fast Track Harmonization Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

Related Activity

The new European Aviation Safety Authority (EASA) was established and formally came into being on September 28, 2003. The JAA worked with the European Commission (EC) to develop a plan to ensure a smooth transition from JAA to the EASA. As part of the transition, the EASA will absorb all functions and activities of the JAA, including its efforts to harmonize JAA regulations with those of the U.S. This rule is a result of the FAA and JAA harmonization rulemaking activities. It adopts the more stringent requirements of the JAR standards. These JAR standards have already been incorporated into the EASA ''Certification Specifications for Large Aeroplanes'' CS–25, in similar if not identical language. The EASA CS–25 became effective on October 17, 2003.

Discussion of the Comments

Electrical Installation, Nickel Cadmium Battery Installation, and Nickel Cadmium Battery Storage, RIN 2120–AH27

On May 17, 2001, the FAA published a notice of proposed rulemaking (Notice No. 01–04, 66 FR 27582) entitled, ''Electrical Installation, Nickel Cadmium Battery Installation, and Nickel Cadmium Battery Storage.'' In the NPRM, the FAA proposed to amend three sections of 14 CFR part 25 regarding airworthiness standards for transport category airplanes concerning electrical equipment and installations to harmonize the standards with those of the associated JAR–25. In the NPRM, the proposed title of § 25.1353 is incorrect. This final rule corrects the title of § 25.1353 to read ''Electrical equipment and installations.'' For electrical equipment installations, the FAA proposed to add text from the associated JAR to harmonize the requirements, and to clarify the intent of this regulation. For nickel cadmium batteries, the FAA proposed to expand the applicability of the regulation to all nickel cadmium battery sizes, regardless of their capabilities. In addition, the FAA proposed to adopt the associated JAR Advisory Circular Joint (ACJ) material for both electrical equipment and nickel cadmium battery installations.

General Comment

The FAA received four comments in response to the proposed rule. Two of the four commenters support the proposed changes. The other two commenters disagreed with the cost estimates in the proposal, as discussed below.

Comment: The third and fourth commenters submitted their comments through the Air Transport Association of America (ATA). The ATA provided comments that ''indicate the cost estimates in the proposal are flawed because they do not address the cost of compliance when installing new equipment in existing airplanes.''

FAA Reply: The FAA does not concur. The cost and technical impacts on existing aircraft due to harmonization of these rules are expected to be minimal because of the following:

1. These harmonized rules will, in general, not be applicable to existing airplanes or modifications to existing airplanes that were certified to earlier amendment levels as defined on the Type Certificate Data sheet. An exception may be new derivative airplane models or modifications to existing models that are deemed significant enough to require application of later amendment levels per 14 CFR 21.101.

2. It is anticipated that any modifications or retrofit changes that require a showing of compliance to the harmonized rules for nickel cadmium batteries §§ 25.1353(c)(5) and (c)(6) will, in general, not require compliance to later amendments.

3. The requirements for temperature sensing, monitoring, and warning, in general apply to batteries that have high enough energy sources to be a hazard, and are typically main airplane batteries or APU start type batteries. Main airplane batteries (which have engine ignition as a stand-by load) or APU start batteries already are required to have this sensing and monitoring functionality.

4. This regulation will not be applicable to flashlights or emergency lighting equipment (dry cell type batteries as they generally have low energy-charging type systems (trickle charge)); unless there were to be new designs or new technologies that warrant this type of battery monitoring and sensing due to potentially hazardous effects.

5. Harmonization of § 25.1353(a) with JAR 25.1353(a) provides consistency with existing rules, § 25.1431, and with the harmonized § 25.1309. The intent of both rules is the same in that the airplane is required to be designed with electrical interference effects that have no unsafe effects on the airplane, systems, or occupants. This rule provides further definition in terms of the level of safety or probability of failure that is required. The main difference between § 25.1353(a) and JAR 25.1353(a) is the use of the term ''extremely remote,'' which is defined as follows:

Extremely Remote Failure Condition: a failure condition that is not anticipated to occur to each airplane during its total life, but which may occur a few times when considering the total operational life of all airplanes of the type. [**Note:** The term ''extremely remote'' has been used previously within 14 CFR part 25 to describe a condition so remote that it is not anticipated to occur in service on any transport category airplane (*i.e.*, ''extremely improbable''). However, for the purposes of this regulation, the term ''extremely remote'' will have the meaning specified above.]

This is further supported by the Advisory Circular Joint (ACJ) 25.1353(a), ''Acceptable Means of Compliance and Interpretation,'' Section Two of the Joint Aviation Requirements (JAR–25).

The FAA has adopted the JAR ACJ material as an acceptable means of showing compliance with the revision to § 25.1353(a) and has developed an Advisory Circular (AC). The FAA will publish a Notice of Availability in the **Federal Register** after the AC is issued.

Changes: No changes were made as a result of this comment.

FAA Disposition of Comments: The FAA adopts the changes as proposed in the NPRM, Notice No. 01–04.

Electrical Cables, RIN 2120-AH29

On May 15, 2001, the FAA published a notice of proposed rulemaking (Notice No. 01–03, 66 FR 26942) entitled, ''Electrical Cables.'' In the NPRM, the FAA proposed harmonizing the standards by revising the regulation to adopt the text of the associated JAR–25. The proposed revision would specify a design action to be taken, and remove the possibility that a designer may not consider a critical installation design condition.

General Comment

The FAA received one comment to both Notice No. 01–03 and Notice No. 01–07. The commenter fully supports the proposal.

Comment: The commenter fully supports the adoption of these amendments to reduce the differences between part 25 and JAR–25. Further, the commenter states that the fruits of the ARAC's considerable efforts should enable the FAA to complete this rulemaking quickly.

Changes: No changes were made as a result of this comment.

FAA Disposition of Comment: The FAA adopts the changes as proposed in the NPRM, Notice No. 01–03.

Design and Installation of Electronic Equipment on Transport Category Airplanes, RIN 2120-AH28

On May 15, 2001, the FAA published a notice of proposed rulemaking (Notice No. 01–07, 66 FR 26956) entitled, ''Design and Installation of Electronic Equipment on Transport Category Airplanes.'' In the NPRM, the FAA proposed to revise § 25.1431 to add a new paragraph (d) that would be parallel to JAR–25.1431(d). The proposal would provide one location in the regulations that explicitly addresses requirements related to electrical power supply transients, clarify the objective of the other related regulations in part 25, and harmonize 14 CFR part 25 with the associated JAR–25.

General Comment

The FAA received one comment to both Notice No. 01–03 and Notice No. 01–07. The commenter fully supports the proposal.

Comment: See Comment under ''Electrical Cables'' above.

Changes: No changes to the rule as proposed are necessary.

FAA Disposition of Comment: The FAA adopts the changes as proposed in the NPRM, Notice No. 01–07.

Fire Protection of Electrical System Components on Transport Category Airplanes, RIN 2120–AG92.

On May 15, 2001, the FAA published a notice of proposed rulemaking (Notice No. 01–06, 66 FR 26964) entitled, ''Fire Protection of Electrical System Components on Transport Category Airplanes.'' In the NPRM, the FAA proposed to revise § 25.869(a), concerning the protection of electrical system components, to adopt the more stringent language in the parallel JAR–25.

General Comment

The FAA received three comments in response to the proposed rule. Two of the commenters agree with the proposal and recommend its adoption. The third commenter suggested a change to the applicability of the rule, as discussed below.

Comment: The commenter states, ''Regulatory changes should apply to airplanes or electrical components manufactured after the date the CFR is changed. The CFR change should not be retroactive to airplanes manufactured before this new regulation is enacted.''

FAA Reply: The harmonized § 25.869(a) and JAR 25.869(a) will be incorporated into later revisions of 14 CFR part 25 and are not retroactive. Therefore, these harmonized rules will, in general, not be applicable to existing airplanes or electrical components that were certified to earlier amendment levels as defined on the Type Certificate Data sheet for the airplane models in question. An exception may be new derivative airplane models or modifications to existing models that are deemed significant enough to require application of later amendment levels per 14 CFR 21.101.

There is currently no FAA advisory material related to the standard. However, the FAA has developed AC 25.869–1X, ''Electrical System Fire and Smoke Protection.'' It contains guidance on this subject and includes, with some modification, the material currently in the JAA's ACJ 25.869. The FAA will publish a Notice of Availability in the **Federal Register** after the AC is issued.

Changes: No changes were made as a result of this comment.

FAA Disposition of Comment: The FAA adopts the changes as proposed in the NPRM, Notice No. 01–06.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to 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. section 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 also requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that this final rule:

1. Has benefits that do justify its costs, is not a ''significant regulatory action'' as defined in the Executive Order, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures;

2. will not have a significant economic impact on a substantial number of small entities;

3. reduces barriers to international trade; and,

4. imposes no unfunded mandates on State, local, or tribal governments, or the private sector.

The (DOT) Order 2100.5, ''Regulatory Policies and Procedures,'' prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the rule does not warrant a full evaluation, a statement to that effect and the basis

for it is included in the regulation. We provide the basis for this minimal impact determination below. We received no comments that conflicted with the economic assessment of minimal impact published in the notices of proposed rulemaking for this action. Given the reasons presented below, we have determined that the expected impact of this rule is so minimal that the final rule does not warrant a full evaluation.

Currently, airplane manufacturers must satisfy both the 14 CFR and the European JAR certification standards to market transport category airplanes in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing new transport category airplanes often with no increase in safety. In the interest of fostering international trade, lowering the cost of airplane development, and making the certification process more efficient, the FAA, JAA, and airplane manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in both the United States and Europe. As discussed previously, these efforts are referred to as harmonization. This final rule results from the FAA's acceptance of ARAC harmonization working group recommendations. Members of the ARAC working groups agreed that the requirements of this rule will not impose additional costs to U.S. manufacturers of part 25 airplanes.

Specifically, this final rule requires:

1. Revising §§ 25.1353(a), (c)(5), and (c)(6), and 25.869(a) to adopt the ''more stringent'' requirements currently in those same sections of JAR–25;

2. adding § 25.1353(d) to adopt JAR 25.1353(d) in its entirety; and,

3. adding a new § 25.1431(d) to incorporate the ''more stringent'' requirement of paragraph 25.1431(d) of the JAR.

We consider that this rule will neither reduce nor increase the requirements beyond those that are already met by U.S. manufacturers to satisfy European airworthiness standards.

As this rule neither increases nor decreases certification requirements beyond those already in existence, we have determined there will be no cost associated with this rule to part 25 manufacturers. We have not tried to quantify the benefits of this amendment beyond identifying the expected harmonization benefit. This amendment eliminates an identified significant regulatory difference (SRD) between part 25 and JAR–25 wording. Eliminating the SRD will provide for a more consistent interpretation of the rules and, thus, is an element of the potentially large cost savings of harmonization.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) directs the FAA to fit regulatory requirements to the sale of the business, organizations, and governmental jurisdictions subject to regulation. We are required to determine whether a proposed or final action will have a ''significant economic impact on a substantial number of small entities'' as defined in the Act.

If we find the action will have a significant impact, we must do a ''regulatory flexibility analysis.'' If, however, we find the action will not have a significant economic impact on a substantial number of small entities, we are not required to do the analysis. In this case, the Act requires that we include a statement that provides the factual basis for our determination.

We have determined that this amendment will not have a significant economic impact on a substantial number of small entities for two reasons:

First, the net effect of the final rule is regulatory cost relief. The amendment requires that new transport category airplane manufacturers meet just the ''more stringent'' European certification requirement, rather than both the United States and European standards. Airplane manufacturers already meet or expect to meet this standard as well as the existing part 25 requirements.

Second, all United States manufacturers of transport category airplanes exceed the Small Business Administration small-entity criteria of 1,500 employees for airplane manufacturers. Those U.S. manufacturers include: The Boeing Company, Cessna Aircraft Company, Gulfstream Aerospace, Learjet (owned by Bombardier Aerospace), Lockheed Martin Corporation, McDonnell Douglas (a wholly owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation.

The FAA received no comments that differed with the assessment given in this section. Since this final rule is cost relieving and there are no small entity manufacturers of part 25 airplanes, the FAA Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

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.

This rule is consistent with the Trade Agreement Act as the European standards are the basis for these U.S. regulations.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), is intended, among other things, to curb the practice of imposing unfounded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

What Other Assessments Has the FAA Conducted?

Paperwork Reduction Act

Under the provisions of the Paperwork Reduction Act of 1995, there are no current or new requirements for information collection associated with this final rule.

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 that correspond to these regulations.

Executive Order 13132, Federalism

The FAA analyzed this final rule and the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this final rule applies to the certification of future designs of transport category airplanes and their subsequent operation, it could affect intrastate aviation in Alaska. Because no comments were received regarding this regulation affecting intrastate aviation in Alaska, we will apply the rule in the same way that it is being applied nationally.

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 regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the 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 final rule preamble helpful in understanding the regulations?

Please send your comments to the address specified in the **FOR FURTHER INFORMATION CONTACT** 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 final rule qualifies for a categorical exclusion.

Energy Impact

The FAA has assessed the energy impact of this final rule in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702 and 44704.

■ 2. Amend § 25.869 by revising paragraph (a)(4) to read as follows:

§ 25.869 Fire protection: systems.

(a) * * *

(4) Insulation on electrical wire and electrical cable installed in any area of the airplane must be self-extinguishing when tested in accordance with the applicable portions of part I, appendix F of this part.

* * * * *

■ 3. Amend § 25.1353 by revising paragraphs (a), (c)(5), and (c)(6), and by adding a new paragraph (d) to read as follows:

§ 25.1353 Electrical equipment and installations.

(a) Electrical equipment, controls, and wiring must be installed so that operations of any one unit or system of units will not adversely affect the simultaneous operation of any other electrical unit or system essential to the safe operation. Any electrical interference likely to be present in the airplane must not result in hazardous effects upon the airplane or its systems except under extremely remote conditions.

* * * * *

(c) * * *

(5) Each nickel cadmium battery installation must have provisions to prevent any hazardous effect on structure or essential systems that may be caused by the maximum amount of heat the battery can generate during a short circuit of the battery or of individual cells.

(6) Nickel cadmium battery installations must have—

(i) A system to control the charging rate of the battery automatically so as to prevent battery overheating; or

(ii) A battery temperature sensing and over-temperature warning system with a means for disconnecting the battery from its charging source in the event of an over-temperature condition; or

(iii) A battery failure sensing and warning system with a means for disconnecting the battery from its charging source in the event of battery failure.

(d) Electrical cables and cable installations must be designed and installed as follows:

(1) The electrical cables used must be compatible with the circuit protection devices required by § 25.1357 of this part, such that a fire or smoke hazard cannot be created under temporary or continuous fault conditions.

(2) Means of permanent identification must be provided for electrical cables, connectors and terminals.

(3) Electrical cables must be installed such that the risk of mechanical damage and/or damage caused by fluids, vapors, or sources of heat, is minimized.

■ 4. Amend § 25.1431 by adding a new paragraph (d) to read as follows:

§ 25.1431 Electronic equipment.

* * * * *

(d) Electronic equipment must be designed and installed such that it does not cause essential loads to become inoperative as a result of electrical power supply transients or transients from other causes.

Issued in Renton, Washington, on March 9, 2004.

Franklin Tiangsing,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–5892 Filed 3–15–04; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Tuesday,
March 16, 2004

Part V

Department of Transportation

Federal Railroad Administration

49 CFR Part 229

Railroad Locomotive Safety Standards: Clarifying Amendments; Headlights and Auxiliary Lights; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[Docket No. FRA–2003–14217; Notice No. 2]

RIN 2130–AB58

Railroad Locomotive Safety Standards: Clarifying Amendments; Headlights and Auxiliary Lights

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Final rule.

SUMMARY: On August 19, 2003, FRA published an interim final rule making a technical clarification to the locomotive headlight and auxiliary light provisions contained in § 229.125(a) and (d) of title 49 of the Code of Federal Regulations (CFR). The purpose of the modification was to codify FRA's longstanding acceptance of lamps used in locomotive headlights and auxiliary lights. FRA believes that the clarification is consistent with both FRA's intent when issuing the requirements related to locomotive headlights and auxiliary lights and FRA's enforcement policies related to those provisions. FRA also believes that the clarification furthers FRA's goal of facilitating the use of advanced technologies and enhances FRA's safety enforcement program by recognizing specific types of lamps it considers acceptable for use in headlights and auxiliary lights. This final rule retains the technical clarifications made in the interim final rule with minor changes for consistency and clarity.

DATES: This final rule is effective March 16, 2004.

ADDRESSES: *Petitions:* Any petitions for reconsideration related to Docket No. FRA–2003–14217, may be submitted by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all petitions for reconsideration will be posted without change to *http://dms.dot.gov* including any personal information. Please see the ''General Information'' heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted petition, comment, or material.

Docket: For access to the docket to read background documents, comments, or petitions for reconsideration received, go to *http://dms.dot.gov* at any time or to 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: Charles L. Bielitz, Mechanical Engineer, FRA Office of Safety, RRS–14, 1120 Vermont Avenue NW., Stop 25, Washington, DC 20590 (telephone: 202–493–6314), or Thomas J. Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590 (telephone: 202–493–6036).

SUPPLEMENTARY INFORMATION:

Background

On August 19, 2003, FRA published an interim final rule making a technical clarification to the locomotive headlight and auxiliary light provisions contained in 49 CFR 229.125(a) and (d). *See* 68 FR 49713 (''Interim Final Rule''). In this Interim Final Rule, FRA stated its belief that, based on new technologies and designs related to the lamps utilized in road locomotive headlights and auxiliary lights over the last decade, the Federal regulations governing these components needed to be modified both to remain consistent with FRA's intent when it originally issued those provisions and to incorporate FRA's enforcement policies developed over the intervening years. Currently, there are two primary types of lamps utilized in locomotive headlight and auxiliary light fixtures: a Parabolic Allumination Reflection (PAR)–56, 200-watt, 30-volt lamp (200-watt lamp) and a PAR–56, 350-watt, 75-volt lamp (350-watt lamp).

Prior to the mid-1990s, the primary lamp used in road locomotive headlights throughout the industry was the 200-watt lamp, which produces a mean luminous intensity that is well in excess of 200,000 candela at the center of its beam, with all production samples having a minimum luminous intensity of 200,000 candela. In the early to mid-1990s, with the advent of locomotive auxiliary lights, the railroad industry began using the 350-watt lamp in both headlight and auxiliary light fixtures. Controlled testing of auxiliary lights performed for FRA by the Volpe National Transportation Systems Center (Volpe) in 1995 used regular production 350-watt lamps. A single 350-watt lamp tested by the U.S. Coast Guard for the Volpe test, as well as data supplied by the lamp vendor, showed a center beam luminous intensity well in excess of 250,000 candela, but it has since been determined that these data were not representative of typical lamp production. At present, most new locomotives are equipped with the 350-watt lamps in both the headlight and auxiliary light fixture. Due to normal variations in production processes, the vast majority of 350-watt lamps produced since 1994 do not produce 200,000 candela. The current production (2001 through mid-2003) of 350-watt lamps is centered at approximately 160,000 candela. Although most 350-watt lamps do not meet the 200,000 candela requirements related to headlights and auxiliary lights contained in 49 CFR 229.125(a) and (d) before their revision through the Interim Final Rule, FRA has accepted and will continue to accept the use of 350-watt lamps in both headlight and auxiliary light fixtures for the reasons discussed below. In this preamble, reference to a section or numbered part is to a section or numbered part in title 49 of the CFR. In order to clarify FRA's continued acceptance of the use of these lamps and to incorporate existing enforcement guidance, FRA issued the Interim Final Rule amending the regulatory provisions contained in part 229 to specifically address the use of these types of lamps in both headlight and auxiliary light locations. This final rule retains the amendments made in that Interim Final Rule with minor changes for consistency and clarity.

Discussion of Comments

In response to the Interim Final Rule, FRA received comments from three organizations: the Brotherhood Railway Carmen Division of the Transportation Communications International Union (BRC), the Association of American Railroads (AAR), and the Long Island Rail Road (LIRR). The concerns raised by the AAR and the LIRR were similar in that they both sought additional relief from the requirements related to the handling of a locomotive that experiences the failure of one lamp in a dual 350-watt lamp headlight. The

concerns raised by the BRC related to the process by which FRA issued the clarifying amendments contained in the Interim Final Rule and retained in this final rule. The BRC expressed concern over FRA's publication of the clarifying amendments in an immediately effective interim final rule. Although the BRC does not object to either the substance or the issuance of the Interim Final Rule in this instance, the organization did want to ensure that FRA was not utilizing immediately effective interim final rules to make substantive changes to existing regulations. It appears that the BRC's primary concern is that FRA not abuse the procedure utilized in this proceeding.

As the modifications contained in the Interim Final Rule and retained in this final rule were intended merely to clarify FRA's intent when issuing the final rule related to auxiliary lights and incorporate existing FRA enforcement policies related to locomotive headlights and auxiliary lights, FRA initially issued the technical clarifications as an Interim Final Rule with a request for comments. The Interim Final Rule made clear that the clarifications were intended to reinforce FRA's continued acceptance of locomotive lamps which have been used throughout the industry for nearly a decade. *See* 68 FR 49713–16. Because FRA viewed the amendments as technical clarifications of the existing regulations, FRA believes that good cause existed for finding that prior public notice of the action was both impracticable and unnecessary. *See* 5 U.S.C. 553(b)(3)(B).

With this said, FRA wishes to make clear that the issuance of an immediately effective interim final rule is a very rare procedural action used by the agency. FRA believes that due to the historical development and enforcement of the provisions involved that it was necessary to issue an immediately effective interim final rule to ensure continued, consistent, and unambiguous enforcement of the headlight and auxiliary light provisions contained in the regulations. FRA fully agrees with the BRC that substantive rule changes should not be made through such a regulatory vehicle and that such an action would violate the Administrative Procedure Act. FRA welcomes the BRC's continued vigilance of its regulatory activities and appreciates the organization's participation and input in all areas of its enforcement program to ensure the safety of the nation's railroads.

The comments of both the AAR and the LIRR seek additional latitude with regard to the handling of a locomotive that utilizes two PAR–56, 350-watt, 75-volt (350-watt) lamps to achieve the 200,000 candela headlight requirement when one of the two lamps becomes inoperative. The AAR seeks to have the provisions related to movement of locomotives with defective auxiliary lights contained at § 229.125(g) applied to locomotives that experience the failure of one or more of the 350-watt lamps utilized in a locomotive's headlight. Similarly, the LIRR seeks to have the regulation amended to permit a locomotive with one inoperative 350-watt lamp in the headlight, found during or after the performance a calendar-day inspection, to continue in revenue service until the next calendar-day inspection. Both these commenters base their requests on the fact that one operative 350-watt lamp is still available in the headlight and that the auxiliary lights mounted on the locomotive will provide additional illumination in front of the locomotive and would not compromise safety.

The Interim Final Rule made clear that FRA will consider a locomotive with a dual-lamp headlight fixture that is equipped with two PAR–56, 350-watt, 75-volt lamps to meet the 200,000-candela requirement contained in § 229.125(a), provided both lamps are operative. The preamble to the Interim Final Rule further stated that if either lamp in such a configuration became inoperative, the locomotive was to be handled in accordance with the movement-for-repair provisions contained in § 229.9. *See* 68 FR 49714. Under the provisions of § 229.9, such a locomotive may continue to use its propelling motors only if it is properly tagged and only until the earlier of either the next calendar day inspection or the arrival of the locomotive at the nearest forward point where the repairs necessary to bring it into compliance can be made. *See* 49 CFR 229.9(b).

The purpose of the technical amendments made to the locomotive headlight requirements in the Interim Final Rule was to clarify the alternative methods by which the existing 200,000 candela requirement could be achieved based on the design of locomotive headlight fixtures and the type of lamps used in those fixtures. Because the purpose of the clarifying amendments was to merely incorporate longstanding enforcement policies related to locomotive headlights into the regulation, FRA proceeded directly to an interim final rule with a request for comments. In FRA's opinion, the additional latitude sought by the AAR and LIRR regarding the handling of a locomotive with a headlight fixture not capable of producing 200,000 candela would constitute a substantive change to the existing regulation. With the concerns of the BRC in mind, FRA believes that to make such a substantive change in a rulemaking proceeding, intended to be a technical clarification of the existing regulation, would clearly violate the Administrative Procedure Act. Thus, although there may be some merit to the requests made by the AAR and the LIRR, FRA does not believe this rulemaking is the proper forum in which to address the issues. While their comments may have merit when considering locomotives with auxiliary lights aimed parallel to the centerline of the locomotive and burning steadily, Part 229 permits auxiliary lights to be aimed up to 15 degrees of the centerline and permits auxiliary lights to flash. *See* 49 CFR 229.125(d)(3) and (e)(1). Further, auxiliary lights may be extinguished or dimmed when trains are passing and under certain other conditions. *See* 49 CFR 229.125(f). FRA believes that changes in these provisions would be beyond the scope of this rulemaking proceeding. The relief sought by AAR and LIRR also raises a number of technical and operational issues that would need to be fully explored and evaluated before any action could be considered by FRA. Consequently, FRA is denying the requests made by AAR and LIRR in their comments to this proceeding. AAR and LIRR can of course file a petition under 49 C.F.R. part 211 seeking an FRA rulemaking to address the additional latitude they favor.

In addition to the specific relief sought by AAR and LIRR, both parties' comments contain information and suggestions for FRA. LIRR's comments note that qualification testing of a 350-watt lamp conducted in late-2001 indicated that the lamp could successfully illuminate a person at 800 feet. The results of this testing were not included with the comments, and FRA is not aware of these tests. A similar test that was reviewed by FRA produced inconclusive results, at best. Moreover, the old performance standard from which the existing 200,000-candela requirement is derived required the headlight to illuminate a *dark object* the size of a man at least 800 feet in front of the light. *See* 44 FR 29618 and 45 FR 21109. At this time FRA is not aware of any testing which definitively establishes that the typical 350-watt lamp is capable of meeting that old performance standard or the existing 200,000-candela requirement.

AAR's comments also urge FRA to convene a group of technical experts to develop a permanent illumination standard for headlights and auxiliary

lights that is based on sound scientific analysis. AAR notes that there was little scientific analysis conducted when the 200,000-candela requirement was adopted in 1980 and stresses that the intensity requirement was established prior to the requirements related to auxiliary lights which add to the illumination provided by a locomotive's headlight. AAR states that it is eager to participate in such a review. FRA agrees that such an endeavor may be useful. FRA welcomes any additional details, information, suggestions, and views related to such a review from AAR and any other interested party. FRA also notes that AAR enjoys custody and control of the Transportation Technology Center, where controlled tests could be readily accomplished.

Section Analysis

A. Headlights: § 229.125(a).

The regulatory provisions related to locomotive headlights are contained at § 229.125(a) through (c). These requirements were included in the regulations when part 229 was added to the Code of Federal Regulations in 1980. *See* 45 FR 21109 (March 31, 1980). Part 229 was added in order to modernize the federal regulations previously contained in part 230 related to all types of locomotives by separating and amending the requirements related to diesel and electric locomotives from those related to steam locomotives. The provisions contained in § 229.125(a)–(c) were intended to be a modified and condensed version of the requirements previously contained in § 230.231 prior to 1980. *See* 44 FR 29618 (May 21, 1979).

In the 1979 Notice of Proposed Rulemaking (NPRM) and the 1980 final rule, FRA explained that the approach contained in § 230.231 for determining intensity was imprecise and unscientific. Section 230.231 used a vague performance standard to describe the intensity, which read as follows:

> a headlight which shall afford sufficient illumination to enable a person in the cab of such locomotive who possesses the usual visual capacity required of locomotive enginemen, to see in a clear atmosphere, a dark object as large as a man of average size standing erect at a distance of at least 800 feet ahead and in front of such headlight. * * *

See § 230.231 in pre-1980 CFR. In order to make this vague performance standard more precise and scientific, FRA specified that a locomotive headlight must produce a luminous intensity of at least 200,000 candela. *See* 44 FR 29618 and 45 FR 21109. In the preamble to the final rule, FRA stated that the more scientific 200,000-candela minimum standard could be met by the headlights used in the existing locomotive fleet and that the use of the more modern standard should not be viewed as a change in FRA's enforcement approach. *Id.* At the time the final rule was issued, virtually all locomotive headlights were equipped with the 200-watt lamps which are capable of producing in excess of 200,000 candela. Thus, FRA was merely attempting to describe, in scientific terms, the type of lamps being used by the industry in locomotive headlight fixtures at that time.

Subsequent to the issuance of the final rule, FRA developed informal enforcement guidance for its field inspectors related to when a locomotive's headlight should be considered inoperative. The guidance was eventually included in FRA's Motive Power and Equipment (MP&E) Enforcement Manual distributed in July of 1992. *See* MP&E Enforcement Manual at 8–79. This guidance instructed FRA inspectors to consider a locomotive's headlight to be operative when the locomotive is equipped with a sealed two-beam (two-lamp) headlight fixture and only one of the lamps is illuminated. The rationale for this guidance was based on the fact that virtually all locomotives were equipped with a dual-lamp headlight fixture and prior to the early 1990s the lamps used in these fixtures were the 200-watt lamps, each independently capable of producing at least 200,000 candela. Because the regulation only requires the headlight to produce 200,000 candela, FRA determined that it would not consider a dual-lamp headlight inoperative if it is equipped with at least one operative lamp capable of producing 200,000 candela. *Id.*

As noted above, in the early to mid-1990s, the industry began widespread use of the 350-watt lamps in both headlight and auxiliary light fixtures. The vast majority of 350-watt lamps produced since 1994 do not produce 200,000 candela. The current production of the 350-watt lamps is centered at approximately 160,000 candela. Furthermore, data provided to FRA do not definitively establish that an individual 350-watt lamp meets the underlying performance standard, discussed above, on which the 200,000-candela requirement was based. Moreover, FRA is not comfortable applying an old and somewhat subjective performance standard in place of the more precise and scientific standard that was adopted several decades ago. Therefore, because most 350-watt lamps do not individually produce the luminous intensity specified in the existing regulation, FRA believed it was necessary to clarify its existing enforcement guidance and specifically modify the regulation to reflect its position regarding the use of 350-watt lamps in locomotive headlight fixtures.

In the Interim Final Rule, consistent with FRA's existing enforcement guidance related to the headlight provisions contained in § 229.125(a), FRA asserted that it would continue to interpret the term ''headlight,'' as used in this provision, to mean the entire headlight fixture whether it is comprised of either one or more lamps. Thus, the requirement contained in this provision to produce 200,000 candela is to be determined by the luminous intensity of the entire headlight fixture. Although a single 350-watt lamp, as described above, generally does not produce 200,000 candela, data clearly establish that the beams of two 350-watt lamps in a dual-lamp headlight easily produce well in excess of 200,000 candela once the two beams overlap sufficiently, which occurs within a few feet in front of the fixture.

In view of the above, the Interim Final Rule made clear that FRA will consider a locomotive with a dual-lamp headlight fixture that is equipped with two PAR–56, 350-watt, 75-volt lamps to meet the 200,000-candela requirement contained in § 229.125(a), provided both lamps are operative. If either lamp in such a configuration becomes inoperative, the locomotive is to be handled in accordance with the movement-for-repair provisions contained in § 229.9. Similarly, the Interim Final Rule made clear that FRA will continue to consider a headlight fixture equipped with a single operative PAR–56, 200-watt, 30-volt lamp to meet the intensity requirement of § 229.125(a) because such a lamp is capable of individually producing 200,000 candela. This final rule retains the amendments made in the Interim Final Rule to the regulatory language contained in § 229.125(a) to specifically include the interpretations and clarifications discussed above. It should be noted that FRA expects railroads to have some method or procedure in place which notifies the operating crew and mechanical employees of the type of lamps being utilized in the locomotive headlight fixture in order that the locomotive can be properly handled for repairs, if necessary.

B. Auxiliary Lights: § 229.125(d)(2)

The regulatory provisions related to locomotive auxiliary lights are found at § 229.125(d) through (h) and § 229.133. These requirements were added to the

regulations between 1993 and 1996 and were established through a rulemaking that began with a 1993 interim final rule, containing interim provisions related to auxiliary lights, and then proceeded to a 1995 NPRM proposing many of the auxiliary light provisions that were ultimately issued in the 1996 final rule. *See* 58 FR 6899 (February 3, 1993), 60 FR 44457 (August 28, 1995), and 61 FR 8881 (March 6, 1996). At this time, the provisions relating to auxiliary lights contained in § 229.133 are for the most part superseded by similar provisions contained at § 229.125, except to the extent that certain types of auxiliary lights were ''super-grandfathered'' as meeting the requirements of § 229.125. *See* 61 FR 8885–86 and § 229.133(c). Although these documents require that each prescribed auxiliary light produce 200,000 candela, none of them directly discusses FRA's rationale for including the specified luminous intensity. It can be assumed that the 200,000-candela requirement was based on the headlight provision discussed above. Moreover, at the time the auxiliary light provisions were added to the regulations, both the 200-watt and 350-watt lamps were believed to be capable of producing 200,000 candela. Consequently, when FRA incorporated the 200,000-candela requirement into the auxiliary light provisions, it is clear that FRA was merely attempting to describe the locomotive lamps being used by the industry at that time.

As part of the auxiliary light rulemaking, FRA's Office of Research and Development, through Volpe, studied the impact of auxiliary lights as alerting devices to improve locomotive conspicuity. The final report on this study was issued in July of 1995 under Report Number DOT/FRA/ORD–95–13 (Volpe Report). The report is part of FRA Docket No. RSGC–2 and is available online at: *http://www.fra.dot.gov/rdv30/reports/index.htm.* As part of this study, FRA evaluated various lighting systems. Four alerting light systems were evaluated for compliance with FRA's interim advisory standards, for costs, and for reliability. Field tests were also conducted on these lighting systems to determine their ability to increase an approaching train's visibility. These four alerting light systems included: standard locomotive headlights, crossing, ditch, and strobe lights. FRA utilized the data developed in this study as the basis for the auxiliary light provisions currently contained in § 229.125(d) through (h). *See* 60 FR 44457; and 61 FR 8881.

Based on FRA's review of the Volpe Report and its supporting data and in light of data subsequently provided by General Electric Company (GE), FRA believes that use of either a 350-watt lamp or a 200-watt lamp in locomotive auxiliary lights meets FRA's intent when issuing the regulations pertaining to such fixtures. A review of the Volpe Report establishes that the lamps tested in the headlight, ditch light, and crossing light systems were all PAR–56, 350-watt, 75-volt lamps. *See* Volpe Report at Appendix D–4.

Although the report notes that two 350-watt lamps sampled for luminous intensity produced peak intensity reading in excess of 200,000 candela, there is no indication in the report that those specific lamps were ever used in any of the subsequent testing. One of these measurements was on an isocandela plot supplied to Volpe by Quest Corporation, the lamp vendor, based on data supplied by GE, the lamp manufacturer, and the second was from a test conducted by the U.S. Coast Guard for Volpe. *See* Volpe Report at Table 4–5 and Appendix C. Based on information recently provided by GE, FRA believes that the intensity readings on these two lamps were an anomaly in terms of peak intensity for 350-watt lamps. The data supplied by GE show that only one of 93 samples of the 350-watt lamp tested from 1994 to the present produced a maximum beam candle power above 250,000 candela. This fact leads FRA to suspect that the lamp for which data was supplied by Quest Corporation and the lamp that was tested by the Coast Guard in relation to the Volpe Report may have been the same lamp, which was not representative of the lamps actually used in the Volpe tests. In fact, the lamps used in the Volpe field tests (which validated the benefits of using auxiliary lights) were 350-watt lamps. A large proportion of the lamps used in the tests in all probability did not meet the luminous intensity requirement because they were from normal production runs which included a high proportion of lamps with a peak luminous intensity below the minimum 200,000 candela.

In addition to the fact that the 350-watt lamp was used in the Volpe tests, FRA also believes that the 350-watt lamp currently being used in the industry provides equal, if not greater, benefits when used in auxiliary light fixtures than a 200-watt lamp capable of producing 200,000 candela. The primary purpose of locomotive auxiliary lights is to enhance the visibility of the front-end locomotive of a train from the perspective of a driver of a motor vehicle approaching a grade crossing. *See* 61 FR 8881. With this purpose in mind, FRA believes that, due to the design of 350-watt lamps, they provide equal, if not greater, visibility to motorists approaching grade crossings. Although FRA used peak candela to describe the type of lamps to be used in auxiliary light fixtures, FRA believes that a more appropriate measure is the intensity of the light at an angle from the head of the locomotive. The Volpe Report indicates that the point of first detection of a train's auxiliary lights for a motorist approaching a grade crossing (205 feet from centerline of the tracks) occurred at approximately 1,550 feet, a point that is 7.5 degrees from the centerline of the locomotive. *See* Volpe Report at Section 5. The Volpe Report also indicates that the point at which the separation of the lamps in the headlight and auxiliary lights became detectable to an approaching motorist was at a distance of approximately 570 feet, a point that is 20 degrees from the centerline of the locomotive. *Id.* Based on this information, it is evident that the key intensity figure for an auxiliary light is the intensity of the light at angles of between 7.5 degrees and 20 degrees from the centerline of the locomotive.

Although a 350-watt lamp does not generally produce a maximum beam candle power (MBCP) in excess of 200,000 candela, these lamps do produce a greater luminous intensity over a broader angle off the beam centerline than the traditional 200-watt lamp capable of producing a MBCP in excess of 200,000 candela. In fact, the available data clearly establish that the currently produced 350-watt lamp has a higher light intensity at any angle greater than 3.5 degrees off the centerline when compared to the more traditional 200-watt lamp used on older locomotives. Thus, the 350-watt lamps are particularly well suited for use in auxiliary light locations, which are primarily intended to be seen by motorists well away from an approaching grade crossing. Consequently, FRA believes that available data support a determination that the 350-watt lamp currently being produced and which has been permitted to be used in most newer locomotive auxiliary light fixtures since the mid-1990s, actually enhances the ability of a motorist to detect an oncoming train.

In addition to the supporting data, FRA also notes that it has accepted the use of both 200-watt and 350-watt lamps since they began being used in auxiliary light fixtures beginning in the early to mid-1990s. It should also be noted that grade crossing accidents, deaths, and injuries have dropped sharply since the introduction of the 350-watt auxiliary lights in the mid-1990s. Furthermore,

FRA is not aware of any complaints by operating crews or any deficiencies being noted by its field inspectors related to the luminous intensity produced by the 350-watt lamps since they began being used in locomotives. Moreover, FRA is not aware of any private litigation where the intensity of the light produced by a locomotive's auxiliary lights was brought into question.

In order to reflect FRA's intent when issuing the regulations related to auxiliary lights and to incorporate FRA's existing enforcement posture with regard to the use of 350-watt lamps, the Interim Final Rule amended the regulatory provisions relating to the auxiliary light provisions contained at § 229.125(d)(2) to specifically permit the continued use of 350-watt lamps. FRA received no specific substantive objections to the clarifying amendments made in the Interim Final Rule. Therefore, this final rule retains the clarifying amendments made in the Interim Final Rule with minor changes for consistency and clarity. FRA continues to believe this modification is necessary to ensure that there is no misunderstanding by either the regulated community or its field inspectors with regard to FRA's position. The modification makes clear that FRA will accept the use of either a lamp capable of producing at least 200,000 candela (a PAR–56, 200-watt, 30-volt lamp) or a lamp capable of producing a minimum of 3,000 candela at 7.5 degrees and a minimum of 400 candela at 20 degrees from the centerline of the locomotive when the lamp is aimed parallel to the tracks (either a PAR–56, 200-watt, 30-volt lamp or a PAR–56, 350-watt, 75-volt lamp). The light intensities specified in the Interim Final Rule and retained in this final rule are based on the luminous intensity produced at those angles by a PAR–56, 200-watt, 30-volt lamp (according to data supplied by GE) when such a lamp is aimed parallel to the tracks. FRA continues to believe this is the most appropriate measure because the agency has interpreted the regulations as permitting this light intensity since their inception. Thus, acceptance of a lamp that produces an equivalent or greater intensity at these critical angles is consistent with the intent and purpose of the auxiliary light provisions when originally prescribed and is consistent with FRA's goal of promoting and facilitating new technologies. In furtherance of this goal, FRA also notes that, although the modification made to the regulation by the Interim Final Rule and retained in this final rule identifies specific lamps as meeting the specified criteria, the modification also acknowledges that lamps of equivalent design and capable of producing equivalent light intensities would be considered acceptable by FRA.

Related Provisions

Although there are provisions contained in §§ 229.133 and 238.443 that reference the use of lamps producing at least 200,000 candela, FRA does not intend to change any of the language contained in those provisions at this time. Section 229.133 contains interim locomotive conspicuity measures that were incorporated into the regulations in 1993 while the final provisions related to locomotive auxiliary lights were being developed. *See* 58 FR 6899; 60 FR 44457; and 61 FR 8881. Although locomotives equipped with one of the specified interim conspicuity measures were ''grandfathered'' or exempted from the subsequent auxiliary light provisions included in § 229.125, that grandfathering expired on March 6, 2000. *See* 61 FR 8885 and § 229.125(d). When issuing the final rule related to locomotive auxiliary lights in 1996, FRA did ''super-grandfather'' certain locomotives if equipped with some of the auxiliary conspicuity measures specified in § 229.133, which included: oscillating lights; strobe lights; and auxiliary lights if spaced at least 44 inches apart. *See* 61 FR 8885 and § 229.133(c). Of the three types of measures ''super-grandfathered,'' only the provision related to oscillating lights specifies the use of a lamp capable of producing at least 200,000 candela. *See* § 229.133(c)(1) through (c)(3). As there are very few locomotives currently being operated that are equipped with oscillating lights and because FRA has no data related to the impact of utilizing 350-watt lamps in single-lamp oscillating light fixtures, FRA is not in a position to accept the use of such lamps in these devices at this time. However, FRA will continue to accept the use of 350-watt lamps in those circumstances where an oscillating light is used in conjunction with the auxiliary lights described in § 229.125, and in circumstances where an oscillating light under § 229.133(b)(4)(i)(A) consists of a dual-lamp fixture equipped with two operative 350-watt lamps.

The requirements related to Tier II passenger equipment also contain a requirement that Tier II power cars be equipped with headlights that produce at least 200,000 candela. *See* § 238.443. However, contrary to the headlight provisions in part 229, which require that a locomotive be equipped with at least one headlight, the provision in § 238.443 requires each Tier II power car to be equipped with at least *two* headlights and that *each* headlight produce no less than 200,000 candela. *Id.* Moreover, the present design of the headlights on Tier II power cars utilizes a single lamp in each of the two required headlight fixtures. Thus, the preceding discussion related to FRA's acceptance of the use of 350-watt lamps in traditional locomotives covered under the provisions of § 229.125(a), is not applicable to the headlights on Tier II power cars, which are separately addressed in part 238.

General Information

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket 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.*

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. The modifications retained in this final rule are not considered significant because they are intended merely to clarify FRA's intent when issuing the final rule related to auxiliary lights and to incorporate existing FRA enforcement policies related to locomotive headlights and auxiliary lights. The economic impact of the modifications and clarifications contained in this final rule will not generally affect the cost of compliance with the existing regulations.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this final rule does not have a significant impact on a substantial number of small entities. Because the modifications retained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, FRA has concluded that there are no substantial

economic impacts on small units of government, businesses, or other organizations.

Paperwork Reduction Act

This final rule does not change any of the information collection requirements contained in the original regulatory provisions being amended.

Environmental Impact

FRA has evaluated this final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c) of FRA's Procedures.

Federalism Implications

FRA believes it is in compliance with Executive Order 13132. Because the modifications retained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, this document will not have a substantial 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. This final rule will not have federalism implications that impose any direct compliance costs on State and local governments.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. Because the modifications retained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, this document will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. Because the modifications retained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, FRA has determined that this document will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

List of Subjects in 49 CFR Part 229

Auxiliary lights, Headlights, Locomotives, Railroad safety.

Adoption of the Amendment

■ In consideration of the foregoing, part 229 of chapter II of title 49 of the Code of Federal Regulations is amended to read as follows:

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

■ 1. The authority citation for Part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20107, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 49 CFR 1.49(c), (m).

■ 2. Section 229.125 is amended by revising paragraphs (a) and (d)(2) to read as follows:

§ 229.125 Headlights and auxiliary lights.

(a) Each lead locomotive used in road service shall have a headlight that produces a peak intensity of at least 200,000 candela. If a locomotive or locomotive consist in road service is regularly required to run backward for any portion of its trip other than to pick up a detached portion of its train or to make terminal movements, it shall also have on its rear a headlight that produces at least 200,000 candela. Each headlight shall be arranged to illuminate a person at least 800 feet ahead and in front of the headlight. For purposes of this section, a headlight shall be comprised of either one or two lamps.

(1) If a locomotive is equipped with a single-lamp headlight, the single lamp shall produce a peak intensity of at least 200,000 candela. The following lamps meet the standard set forth in this paragraph (a)(1): a single operative PAR–56, 200-watt, 30-volt lamp; or an operative lamp of equivalent design and intensity.

(2) If a locomotive is equipped with a dual-lamp headlight, a peak intensity of at least 200,000 candela shall be produced by the headlight based either on a single lamp capable of individually producing the required peak intensity or on the candela produced by the headlight with both lamps illuminated. If both lamps are needed to produce the required peak intensity, then both lamps in the headlight shall be operational. The following lamps meet the standard set forth in this paragraph (a)(2): a single operative PAR–56, 200-watt, 30-volt lamp; two operative PAR–56, 350-watt, 75-volt lamps; or operative lamp(s) of equivalent design and intensity.

* * * * *

(d) * * *

(2) Each auxiliary light shall produce a peak intensity of at least 200,000 candela or shall produce at least 3,000 candela at an angle of 7.5 degrees and at least 400 candela at an angle of 20 degrees from the centerline of the locomotive when the light is aimed parallel to the tracks. Any of the following lamps meet the standard set forth in this paragraph (d)(2): an operative PAR–56, 200-watt, 30-volt lamp; an operative PAR–56,350-watt,

75-volt lamp; or an operative lamp of equivalent design and intensity.

* * * * *

Issued in Washington, DC, on March 10, 2004.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 04–5913 Filed 3–15–04; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Air pollution control:
- State operating permit programs—
  - California; published 1-16-04

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Food and Drug Administration

Animal drugs, feeds, and related products:
- Trenbolone and estradiol; published 3-16-04

HOMELAND SECURITY DEPARTMENT

Customs and Border Protection Bureau

Merchandise, special classes:
- Import restrictions—
  - Honduras; archaeological material; published 3-16-04

NATIONAL CREDIT UNION ADMINISTRATION

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- Bombardier; published 2-10-04

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- Headlights and auxiliary lights; published 3-16-04

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- Import restrictions—
  - Honduras; archaeological material; published 3-16-04

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Animal and Plant Health Inspection Service

Genetically engineered organisms; importation, interstate movement, and environmental release; comments due by 3-23-04; published 1-23-04 [FR 04-01411]

Plant-related quarantine, domestic:
- Oriental Fruit Fly; comments due by 3-22-04; published 1-20-04 [FR 04-01067]

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
- Fish and shellfish; subsistence taking; comments due by 3-26-04; published 2-3-04 [FR 04-02098]

AGRICULTURE DEPARTMENT

Rural Utilities Service

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- Technical Assistance and Training Grants Program; clarification; comments due by 3-22-04; published 1-22-04 [FR 04-01274]

COMMERCE DEPARTMENT

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International fisheries regulations:
- Antarctic marine living resources conservation and management; environmental impact statement; meetings; comments due by 3-22-04; published 2-5-04 [FR 04-02534]

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Senior Companion Program; amendments; comments due by 3-26-04; published 2-10-04 [FR 04-02802]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

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Federal Acquisition Regulation (FAR):
- Definitions clause; comments due by 3-22-04; published 1-21-04 [FR 04-01152]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

Natural Gas Policy Act:
- Interstate natural gas pipelines—
  - Business practice standards; comments due by 3-26-04; published 2-25-04 [FR 04-04095]

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- California; comments due by 3-26-04; published 2-25-04 [FR 04-04128]

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  - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

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  - National priorities list update; comments due by 3-22-04; published 2-20-04 [FR 04-03599]
- National oil and hazardous substances contingency plan—
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Superfund program:
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  - National priorities list update; comments due by 3-25-04; published 2-24-04 [FR 04-03824]

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- New Mexico; comments due by 3-22-04; published 2-10-04 [FR 04-02835]

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- Long-term care hospitals; prospective payment system; annual payment rate updates and policy changes; comments due by 3-23-04; published 1-30-04 [FR 04-01886]

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Food and Drug Administration

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HOMELAND SECURITY DEPARTMENT
Human Resources Management System; establishment; comments due by 3-22-04; published 2-20-04 [FR 04-03670]

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Fish and shellfish; subsistence taking; comments due by 3-26-04; published 2-3-04 [FR 04-02098]
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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 743/P.L. 108–203

Social Security Protection Act of 2004 (Mar. 2, 2004; 118 Stat. 493)

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Native American Technical Corrections Act of 2004 (Mar. 2, 2004; 118 Stat. 542)

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