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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 931

[Docket No. FV98–931–1 FIR]

Fresh Bartlett Pears Grown in Oregon and Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the Northwest Fresh Bartlett Pear Marketing Committee (Committee) under Marketing Order No. 931 for the 1998–99 and subsequent fiscal periods from $0.03 to $0.02 per standard box handled. The Committee is responsible for local administration of the marketing order which regulates the handling of fresh Bartlett pears grown in Oregon and Washington. Authorization to assess fresh Bartlett pear handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1998–99 fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: November 13, 1998.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 141 and Order No. 931 (7 CFR part 931), regulating the handling of fresh Bartlett pears grown in Oregon and Washington hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, fresh Bartlett pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable fresh Bartlett pears beginning July 1, 1998, and continuing until modified, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues to decrease the assessment rate established for the Committee for the 1998–99 and subsequent fiscal periods from $0.03 to $0.02 per standard box handled.

The fresh Bartlett pear marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of fresh Bartlett pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1997–98 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 28, 1998, and unanimously recommended 1998–99 expenditures of $97,000 and an assessment rate of $0.02 per standard box of fresh Bartlett pears handled. In comparison, last year's budgeted expenditures were $111,441. The assessment rate of $0.02 is $0.01 less than the 1997–98 rate and will reduce the financial burden on handlers. With a 1997–98 rate of $0.03 per standard box and estimated 1998 fresh Bartlett pear shipments of 3,000,000 standard boxes, the projected reserve on June 30, 1999, would have exceeded the level the Committee believed to be adequate to administer the program. The Committee discussed lower assessment rates, but decided that an assessment rate of less than $0.02 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 1998–99 fiscal period include $38,878 for salaries, $5,323 for office rent, and $4,062 for health insurance. Budgeted expenses for these

items in 1997–98 were $48,454, $8,187, and $4,956, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Bartlett pears. With fresh Bartlett pear shipments for 1998–99 estimated at 3,000,000 standard boxes, the $0.02 per standard box assessment rate should provide $60,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve and miscellaneous income, will be adequate to cover budgeted expenses. Funds in the reserve ($38,990 at the end of the 1997–98 fiscal period) will be kept within the maximum permitted by the order (approximately one fiscal year's operational expenses; § 931.42).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 1,800 producers of fresh Bartlett pears in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of fresh Bartlett pear producers and handlers may be classified as small entities.

This rule continues to decrease the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal periods from $0.03 to $0.02 per standard box handled. The Committee unanimously recommended 1998–99 expenditures of $97,000 and an assessment rate of $0.02 per standard box of fresh Bartlett pears handled. In comparison, last year's budgeted expenditures were $111,441. The assessment rate of $0.02 is $0.01 less than the 1997–98 rate. At the 1997–98 rate of $0.03 per standard box and estimated 1998 fresh Bartlett pear shipments of 3,000,000 standard boxes, the projected reserve on June 30, 1999, would have exceeded the level the Committee believed to be adequate to administer the program. The assessment rate reduction will also lessen the financial burden on handlers. The Committee decided that an assessment rate of less than $0.02 would not generate the income necessary to administer the program with an adequate reserve.

Major expenses recommended by the Committee for the 1998–99 fiscal period include $38,878 for salaries, $5,323 for office rent, and $4,062 for health insurance. Budgeted expenses for these items in 1997–98 were $48,454, $8,187, and $4,956, respectively.

With fresh Bartlett pear shipments for 1998–99 estimated at 3,000,000 standard boxes, the $0.02 rate of assessment should provide $60,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve and miscellaneous income, will be adequate to cover budgeted expenses. Funds in the reserve ($38,990 at the end of the 1997–98 fiscal period) will be kept within the maximum permitted by the order (approximately one fiscal year's operational expenses; § 931.42).

Recent price information indicates that the grower price for the 1998–99 marketing season will range between $7.59 and $12.72 per standard box of fresh Bartlett pears. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total grower revenue will range between 0.26 and 0.16 percent.

This action continues to decrease the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. Also, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the fresh Bartlett pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 28, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

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

An interim final rule concerning this action was published in the **Federal Register** on July 16, 1998 (63 FR 38280). In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended September 14, 1998. No comments were received.

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

List of Subjects in 7 CFR Part 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 931 which was published at 63 FR 38280 on July 16,

1998, is adopted as a final rule without change.

Dated: October 8, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–27531 Filed 10–13–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212 and 245

[INS–1879–97]

RIN 1115–AE73

Interim Procedures for Certain Health Care Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule, which has been drafted in consultation with the U.S. Department of Health and Human Services (HHS), amends regulations of the Immigration and Naturalization Service (Service or INS) in order to implement, on a temporary basis, certain portions of section 343 of the Illegal Immigration Reform and Immigrant Responsibility act of 1996 (IIRIRA) as they relate to prospective immigrants. Section 343, which was codified at section 212(a)(5)(C) of the Immigration and Nationality Act (Act or INA), provides that aliens coming to the United States to perform labor in covered health care occupations (other than as a physician) are inadmissible unless they present a certificate relating to their education, qualifications, and English language proficiency. This requirement is intended to ensure that aliens possess proficiency in the skills that affect the provision of health care services in the United States. This rule establishes a temporary mechanism to allow applicants for immigrant visas or adjustment of status in the fields of nursing and occupational therapy to satisfy the requirements of section 343 on a provisional basis. The Service expects to publish a proposed rule in the near future which will implement in full the provisions of section 343.

DATES: *Effective date:* This rule is effective December 14, 1998.

Comment date: Written comments must be submitted on or before February 11, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, pleaser reference the INS No. 1879–97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Benefits Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION: On September 30, 1996, President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104–208. Section 343 of IIRIRA created a new ground of inadmissibility at section 212(a)(5)(C) of the Act for aliens coming to the United States to perform labor in certain health care occupations. Pursuant to section 343, any alien coming to the United States for the purpose of performing labor as a health care worker, other than as a physician, is inadmissible unless the alien presents to the consular officer, or, in the case or adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS), or an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of HHS.

Under section 343, the certificate must verify that: (1) The alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States under the classification specified in the application; are comparable with that required for an American health care worker; are authentic and, in the case of a license, the alien's license is unencumbered; (2) the alien has the level of competence in oral and written English considered by the Secretary of HHS, in consultation with the Secretary of Education (DoE), to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicants ability to speak and write English; and, finally, (3) if a majority of states licensing the profession in which the alien intends to work recognize a test predicting the alien's success on the profession's licensing or certification examination, the alien has passed such a test, or has passed such an examination.

Section 343 raises a number of important and difficult issues as to its scope and proper implementation and requires extensive coordination between the Service and other Federal agencies. Prior to the publication of this rule, the Service met with representatives of HHS, as well as the United States Trade Representative, the Department of Labor (DOL), the Department of State (DOS), the DoE, the Department of Commerce (DOC), the CGFNS, the National Board for Certification in Occupational Therapy (NBCOT), various professional organizations representing these health care occupations, and many other interested parties.

The Purpose of the Interim Rule

The purpose of this interim rule is to establish temporary procedures which will: (1) Allow the immigration of certain health care workers into the United States on a permanent basis in order to prevent the disruption of critical health care services to the public; (2) provide for the immigration of certain health care workers who were petitioned on a permanent basis prior to the enactment of IIRIRA; and (3) establish a temporary mechanism to ensure that nurses and occupational therapists immigrating to this country have education, experience, and training which are equivalent to a United States worker in a similar occupation.

This interim rule provides a temporary mechanism for implementing section 343 with respect to nurses and occupational therapists. Aliens who obtain a certificate in accordance with this interim rule will be deemed to have satisfied the education, training, and licensing requirements of section 343. Credentialing organizations verifying that an alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States under the classification specified in the application are required to determine, to the best of their ability, whether the alien appears to be classifiable under section 203(b) of the Act. (The Service has substituted the term ''admission'' for the term ''entry,'' in conformity with section 308(f) of Pub. L. 104–208 which amended the Act.) Although credentialing organizations are required to make certain verifications in accordance with this interim rule, the Service is not in any way deferring or delegating to the credentialing organizations the authority to make binding determinations regarding the alien's admissibility into the United States.

The decision to include nursing and occupational therapy in this interim rule was based on information from DOL that there is a sustained level of demand for foreign-trained workers in these two occupations. Moreover, organizations with an established track record in providing credentialing services exist for these two occupations. For the purposes of this interim rule, the Service finds that these two criteria allow the implementation of section 343 of IIRIRA on a temporary basis.

For the purposes of this interim rule, the term ''sustained level of demand'' means the presence of an existing demand for foreign health care workers in a particular occupation that is expected to continue in the foreseeable future.

The term ''organizations with an established track record'' means, for the purposes of this interim rule, an organization which has a record of issuing actual certificates, or documents similar to a certificate, that are generally accepted by the state regulatory bodies as certificates that an individual has met certain minimal qualifications.

The two organizations identified in this rule, the CGFNS for nurses and the NBCOT for occupational therapists, are organizations which have been issuing certificates, or similar documents, for a period of years and which have attained credibility with the various professional and regulatory bodies which deal with the two occupations listed in this rule. Therefore, the NBCOT and the CGFNS both meet the two criteria identified for inclusion in this interim rule. The Service has not identified other credentialing organizations which have an established track record in providing credentialing services for these two occupations other than the two organizations discussed in this rule.

During the period of time that the interim rule is in effect, the Service will entertain any requests to issue certificates from an organization which demonstrates a proven track record in issuing certificates for a health care occupation and where there is a sustained level of demand for foreign-trained individuals. Such organizations are encouraged to contact the Service at the address provided earlier in the rule.

The implementation of this interim rule on a limited basis also allows the Service additional time to obtain comment on a number of issues which extend beyond near-term immigration issues in nursing and occupational therapy to other policy concerns, such as the overall impact on the public health and the domestic labor market for a variety of health care occupations.

Given the complex nature of the requirements of section 343, the Service will publish a proposed rule in the near future which will, among other things, list all the occupations covered by section 343, further describe the procedures for obtaining and presenting the certificates, describe the standards required for an organization to obtain approval to issue certificates, and describe the procedure whereby an organization's authorization can be terminated by the Service. The Service believes that major issues such as the scope of covered occupations, the standards for obtaining authorization to issue certificates, and the procedure for termination of an organization's authority to issue certificates are better addressed through proposed rule making. The Service expects to publish the proposed rule as soon as possible, within approximately 1 year.

The Service's Temporary Policies and Their Effect

The Service has issued a number of temporary policy guidelines which will continue to apply while the Service develops a rule fully implementing section 343.

Occupations Covered

The current policy of the Service is that section 343 is applicable only to the seven occupations listed in the Joint Explanatory Statement of the Committee of Conference published in the Congressional Record of September 24, 1996, Nos. 132–133, page H10900. The seven occupations are: Nursing, physical therapy, occupational therapy, speech language pathology, medical technology, medical technician, and physician's assistant.

Nonimmigrant Health Care Workers

In order to ensure that health care facilities remain fully staffed and are able to continue to provide the same level and quality of service to the United States public pending promulgation of a final rule, the Service and DOS have agreed to exercise authority under section 212 (d) (3) of the Act and temporarily waive the certification requirement of section 343 for aliens coming to the United States as nonimmigrant care workers. The Service and the DOS have agreed to extend from 6 months to 1 year the period for which such a waiver is granted. This policy will continue until a final rule is published which fully implements section 343.

Immigrant Health Care Workers

There is a two-step process for an alien to become a permanent resident or enter the United States as an immigrant to perform labor as a health care worker. In general, a United States employer must file a Form I–140, Immigrant Petition for Alien Worker, with the Service with the appropriate supporting documentation. The Form I–140 petition establishes the alien's eligibility for the employment-based classification sought. Once the Form I–140 petition is approved by the Service, the alien may apply for an immigrant visa abroad at a consular post or apply for adjustment of status to that of a lawful permanent resident by filing a Form I–485, Application to Register Permanent Resident of Adjust Status in the United States.

The Service has no statutory authority to waive the requirements of section 343 for aliens coming to the United States permanently as immigrants to perform health care services in this country. Thus, the Service has adopted an interim policy whereby, instead of denying the applications for adjustment of status filed by uncertified aliens seeking to perform labor on a permanent basis in covered health care occupation, such applications are held in abeyance pending promulgation of the implementing regulations. Similarly, the DOS has no statutory authority to issue immigrant visas to such uncertified aliens, and has held visa applications from such persons in abeyance as well. As a result, the number of applications for adjustment of status which have been held in abeyance and the number of aliens unable to obtain immigrant visas has grown to significant proportions. The four service centers have advised that they are holding in excess of 11,000 such adjustment cases in abeyance.

Who Is Affected by the Rule—§ 212.15(a), (b) and (c)

This interim rule will apply to aliens coming to the United States as immigrants and to aliens applying for permanent residency to perform labor in the occupations of nurse and occupational therapist. This interim rule does not apply to any other health care occupation. The applications of aliens seeking to engage permanently in any of the other five health care occupations, *i.e.*, physical therapy, speech language pathology, medical technology, medical technician, and physician's assistant, listed in the Joint Explanatory Statement previously cited, will continue to be held in abeyance pending promulgation of a final regulation implementing section 343.

This interim rule does not affect the admission of nonimmigrant aliens coming to the United States to work

temporarily in any health care field. Nonimmigrants in the fields or nursing, occupational therapy, physical therapy, speech language pathology, medical technology, medical technician, or physician's assistant will continue to be admitted consistent with the Service's waiver policy previously described.

At this time, the Service has not extended the application of section 343 beyond the seven occupations listed in the Joint Explanatory Statement of the Committee of Conference. The Service, in consultation with HHS, may include additional health care occupations in its forthcoming proposed rule and expects to seek public comment on whether such occupations should be affected by section 343. Until a final regulation implementing section 343 is promulgated, however, the Service (as well as DOS) will continue to deem both immigrants and nonimmigrants in occupations other than the seven listed above to be exempt from the requirements of section 343. Applications for permanent resident status filed by aliens to work in the occupations of speech language pathologist, medical technologist, medical technicians, physical therapists, and physician assistants, however, will continue to be held in abeyance until a final rule is published. Further, the DOS has notified the Service that it will continue its policy of not issuing immigrant visas to aliens coming to the United States to perform labor in these five occupations until a final rule is published.

The Service has interpreted the term ''performing labor as a health care worker'' to mean providing direct or indirect health care services to a patient. Aliens coming to the United States to perform services in non-clinical health care occupations such as, but not limited to, medical teachers, medical researchers, managers of health care facilities, and medical consultants to the insurance industry, therefore, are not covered by the provisions of section 343. Individuals employed in these occupations do not perform patient care and, therefore, are not performing labor in a health care occupation as contemplated in the statute. Nevertheless, aliens who are indirectly involved in the performance of patient care, for example, supervisory nurses, must comply with the provisions of section 343.

Since the statute specifically refers only to aliens who are seeking to enter the United States under section 203(b) of the Act for the purpose of performing labor as health care workers, section 343 does not apply to the spouse and dependent children of such aliens. Dependent aliens are admitted to the United States for the primary purpose of family unity and are merely accompanying the principal alien. Therefore, the admissibility of dependent aliens is not affected by the provisions of section 343. For similar reasons, it is the position of the Service that an alien who has applied for adjustment of status under section 245 of the Act on the basis of a family-sponsored immigrant petition pursuant to section 203(a) of the Act or on the basis of an employment-based immigrant petition in a non-health care occupation does not have to comply with section 343 of IIRIRA.

Additionally, an alien who applies for adjustment of status pursuant to sections 209, 210, 245a, 249 or any other section of the Act is not affected by the provisions of section 343 of IIRIRA. This distinction derives from the fact that section 343 of IIRIRA applies only to aliens who are coming to the United States for the primary purpose of performing labor as a health care worker. Aliens applying for adjustment of status under these statutory provisions, regardless of their ultimate professional goal, will not be deemed to be adjusting status for the purpose of performing labor as a health care worker.

Organization Granted Temporary Approval To Issue Certificates for Nurses and Occupational Therapists—§ 212.15(e)

This rule grants temporary authorization to the CGFNS to issue certificates to aliens coming to the United States on a permanent basis to work in the field of nursing. This rule grants temporary authorization to the NBCOT to issue certificates to aliens coming to the United States on a permanent basis to work in the field of occupational therapy.

Under this interim rule, CGFNS is authorized to issue certificates only for the occupation of nurse, for which it has an established track record of issuing certificates, and not for the occupation of occupational therapy. Since CGFNS does not have an established track record of issuing certificates for occupational therapists at this time, it will be limited to issuing certificates for occupation of nursing for the validity period of this interim rule.

The Service defers consideration of whether CGFNS may be authorized to issue certificates for other health care occupations, including occupational therapy, until the promulgation of its forthcoming proposed rule.

This interim rule authorizes NBCOT, on a temporary basis, to issue certificates in accordance with section 343 for the occupation of occupational therapy. NBCOT is authorized to issue such certificates solely because of NBCOT's proven track record in issuing certificates for the position of occupational therapist and the current acceptance of these certificates by the various state regulatory boards in the field of occupational therapy.

Insofar as this interim rule addresses the certification requirements for aliens seeking to immigrate to the United States, the Service has determined that it is unnecessary to require that the certificate issued by CGFNS or NBCOT be valid for a specific period of time beyond the date of admission or adjustment of status. The Service may nevertheless consider imposing such a validity period in the context of promulgating its proposed rule.

English Language Requirement—§ 212.15(g)

Purusant to section 343 of IIRIRA, HHS, in consultation with the Secretary of Education, is required to establish a level of competence in oral and written English which is appropriate for the health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write.

The statute vests the Secretary of HHS with the ''sole discretion'' to determine the standardized tests and appropriate minimum scores required by section 343 of IIRIRA.

The HHS has identified two testing services which conduct a nationally recognized, commercially available, standardized assessment as contemplated in the statute. The two testing services are the Educational Testing Service (ETAS) and the Michigan English Language Assessment Battery (MELAB). The new regulation at § 212.15(g) lists the tests and appropriate scores as determined by HHS for each occupation.

In developing the English language test scores, HHS consulted with the DoE and appropriate health care professional organizations. The HHS also examined a study sponsored in part by NBCOT entitled ''Standards for Examinations Assessing English as a Second Language'' in arriving at these scores. The scores reflect the current industry requirements for the occupations.

Under this interim regulation, an organization approved to issue certificates may use either of the above-named testing services. It should be noted, however, that HHS has

determined that occupational therapists should only take the test administered by ETS. The HHS has advised the Service that it made this determination based on the fact that all 50 states have accepted the NBCOT requirements which list the ETS as the only acceptable examination.

In addition, organizations authorized to issued certifications are encouraged to develop a test specifically designed to measure English language skills and seek HHS approval of the test. While HHS has identified MELAB and ETS for purposes of this interim rule, other testing services may submit information about their testing services to the Service so that HHS and the DOE could review whether the testing service should be included in the final rule.

HHS has advised that graduates of health professional programs in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States are exempt from the English language requirements of section 343 of IIRIRA for the duration of the interim rule. The HHS has determined that, for purposes of this rule, aliens who have graduated from these programs have competency in oral and written English because the level of English that they would need to graduate from these programs is deemed equivalent to the level that would be demonstrated by achieving the minimum passing score on the test described above.

Presentation of the Certificate—§ 212.15(d) and § 245.14

Section 343 of IIRIRA is codified in section 212(a) of the Act as a new ground of inadmissibility. In genral, grounds listed in section 212(a) are bars to admission to the United states which must be overcome when an alien applies for admission. This interim rule provides that the certificate must be presented to a consular officer at the time that the alien applies for an immigrant visa and to the Service at the time of admission or adjustment of status. The certificate must be valid at the time the alien applies for an immigrant visa at a consular post abroad and seeks admission or adjustment of status to that of a permanent resident.

The Service and the DOS will consider, in the context of the proposed rulemaking, whether it would be more efficient to review the certificate as part of the review of the alien's qualifications for classification at the time that a Form I–140 is adjudicated by the Service. In this regard, it should be noted that such a filing procedure has long been used with respect to labor certifications under section 212(a)(5)(A) of the Act.

Good Cause Exception

This interim rule is effective 60 days from the date of publication in the **Federal Register.** The Service invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553. Although section 343 went into effect on September 30, 1996, due to the complexities of the requirements of section 343, and the need to coordinate the interests and concerns of a great number of Federal agencies, the health care sector, and members of the affected public, the Service is still in the process of developing a proposed rule in order to solicit comment from the public. A continued delay in the implementation of this provision, however, could have a negative effect on the availability of health care in this country, particularly in medically under-served areas for nursing and occupational therapy, and will create a further backlog with respect to pending applications filed by aliens seeking to immigrate to perform labor in a health care occupation.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule has been drafted in a way to minimize the economic impact that it has on small business while meeting its intended objective. The health care workers who will be issued certificates are not considered small entities as the term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act of 1995

The information required on the certificate for health care workers showing that the alien possesses proficiency in the skills that affect the provisions of health care services in the United State (as provided in § 212.15(f)) is considered an information collection. Since a delay in issuing this interim rule could create a further backlog with respect to pending applications filed by aliens seeking to immigrate to perform labor in a health care occupation, the INS is using emergency review procedures, for review and clearance by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (PRA) of 1995.

The OMB approval has been requested by November 13, 1998. If granted, the emergency approval is only valid for 180 days. Comments concerning the information collection should be directed to: Office of Information and Regulatory Affairs

(OMB), OMB Desk Officer for the Immigration and Naturalization Service, Office of Management and Budget, Room 10235, Washington, DC 20503.

During the first 60 days of this same period a regular review of this information will also be undertaken. Written comments are encouraged and will be accepted until December 14, 1998. Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Service, in calculating the overall burden this requirement will place upon the public, estimates that approximately 7,000 certificates will be issued annually. The Service also estimates that it will take the testing entity approximately 2 hours to comply with the requirements. This amounts to 14,000 total burden hours.

Organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to: Immigration and Naturalization Service, Director, Policy Directives and Instructions Branch (HQPDI), 425 I Street NW., Room 5307, Washington, DC 20536.

List of Subjects

8 CFR Part 212

Administrative practice and procedures, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 212.15 is added to read as follows:

§ 212.15 Certificates for foreign health care workers.

(a) *Inadmissible aliens.* With the exception of the aliens described in paragraph (b) of this section, any alien coming to the United States for the primary purpose of performing labor in a health care occupation listed in paragraph (c) of this section is inadmissible to the United States unless the alien presents a certificate as described in paragraph (f) of this section.

(b) *Inapplicability of the ground of inadmissibility.* The following aliens are not subject to this ground of inadmissibility:

(1) Aliens seeking admission to the United States to perform services in a non-clinical health care occupation. A non-clinical health-care occupation is one where the alien is not required to perform direct or indirect patient care. Occupations which are considered to be non-clinical include, but are not limited to, medical teachers, medical researchers, managers of health care facilities, and medical consultants to the insurance industry;

(2) The spouse and dependent children of any immigrant alien who is seeking to immigrate in order to accompany or follow to join the principal alien; and

(3) Any alien applying for adjustment of status to that of a permanent resident under any provision of law other than an alien who is seeking to immigrate on the basis of an employment-based immigrant visa petition which was filed for the purpose of obtaining the alien's services in a health care occupation described in paragraph (c) of this section.

(c) *Occupations affected by this provision.* With the exception of the aliens described in paragraph (b) of this section, any alien seeking admission to the United States to perform labor in one of the following health care occupations, regardless of where he or she received his or her education or training, is subject to this provision:

(1) Licensed Practical Nurses, Licensed Vocational Nurses, and Registered Nurses.

(2) Occupational Therapists.

(d) *Presentation of the certificate.* An alien described in paragraph (a) of this section who is applying for admission as an immigrant seeking to perform labor in a health care occupation as described in this section must present a certificate to a consular officer at the time of visa issuance and to the Service at the time of admission or adjustment of status. The certificate must be valid at the time of visa issuance and admission at a port-of-entry, or, if applicable, at the time of adjustment of status.

(e) *Organizations approved by the Service to issue certificates for health care workers.* (1) The Commission on Graduates of Foreign Nursing Schools is authorized to issue certificates under section 343 for the occupation of nurse. (2) The National Board for Certification in Occupational Therapy is authorized by the Service to issue certificates under section 343 for the occupation of occupational therapist.

(f) *Contents of the certificate.* A certificate must contain the following information:

(1) The name and address of the certifying organization;

(2) A point of contact where the organization may be contacted in order to verify the validity of the certificate;

(3) The date of the certificate was issued;

(4) The occupation for which the certificate was issued;

(5) The alien's name, and date and place of birth;

(6) Verification that the alien's education, training, license, and experience are comparable with that required for an American health care worker of the same type;

(7) Verification that the alien's education, training, license, and experience are authentic and, in the case of a license, unencumbered;

(8) Verification that the alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States as an immigrant under section 203(b) of the Act. This verification is not binding on the Service; and

(9) Verification either that the alien has passed a test predicting success on the occupation's licensing or certification examination, provided such a test is recognized by a majority of States licensing the occupation for which the certificate is issued, or that the alien has passed the occupation's licensing or certification examination.

(g) *English testing requirement.* (1) With the exception of those aliens described in paragraph (g)(2) of this

section, every alien must meet certain English language requirements in order to obtain a certificate. The Secretary of Health and Human Services has determined that an alien must have a passing score on one of the two tests listed in paragraph (g)(3) of this section before he or she can be granted a certificate.

(2) Aliens exempt form the English language requirement. Aliens who have graduated from a college, university, or professional training school located in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States are exempt from the English language requirement.

(3) Approved testing services.

(i) Michigan English Language Assessment Battery (MELAB).

(ii) Test of English as a Foreign Language, Educational Testing Service (ETS).

(4) Passing scores for various occupations. (i) *Occupational therapists.* An alien seeking to perform labor in the United States as an occupational therapist must obtain the following scores on the English tests administered by ETS: Test Of English as a Foreign Language (TOEFL), Paper-Based 560, Computer-Based 220; Test of Written English (TWE): 4.5; Test of Spoken English (TSE): 50. Certifying organizations shall not accept the results of the MELAB for the occupation of occupational therapists. Aliens seeking to obtain a certificate to work as an occupational therapist must take the test offered by the ETS. MELAB scores are not acceptable for these occupations.

(ii) *Registered nurses.* An alien coming to the United States to perform labor as a registered nurse must obtain the following scores to obtain a certificate: ETS: TOEFL: Paper-Based 540, Computer-Based 207; TWE: 4.0; TSE: 50; MELAB: Final Score 79; Oral Interview: 3+.

(iii) *Licensed practical nurses and licensed vocational nurses.* An alien coming to the United States to perform labor as a licensed practical nurse or licensed vocational nurse must have the following scores to be issued a certificate: ETS: TOEFL: Paper-Based 530, Computer-Based 197; TWE: 4.0; TSE: 50; MELAB: Final Score 77; Oral Interview: 3+.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; 8 CFR part 2.

4. Section 245.14 is added to read as follows:

§ 245.14. Adjustment of status of certain health care workers.

An alien applying for adjustment of status to perform labor in a health care occupation as described in 8 CFR 212.15(c) must present evidence at the time he or she applies for adjustment of status, and, if applicable, at the time of the interview on the application, that he or she has a valid certificate issued by the Commission on Graduates of Foreign Nursing Schools or the National Board of Certification in Occupational Therapy.

Dated: October 6, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–27522 Filed 10–13–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 93–076–12]

RIN 0579–AA59

Animal Welfare; Marine Mammals, Swim-With-the-Dolphin Programs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Applicability of regulations.

SUMMARY: We are announcing that, until further notice, the Animal and Plant Health Inspection Service will not apply to wading programs the standards in the ''swim-with-the-dolphin'' regulations pertaining to participant/attendant ratio and space for the interactive area.

EFFECTIVE DATE: October 5, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1228, (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1998, the Animal and Plant Health Inspection Service published a final rule in the **Federal Register** (63 FR 47128–47151, Docket No. 93–076–10) that amended the Animal Welfare regulations in 9 CFR, part 3, subpart E (referred to below as the regulations), to establish standards for ''swim-with-the-dolphin'' (SWTD) programs. The rule became effective October 5, 1998. The regulations include standards for space (see § 3.111(a)) and standards for the ratio of human participants to attendants or other authorized SWTD personnel (i.e., head trainer/behaviorist or trainer/supervising attendant) (see § 3.111(e)(4)).

This document announces that, as of October 5, 1998, and until further notice, we are not applying to wading programs the standards in § 3.111(a) for space for the interactive area or the standards in § 3.111(e)(4) for human participant/attendant ratio. For the purposes of this action, wading programs are those in which human participants interact with dolphins by remaining stationary and non-buoyant. We will more fully examine the issue of interactive space requirements and human participant/attendant ratios for programs in which contact between humans and cetaceans is limited and controlled, with negligible movement of humans within the enclosure, and in the near future will publish a document in the **Federal Register** requesting information from the public concerning such programs.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington DC, this 6th day of October 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–27368 Filed 10–13–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE148, Special Condition 23–98–04–SC]

Special Conditions; Raytheon Aircraft Company Model 300 Airplane; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to California Microwave, Inc., 701 Wilson Point Road, Martin State Airport, Box 4, Baltimore, Maryland 21220, for a Supplemental Type Certificate on the Raytheon Model 300 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel

and unusual design features include the installation of an electronic flight instrument system (EFIS) for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

DATES: The effective date of these special conditions is October 2, 1998. Comments must be received on or before November 13, 1998.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE148, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE148. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

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

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE148.'' The postcard will be date stamped and returned to the commenter.

Background

On April 23, 1998, California Microwave, Inc., 701 Wilson Point Road, Martin State Airport, Box 4, Baltimore, Maryland 21220, applied to the FAA for a Supplemental Type Certificate (STC) for a modification on a Raytheon Model 300 airplane. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, California Microwave, Inc. must show that the Raytheon Model 300 airplane meets the applicable provisions of the following:

The type certification basis as modified by this STC to add an EFIS on the Raytheon Model 300 airplane is given by the following:

Special Federal Aviation Regulation (SFAR) 41C, effective September 13, 1982, see NOTE 7 or 11 (300 only); 14 CFR part 23, effective February 1, 1965, through Amendment 23–9; Amendment 23–11; Amendment 23–14, §§ 23.143(a). 23.145(d), 23.153, 23.161(c)(3), 23.173(a), 23.175, 23.427, 23.441, and 23.445; Amendment 23–15, § 23.951(c) and § 23.997(d); Amendment 23–23, § 23.1545(a); Amendment 23–26, §§ 23.967 and 23.1305(n); Special Conditions No. 23–47–CE–5, including Amendment Nos.. 1, 2, 3 dated November 15, 1982, and 4 dated October 17, 1986; 14 CFR part 25, § 25.929, effective February 1, 1965, Amendment 25–23, § 25.1419; Amendment 25–41, § 25.831(d); 14 CFR part 36, through Amendment 36–10, and SFAR 27, through Amendment 27–4; § 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment 23–49; and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action. Compliance with ice protection has been demonstrated in accordance with § 25.1419 when ice protection equipment is installed in accordance with the Equipment List.

If the Administrator finds that the applicable airworthiness regulations, 14 CFR part 23, do not contain adequate or appropriate safety standards for the Raytheon Model 300 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The California Microwave, Inc. modified Raytheon Model 300 airplane will incorporate the following novel or unusual design features: Installation of an EFIS for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF.

Discussion

The FAA may issue and amend special conditions, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards, designated according to § 21.101(b), do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations. Special conditions are normally issued according to § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis in accordance with § 21.101(b)(2).

California Microwave, Inc. plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include an EFIS, which is susceptible to the HIRF environment, that was not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

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

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

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

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

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

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

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

or,

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

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term *critical* means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary EFIS, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

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

Applicability

As discussed above, these special conditions are applicable to the Raytheon Model 300 airplane. Should California Microwave, Inc. apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate incorporating, the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model Raytheon Model 300 airplane. It is not a rule of general applicability and

affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Raytheon Model 300 airplane modified by California Microwave, Inc. to add an EFIS.

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

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on October 2, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–27533 Filed 10–13–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–63–AD; Amendment 39–10836; AD 98–21–28]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Model 3101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain British Aerospace Jetstream Model 3101 airplanes. This AD requires modifying the propeller de-icing system to assure system performance at low ambient temperatures. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified in this AD are intended to prevent propeller-induced vibrations from occurring during icing encounters at low ambient temperatures, which could result in decreased performance of the de-icing system during icing encounters with possible loss of control of the airplane.

DATES: Effective January 15, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 15, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–63–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–63–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace Jetstream Model 3101 airplanes. The CAA reports cases of propeller-induced vibrations occurring during icing encounters at low ambient temperatures (−10 to −20 degrees Celsius).

These conditions, if not corrected, could result in decreased performance of the de-icing system during icing encounters with possible loss of control of the airplane.

Relevant Service Information

Jetstream has issued Service Bulletin 30–JM 7453, Original Issue: October 24, 1984, Revision 2: December 10, 1984, which specifies procedures for accomplishing the following modifications to the de-icing system:

Modification No.	Title
JM 7398	Ice Protection—Introduction of Revised Propeller De-Ice Circuit.
JM 7407	Ice and Rain Protection—Introduction of Dowty Rotol Dual Brush Block Assembly in Propeller De-icing Systems.
JM 7408	Propeller—Introduction of Propeller Incorporating Slipring to Dowty Rotol Mod VP3062.
JM 7445	Propeller—Introduction of Propeller with Revised 21-inch Boots.
JM 7449	Ice and Rain Protection—Introduction of Dowty Rotol Dual Rate Timer, Revised Ammeter, Selector Switch, and Fuses.

The CAA classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory is the same in the United

Kingdom as the FAA issuing an AD in the United States.

The FAA's Determination

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other British Aerospace Jetstream Model 3101 airplanes of the same type design registered in the United States, the FAA is issuing an AD. This AD requires modifying the propeller de-icing system to assure system performance at low ambient temperatures. Accomplishment of the actions of this AD would be required in accordance with the previously referenced service bulletin.

Cost Impact

The FAA estimates that 45 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 169 workhours per airplane to accomplish the required modifications, and that the average labor rate is approximately $60 per work hour. Parts will be provided by the manufacturer at no cost to the owners/operators of the affected airplanes. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $456,300, or $10,140 per airplane.

All 45 of the affected airplanes in the U.S. Registry have the modifications incorporated. Therefore, there is no cost impact for any of the affected airplanes currently on the U.S. Register.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. The requirements of this direct final rule address an unsafe condition identified by a foreign civil airworthiness authority and do not impose a significant burden on affected operators. In accordance with Section 11.17 of the Federal Aviation Regulations (14 CFR 11.17) unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, a written adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–63–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–21–28 British Aerospace: Amendment 39–10836; Docket No. 98–CE–63–AD.

Applicability: Jetstream Model 3101 airplanes, serial numbers 601 through 645, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or

repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent propeller-induced vibrations from occurring during icing encounters at low ambient temperatures, which could result in decreased performance of the de-icing system during icing encounters with possible loss of control of the airplane, accomplish the following:

(a) Modify the propeller de-icing system by incorporating the following modifications in accordance with Jetstream Service Bulletin 30–JM 7453, Original Issue: October 24, 1984, Revision 2: December 10, 1984:

(1) Modification No. JM 7398: Ice Protection—Introduction of Revised Propeller De-Ice Circuit.

(2) Modification No. JM 7407: Ice and Rain Protection—Introduction of Dowty Rotol Dual Brush Block Assembly in Propeller De-icing Systems.

(3) Modification No. JM 7408: Propeller—Introduction of Propeller Incorporating Slipring to Dowty Rotol Mod VP3062.

(4) Modification No. JM 7445: Propeller—Introduction of Propeller with Revised 21-inch Boots.

(5) Modification No. JM 7449: Ice and Rain Protection—Introduction of Dowty Rotol Dual Rate Timer, Revised Ammeter, Selector Switch, and Fuses.

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

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be used if approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(d) The modifications required by this AD shall be done in accordance with Jetstream Service Bulletin 30–JM 7453, Original Issue: October 24, 1984, Revision 2: December 10, 1984. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Jetstream Service Bulletin 30–JM–7453, Original Issue: October 24, 1984, Revision 2: December 10, 1984. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

(e) This amendment becomes effective on January 15, 1999.

Issued in Kansas City, Missouri, on October 6, 1998.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–27329 Filed 10–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740 and 743

[Docket No. 980814218–8218–01]

RIN 0694–AB724

Clarification of Reporting Requirements Under the Wassenaar Arrangement

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: On January 15, 1998, the Bureau of Export Administration (BXA) published an interim rule implementing the Wassenaar Arrangement list of dual-use items and reporting requirements under the Wassenaar Arrangement. On February 17, 1998, BXA published an interim final rule that conformed the savings clause date for shipments of items removed from eligibility for export or reexport under a particular License Exception authorization or the designator NLR until April 15, 1998. The February 17 rule did not affect the reporting requirement provisions and any item removed from License Exception or NLR eligibility as a result of the January 15 rule continues to be subject to the reporting requirements of the Wassenaar Arrangement. This interim rule provides further clarification on the savings clause provisions and the reporting requirements under the Wassenaar Arrangement. Specifically, this rule clarifies: the reporting requirement obligations of items described on the Wassenaar Arrangements Annex 1 (Sensitive List) and Annex 2 (Very Sensitive List) of the List of Dual-Use Goods and Technologies, including clarification on the timing of the first report in accordance with the savings clause provision; the reporting requirements for computers controlled under Export Control Classification Number (ECCN) 4A003.b; the reporting requirement procedures under License Exception TSR; and that the reporting requirement provisions do not apply to reexports, release of technology or source code to foreign nationals in the United States (i.e., ''deemed exports'' to foreign nationals), or to items not controlled for National Security (NS) reasons.

In addition, this rule revises the country scope for reporting requirements.

DATES: Effective Date: This rule is effective October 14, 1998.

Comment Date: Comments on this rule must be received on or before December 14, 1998.

ADDRESSES: Written comments should be sent to Patricia Muldonian, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Regulatory Policy Division, Bureau of Export Administration, telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

On January 15, 1998, the Bureau of Export Administration (BXA) published an interim rule (63 FR 2452) that made changes to the Commerce Control List necessary to implement the Wassenaar Arrangement List of Dual-Use Goods and Technologies. In addition, the January 15 rule imposed new reporting requirements on persons that export certain items controlled under the Wassenaar Arrangement to countries outside of Country Group A:1 in order to fulfill the information exchange requirements of the Wassenaar Arrangement. The January 15 rule also removed License Exception availability for certain items controlled for missile technology reasons and for certain other items controlled for national security reasons for which the U.S. has agreed to license with extreme vigilance.

BXA received many industry comments on the savings clause provision date of February 17, 1998, for submission of license applications for items removed from eligibility for export or reexport under a particular License Exception authorization or the designator NLR, stating that more time

was required to determine how the rule affected their products and to develop and revise their export compliance software necessary to implement the provisions of the Export Administration Regulations. In response to the industry issues raised, BXA published an interim rule on February 17, 1998 (63 FR 7699) that conformed the saving clause date for shipments of items removed from eligibility for export or reexport under a particular License Exception authorization or NLR until April 15, 1998. The February 17 rule did not affect the reporting requirements of section 743.1 of the Export Administration Regulations, and any item removed from License Exception or NLR eligibility as a result of the January 15 rule continued to be subject to reporting requirements.

This rule provides further clarification on the savings clause provision of the February 17 rule and on reporting requirements under the Wassenaar Arrangement.

Clarification of Reporting Requirements of Items on the Wassenaar Arrangement's Annex 1 and Annex 2

Reporting obligations under the Wassenaar Arrangement are required for exports in accordance with the provisions of § 743.1 of the Export Administration Regulations (items on the Wassenaar Arrangement's Annex 1—List of Dual-Use Goods and Technologies (Sensitive List)), effective from January 15, 1998 until April 15, 1998, and for the following items on the Wassenaar Arrangement's Annex 2—List of Dual-Use Goods and Technologies (Very Sensitive List), in which License Exceptions or the designator NLR have been removed and export license requirements imposed in accordance with the savings clause provision. Reports for Annex 2 items are also effective from January 15, 1998 until April 15, 1998. After April 15, 1998, these items require a license for export or reexport.

License Exception eligibility has been removed and licensing requirements imposed for the following ECCNs on the Wassenaar Arrangement's Annex 2—List of Dual-Use Goods and Technologies: 1A002.a, 1C001, 1E001, 4A003.b, 4A003.c, 4D001, 4E001, 5A001.b.9, 5D001, 5E001.a, 6A001.a.2.a.1, 6A001.a.2.a.2, 6A001.a.2.a.7, 6A001.a.2.b, 6A001.a.2.c, 6A001.a.2.e, 6A008.l.3, 6B008, 6D001, 6D003.a, 6E001, 6E002, 8A001.b, 8A001.d, 8A002.o.3.b, 8D001, 8E001, and 9A001. The Bureau of Export Administration will extract the necessary information from licenses to report these exports to the Arrangement.

The Wassenaar reporting requirement provisions do not apply to:

(1) Reexports;

(2) Any release of technology or source code subject to the EAR to a foreign national in the United States; or

(3) Items controlled solely for Missile Technology (MT), Nuclear Nonproliferation (NP), Chemical and Biological Weapons (CB), or Short Supply (SS) reasons.

Clarification of License Exception TSR

BXA received comments from industry requesting guidance on how to comply with the Wassenaar reporting requirements for exports of technology under License Exception TSR. This rule clarifies that, for exports of technology under License Exception TSR for which reports are required under § 743.1(c) of the EAR, exporters should report the number of units in the shipment as one (1) for the initial export of the technology to a single ultimate consignee. Additional exports of the technology must be reported only when the type or scope of technology changes or exports are made to other ultimate consignees. In addition, release of controlled technology or source code to foreign nationals in the U.S., should not be included in the reports.

Revisions to the Reporting Requirements for Computers

In order to reduce duplicative reporting requirements on industry, this rule revises § 743.1(c)(2) by eliminating the reporting requirement for computers controlled under 4A003.b for exports to destinations in Computer Tier 3. Reporting requirements for exports of such computers to destinations in Computer Tier 3 continue to be required under the post-shipment verification reporting requirements of § 740.7(d)(4)(v) and § 742.12(b)(3)(iv).

Clarification of Reporting Requirement for License Exception GOV

This rule corrects an inadvertent error in the January 15 rule for License Exception GOV. This rule revises § 740.11(b)(2)(iii)(A) and paragraph (a) to Supplement No. 1 to § 740.11 by revising the phrase ''Items for official use within a national territory by agencies of the U.S. Government'' to read ''Items for official use within a national territory by agencies of cooperating governments''.

Additions to the Commerce Control List and Clarification of the Savings Clause Provision

BXA received comments from industry requesting that BXA clearly describe the new entries that were added in the January 15 rule and explain the impact of those entries in accordance with the February 17 extension of the savings clause provision. This rule clarifies that, in addition to the modifications in some parameters of items controlled on the Commerce Control List, the following new entries have been added that control items previously (prior to January 15, 1998) eligible for export or reexport under the designator NLR. Items changed from NLR eligibility to requiring a license for export or reexport were authorized for export or reexport under the designator NLR in accordance with the February 17 rule until April 15, 1998. After April 15, 1998, these items require a license for export or reexport. However, use of the designator NLR until April 15, 1998, does not relieve exporters of their responsibility to provide reports for items subject to the reporting requirements under the Wassenaar Arrangement retroactive from January 15, 1998 to April 15, 1998.

New ECCNs Added to the Commerce Control List by the January 15 Rule

1A005: Body armor, and specially designed components therefor, not manufactured to military standards or specifications, not to their equivalents in performance.

1C006.d: Certain fluorocarbon electronic cooling fluids.

1C007.f: Certain ceramic-ceramic composite materials with oxide or glass matrix.

1C009.b: Fluorinated polymides containing 10% by weight or more of combined fluorine. (Note that this control is a slight rollback, based on % by weight of combined fluorine.)

1C011: Certain metals and compounds.

2B007.d: Robots specially designed to operate at altitudes exceeding 30,000 m.

2B009: Certain spin-forming/flow forming machines.

5E001.b.10: Development technology for spread spectrum and frequency hopping techniques.

6A001.a.2.e: Certain bottom or bay cable systems.

6A005.a.4.c.1: Carbon dioxide lasers having a pulse energy exceeding 5 J per pulse. (Note that this control is a slight rollback, because ''peak power'' is no longer a controlling parameter.)

6D003.a.3: Software for bottom or bay cable systems.

7D003.e: Computer aided design software.

7E004.a.5: Technology for the development or production of electric actuators specially designed for primary flight control.

7E004.a.6: Technology for the development or production of flight control optical sensor arrays.

8A002.j.4: Certain stirling cycle engine air independent power systems.

9B004: Intermetallic airfoil-to-disk combinations.

In addition, this rule revises the country scope for reports under the Wassenaar Arrangement. The January 15 rule stated that reporting requirements apply to all destinations, except Country Group A:1. This rule revises § 743.1(d), Country Exceptions, to state that the reporting requirements apply to all destinations, except Wassenaar member countries, as identified in a new Supplement No. 1 to part 743.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), and August 13, 1998 (63 FR 44121).

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) These collections has been approved by the Office of Management and Budget under control numbers 0694–0088 and 0694–0201.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations.

Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close December 14, 1998. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–5653.

List of Subjects in 15 CFR Parts 740 and 743

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 740 and 743 of the Export Administration Regulations (15 CFR parts 730 through 799) are amended as follows:

1. The authority citation for part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995, 3 CFR, 1995 Comp., p. 501; Notice of August 14, 1996, 3 CFR, 1996 Comp., p. 289; Notice of August 13, 1997 (62 FR 43629, August 15, 1997); and Notice of August 13, 1998 (63 FR 44121).

2. The authority citation for part 743 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995, 3 CFR, 1995 Comp., p. 501; Notice of August 14, 1996, 3 CFR, 1996 Comp., p. 289; Notice of August 13, 1997 (62 FR 43629, August 15, 1997); and Notice of August 13, 1998 (63 FR 44121).

PART 740—[AMENDED]

3. Section 740.6 is amended by revising paragraph (b) to read as follows:

§ 740.6 Technology and software under restriction (TSR).

* * * * *

(b) *Reporting requirements.* See § 743.1 of the EAR for reporting requirements for exports of certain items under License Exception TSR. Note that reports are not required for release of technology or source code subject to the EAR to foreign nationals in the U.S. under the provisions of License Exception TSR.

4. Section 740.11 is amended:

a. By revising the heading of paragraph (b)(2)(iii)(A); and

b. By revising the first sentence of paragraph (a) in Supplement No. 1, to read as follows:

§ 740.11 Governments and international organizations (GOV).

* * * * *

(b) * * *

(2) * * *

(iii) * * *

(A) *Items for official use within national territory by agencies of cooperating governments.* * * *

* * * * *

Supplement No. 1 to § 740.11—Additional Restrictions on Use of License Exception GOV

(a) Items for official use within the national territory by agencies of cooperating governments. * * *

* * * * *

PART 743—[AMENDED]

5. Section 743.1 is amended:

a. By revising paragraph (b);

b. By adding a note immediately following paragraph (c)(2);

c. By revising paragraph (d); and

d. By adding a note immediately following paragraph (e)(1)(ii), to read as follows:

§ 743.1 Wassenaar Arrangement.

* * * * *

(b) *Requirements.* You must submit two (2) copies of each report required under the provisions of this section and maintain accurate supporting records (see § 762.2(b) of the EAR) for all exports of items specified in paragraph (c) of this section under any of the following License Exceptions authorized by part 740 of the EAR: License Exceptions GBS, CIV, TSR, LVS, CTP, GOV and KMI (under the provisions of § 740.8(b)(2)(ii) and (iii) only). Exports of technology and source code under License Exception TSR to foreign nationals in the U.S. should not be reported. For purposes of this part 743, ''you'' has the same meaning as ''U.S. exporter'', as defined in part 772 of the EAR.

(c) * * *

(2) * * *

Note to paragraph (c)(2): Exports of computers controlled under 4A003.b to destinations in Computer Tier 3 (see § 740.7(d)(1) of the EAR) should not be included in the reports required under paragraph (c) of this section. Reporting for computers under 4A003.b to Computer Tier 3 destinations should be reported under the post-shipment verification reporting provisions of § 740.7(d)(4)(v) or under § 742.12(b)(3)(iv) of the EAR.

(d) *Country Exceptions.* You must report each export subject to the provisions of this section, except for exports to Wassenaar member countries, as identified in Supplement No. 1 to part 743.

(e) * * *

(1) * * *

(ii) * * *

Note to paragraph (e)(1)(ii): For exports of technology for which reports are required under § 743.1(c) of this section, the number of units in the shipment should be reported as one (1) for the initial export of the technology to a single ultimate consignee. Additional exports of the technology must be reported only when the type or scope of technology changes or exports are made to other ultimate consignees. Additionally, do not report the release of technology or source code subject to the EAR to foreign nationals in the U.S.

* * * * *

6. Part 743 is amended by adding a new Supplement No. 1 to read as follows:

Supplement No. 1 to Part 743—Wassenaar Arrangement Member Countries

Argentina
Australia
Austria
Belgium
Bulgaria
Canada
Czech Republic
Denmark
Finland
France
Germany
Greece
Hungary
Ireland
Italy
Japan
Luxembourg
Netherlands
New Zealand
Norway
Poland
Portugal
Romania
Russia
Slovakia
South Korea
Spain
Sweden
Switzerland
Turkey
Ukraine
United Kingdom
United States

Dated: October 5, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 98–27391 Filed 10–13–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8786]

RIN 1545–AU79

Source of Income From Sales of Inventory Partly From Sources Within a Possession of the United States; Also, Source of Income Derived From Certain Purchases From a Corporation Electing Section 936

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 863 governing the source of income from sales of inventory produced in the United States and sold in a possession of the United States or produced in a possession of the United States and sold in the United States; final regulations under section 863 governing the source of income from sales of inventory purchased in a possession of the United States and sold in the United States; and final regulations under section 936 governing the source of income of a taxpayer from the sale in the United States of property purchased from a corporation that has an election under section 936 in effect. This document affects persons who produce (in whole or in part) inventory in the United States and sell in a possession, or produce (in whole or in part) inventory in a possession and sell in the United States, as well as persons who purchase inventory in a possession and sell in the United States, and also persons who sell in the United States property purchased from a corporation that has a section 936 election in effect.

DATES: *Effective Date:* These regulations are effective November 13, 1998.

Applicability Date: These regulations apply to taxable years beginning on or after November 13, 1998.

FOR FURTHER INFORMATION CONTACT: Anne Shelburne, (202) 874–1305 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1556. Responses to this collection of information are mandatory.

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 control number.

The estimated average annual burden per respondent is approximately 2.5 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and the Office of Management and Budget, Attn: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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.

Background

This document contains final regulations under section 863 of the Internal Revenue Code (Code), providing rules to source income from cross-border sales of certain property, where the property is manufactured in a possession of the United States and sold in the United States, or vice versa, or purchased in a possession and sold in the United States. These regulations also contain rules under section 936 to source income of a taxpayer from the sale in the United States of property purchased from a corporation that has an election under section 936 in effect.

On October 10, 1997, proposed regulations (REG–251985–96) were published in the **Federal Register** (62 FR 52953). Having considered the comments, the IRS and the Treasury Department adopt the proposed regulations without significant change in this Treasury decision.

Explanation of Provisions

I. Income Partly From Sources Within a Possession

Section 863 authorizes the Secretary to promulgate regulations allocating or apportioning, to sources within or without the United States, all items of gross income, expenses, losses, and deductions other than those items specified in sections 861(a) and 862(a).

Guidance in these regulations to determine the source of possession income under section 863 concerns two types of transactions: transactions described in section 863(b)(2) for property produced in the United States and sold in a possession (or vice versa), and transactions described in section 863(b)(3) for property purchased in a possession and sold in the United States (collectively, Section 863 Possession Sales).

1. Methods for Allocating or Apportioning Gross Income From Section 863 Possession Sales

a. Property produced and sold. Under the final regulations, income from sales of inventory produced in the United States and sold in a possession of the United States or produced in a possession and sold in the United States (collectively, Possession Production Sales), is allocated or apportioned according to one of three methods.

Paragraph (f)(2)(i)(A) of the regulations makes the 50/50 method the general rule to allocate gross income from Possession Production Sales between production activity and business sales activity, so that the income from each type of activity can then be apportioned between U.S. and foreign sources. The taxpayer, however, may elect to apply the independent factory price (IFP) method (described in paragraph (f)(2)(i)(B)), or, with the consent of the District Director, the books and records method (described in paragraph (f)(2)(i)(C)).

Under the possession 50/50 method, the final regulations allocate half of the taxpayer's gross income from Possession Production Sales to production activity and half to business sales activity. The income is then apportioned between U.S. and possession sources based on a property fraction and a business sales activity fraction.

The final regulations apply the property fraction in § 1.863–3(c) to apportion the half of a taxpayer's income allocated to production activity. Thus, income is apportioned to the United States or to a possession or to other foreign sources based on the location of the taxpayer's production assets. Consistent with the changes made to the regulations under § 1.863–3(c), production assets are defined as tangible and intangible assets owned directly by the taxpayer that are directly used by the taxpayer to produce inventory sold in Possession Production Sales. Production assets are included in the fraction at their adjusted tax basis, consistent with the changes made to the regulations under § 1.863–3(c).

The other half of the taxpayer's gross income, allocated to business sales activity, is apportioned according to a business sales activity fraction. The portion of this income that is possession source income is determined by multiplying the income by a fraction, the numerator being the business sales activity of the taxpayer in the possession, and the denominator being the business sales activity of the taxpayer within the possession and outside the possession. The remaining income is sourced in the United States. Although some of the business sales activity factors not incurred in a possession may be incurred in a foreign country, Treasury and the IRS believe that the business sales activity fraction is only intended to source the business sales activity portion of Possession Production Sales outside the United States to the extent of business sales activity located in a possession.

Under the final regulations, as opposed to the current regulations, business sales activity is measured by the sum of certain expenses, including amounts paid for labor, materials, advertising, and marketing (but excluding any expenses or other amounts that are nondeductible under section 263A, interest, and research and development), plus receipts for the sale of goods. This formula is intended to reflect better the business sales activity producing the income by including more of the factors responsible for producing that income. Also, cost of goods sold is now excluded from the business sales activity fraction apportioning income from Possession Production Sales, because such costs generally reflect production activity. Production activity is already represented in the formula by the one-half of the taxpayer's income apportioned according to the location of production assets.

The final regulations provide explicit guidance for attributing business sales activity between the United States and a possession. In attributing business sales activity between the United States and a possession, expenses are allocated and apportioned between the United States and a possession based on the rules in §§ 1.861–8 through 1.861–14T. Gross sales are allocated to the United States or a possession based on the place of sale.

The final regulations make the IFP method elective, and thus eliminate any bias against taxpayers choosing to export through independent distributors. The regulations rely upon the regulations under § 1.863–3 for rules in applying the IFP method.

The final regulations permit taxpayers to request permission from the District Director to use their books and records to determine the source of their income. The final regulations refer to § 1.863–3(b)(3) in applying the method to Possession Production Sales.

b. Property purchased and sold. Paragraph (f)(3)(i)(A) makes the business activity method the general rule to apportion income between the United States and a possession, from sales of property purchased in a possession and sold in the United States (Possession Purchase Sales). The taxpayer may, however, elect to apply, with consent of the District Director, the books and records method.

The final regulations apportion the taxpayer's income from Possession Purchase Sales on the basis of a business activity fraction. The portion of this income that is possession source income is determined by multiplying the income by a fraction, the numerator being the business of the taxpayer in the possession, and the denominator being the business of the taxpayer within the possession and outside the possession.

The remaining income is sourced in the United States.

The business activity fraction is similar to the business sales activity fraction discussed previously, used to apportion the taxpayer's income in Possession Production Sales, except that the fraction applies only to expenses, cost of goods sold, and sales attributable to Possession Purchase Sales. In addition, the business activity fraction apportioning Possession Purchase Sales includes amounts paid for cost of goods sold. Such costs are attributed to the possession, however, only to the extent the property purchased is manufactured, produced, grown, or extracted in the possession. Treasury and the Internal Revenue Service anticipate that if a taxpayer acts in the reasonable belief that the products were manufactured in the possession, the taxpayer could act on that basis in preparing its tax return. The business activity fraction reflects the view of Treasury and the IRS that the purchase rule of section 863(b)(3) was intended to apply only to purchase and resale transactions where the goods purchased are created or derived from the possession.

The final regulations permit taxpayers to request permission from the District Director to use their books and records to determine the source of their income. The proposed regulations refer to § 1.863–3(b)(3) in applying the method to Possession Purchase Sales.

2. Determination of Source of Gross Income

Under the final regulations, once gross income attributable to production activity, business activity, or sales activity has been determined under one of the prescribed methods, the source of the gross income is determined separately for each type of income. The source of gross income attributable to production activity (when applying the possession 50/50 method) is determined under paragraph (c)(1), based on the location of production assets. The source of gross income attributable to sales activity (when applying the IFP method or the books and records method) is determined under paragraph (c)(2), based generally on the location of the sale. The source of gross income attributable to business sales activity (when applying the possession 50/50 method) is determined under paragraph (f)(2)(ii)(B), based on expenses and gross sales attributable to Possession Production Sales. The source of gross income attributable to business activity (when applying the business activity method) is determined under paragraph (f)(3)(ii), based on expenses, cost of goods sold, and gross sales attributable to Possession Purchase Sales.

3. Determination of Source of Taxable Income

Once the source of gross income is determined under paragraph (f)(2) or (3), taxpayers then determine the source of taxable income. Under paragraph (f)(4), taxpayers must allocate and apportion under §§ 1.861–8 through 1.861–14T the amounts of expenses, losses and other deductions to gross income determined under each of the prescribed methods. In the case of amounts of expenses, losses and other deductions allocated and apportioned to gross income determined under the IFP method or the books and records method, the taxpayer must apply the rules of §§ 1.861–8 through 1.861–14T to allocate and apportion these amounts between gross income from sources within the United States and within a possession. However, for expenses, losses and other deductions allocated and apportioned to gross income determined under the possessions 50/50 method or gross income from Possession Purchase Sales determined under the business activity method, taxpayers must apportion expenses and other deductions pro rata based on the relative amounts of U.S. and possession source gross income. Nevertheless, the research and experimental (R&E) expense allocation rules in § 1.861–17 apply to taxpayers using the 50/50 method, so that the R&E set aside (described in § 1.861–17) remains available to such taxpayers.

4. Treatment of Gross Income Derived From Certain Purchases From a Corporation That Has an Election in Effect Under Section 936.

The final regulations clarify that section 863 does not apply to determine the source of a taxpayer's gross income derived from a purchase of inventory from a corporation that has an election in effect under section 936, if the taxpayer's income from sales of that inventory is taken into account to determine benefits under section 936(h)(5)(C) for the section 936 corporation.

5. Treatment of Partners and Partnerships

The final regulations rely on the rules in § 1.863–3(g) for determining the appropriate treatment in transactions involving partnerships. Under those rules, the aggregate approach applies to a partnership's production and sales activity for two purposes only. First, the aggregate approach applies in determining the character of a partner's distributive share of partnership income. Second, the aggregate approach applies in sourcing income from sales of inventory property that is transferred in-kind from or to a partnership.

6. Election and Reporting Rules

Under paragraph (f)(6)(i) of the final regulations, a taxpayer must use the 50/50 method to determine the source of income from Possession Production Sales unless the taxpayer elects to use the IFP method, or elects the books and records method. For Possession Purchase Sales, a taxpayer must use the business activity method, unless the taxpayer elects the books and records method. The taxpayer makes an election by using the method on its timely filed original tax return. That method must be used in later taxable years unless the Commissioner or his delegate consents to a change. Permission to change methods in later years will be granted unless the change would result in a substantial distortion of the source of income.

A taxpayer must fully explain the methodology used in applying either paragraph (f)(2) or (3), and the amount of income allocated or apportioned to U.S. and foreign sources, in a statement attached to its tax return.

II. Income Derived From Certain Purchases From a Corporation That Has an Election in Effect Under Section 936

These regulations clarify that, where a taxpayer purchases a product from a corporation that has an election in effect under section 936, the source of the taxpayer's gross income derived from sales of that product (in whatever form sold) in the United States is U.S. source, if the taxpayer's income from sales of that product is taken into account to determine benefits under section 936(h)(5)(C)(i) for the section 936 corporation. The taxpayer's income is U.S. source without regard to whether a possession product is a component, end-product form, or integrated product. No inference should be drawn concerning the treatment of transactions involving sales of property purchased from a section 936 corporation entered into before the regulations are applicable.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the rules of this section principally

impact large multinationals who pay foreign taxes on substantial foreign operations and therefore the rules will impact very few small entities. Moreover, in those few instances where the rules of this section impact small entities, the economic impact on such entities is not likely to be significant. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Anne Shelburne, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by revising the entry for ''Section 1.863–3'', removing the entry for ''Sections 1.936–4 through 1.936–7'' and adding entries in numerical order to read as follows:

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

Section 1.863–3 also issued under 26 U.S.C. 863(a) and (b), and 26 U.S.C. 936(h).* * *

Section 1.936–4 also issued under 26 U.S.C. 936(h).

Section 1.936–5 also issued under 26 U.S.C. 936(h).

Section 1.936–6 also issued under 26 U.S.C. 863(a) and (b), and 26 U.S.C. 936(h).

Section 1.936–7 also issued under 26 U.S.C. 936(h).* * *

Par. 2. Section 1.863–3 is amended as follows:

1. Paragraph (f) is revised.

2. Paragraph (h) is amended by adding a sentence at the end of the paragraph.

The revision and addition read as follows:

§ 1.863–3 Allocation and apportionment of income from certain sales of inventory.

* * * * *

(f) *Income partly from sources within a possession of the United States*—(1) *In general.* This paragraph (f) relates to gains, profits, and income, which are treated as derived partly from sources within the United States and partly from sources within a possession of the United States (Section 863 Possession Sales). This paragraph (f) applies to determine the source of income derived from the sale of inventory produced (in whole or in part) by the taxpayer within the United States and sold within a possession, or produced (in whole or in part) by a taxpayer in a possession and sold within the United States (Possession Production Sales). It also applies to determine the source of income derived from the purchase of personal property within a possession of the United States and its sale within the United States (Possession Purchase Sales). A taxpayer subject to this paragraph (f) must divide gross income from Section 863 Possession Sales using one of the methods described in either paragraph (f)(2)(i) of this section (in the case of Possession Production Sales) or paragraph (f)(3)(i) of this section (in the case of Possession Purchase Sales). Once a taxpayer has elected a method, the taxpayer must separately apply that method to the applicable category of Section 863 Possession Sales in the United States and to those in a possession. The source of gross income from each type of activity must then be determined under either paragraph (f)(2)(ii) or (3)(ii) of this section, as appropriate. The source of taxable income from Section 863 Possession Sales is determined under paragraph (f)(4) of this section. The taxpayer must apply the rules for computing gross and taxable income by aggregating all Section 863 Possession Sales to which a method in this section applies after separately applying that method to Section 863 Possession Sales in the United States and to Section 863 Possession Sales in a possession. This section does not apply to determine the source of a taxpayer's gross income derived from a sale of inventory purchased from a corporation that has an election in effect under section 936, if the taxpayer's income from sales of that inventory is taken into account to determine benefits under section 936 for the section 936 corporation. For rules to be applied to determine the source of such income, see § 1.936–6(a)(5) Q&A 7a and 1.936–6(b)(1) Q&A 13.

(2) *Allocation or apportionment for Possession Production Sales*—(i) *Methods for determining the source of gross income for Possession Production Sales*—(A) *Possession 50/50 method.* Under the possession 50/50 method, gross income from Possession Production Sales is allocated between production activity and business sales activity as described in this paragraph (f)(2)(i)(A). Under the possession 50/50 method, one-half of the taxpayer's gross income will be considered income attributable to production activity and the source of that income will be determined under the rules of paragraph (f)(2)(ii)(A) of this section. The remaining one-half of such gross income will be considered income attributable to business sales activity and the source of that income will be determined under the rules of paragraph (f)(2)(ii)(B) of this section.

(B) *IFP method.* In lieu of the possession 50/50 method, a taxpayer may elect the independent factory price (IFP) method. Under the IFP method, gross income from Possession Production Sales is allocated to production activity or sales activity using the IFP method, as described in paragraph (b)(2) of this section, if an IFP is fairly established under the rules of paragraph (b)(2) of this section. See paragraphs (f)(2)(ii)(A) and (C) of this section for rules for determining the source of gross income attributable to production activity and sales activity.

(C) *Books and records method.* A taxpayer may elect to allocate gross income using the books and records method described in paragraph (b)(3) of this section, if it has received in advance the permission of the District Director having audit responsibility over its return. See paragraph (f)(2)(ii) of this section for rules for determining the source of gross income.

(ii) *Determination of source of gross income from production, business sales, and sales activity*—(A) *Gross income attributable to production activity.* The source of gross income from production activity is determined under the rules of paragraph (c)(1) of this section, except that the term possession is substituted for foreign country wherever it appears.

(B) *Gross income attributable to business sales activity*—(*1*) *Source of gross income.* Gross income from the taxpayer's business sales activity is sourced in the possession in the same proportion that the amount of the taxpayer's business sales activity for the taxable year within the possession bears to the amount of the taxpayer's business sales activity for the taxable year both within the possession and outside the possession, with respect to Possession Production Sales. The remaining income is sourced in the United States.

(*2*) *Business sales activity.* For purposes of this paragraph (f)(2)(ii)(B), the taxpayer's business sales activity is equal to the sum of—

(*i*) The amounts for the taxable period paid for wages, salaries, and other compensation of employees, and other expenses attributable to Possession Production Sales (other than amounts that are nondeductible under section 263A, interest, and research and development); and

(*ii*) Possession Production Sales for the taxable period.

(*3*) *Location of business sales activity.* For purposes of determining the location of the taxpayer's business activity within a possession, the following rules apply:

(*i*) *Sales.* Receipts from gross sales will be attributed to a possession under the provisions of paragraph (c)(2) of this section.

(*ii*) *Expenses.* Expenses will be attributed to a possession under the rules of §§ 1.861–8 through 1.861–14T.

(C) *Gross income attributable to sales activity.* The source of the taxpayer's income that is attributable to sales activity, as determined under the IFP method or the books and records method, will be determined under the provisions of paragraph (c)(2) of this section.

(3) *Allocation or apportionment for Possession Purchase Sales*—(i) *Methods for determining the source of gross income for Possession Purchase Sales*—(A) *Business activity method.* Gross income from Possession Purchase Sales is allocated in its entirety to the taxpayer's business activity, and is then apportioned between U.S. and possession sources under paragraph (f)(3)(ii) of this section.

(B) *Books and records method.* A taxpayer may elect to allocate gross income using the books and records method described in paragraph (b)(3) of this section, subject to the conditions set forth in paragraph (b)(3) of this section. See paragraph (f)(2)(ii) of this section for rules for determining the source of gross income.

(ii) *Determination of source of gross income from business activity*—(A) *Source of gross income.* Gross income from the taxpayer's business activity is sourced in the possession in the same proportion that the amount of the taxpayer's business activity for the taxable year within the possession bears to the amount of the taxpayer's business activity for the taxable year both within the possession and outside the possession, with respect to Possession Purchase Sales. The remaining income is sourced in the United States.

(B) *Business activity.* For purposes of this paragraph (f)(3)(ii), the taxpayer's business activity is equal to the sum of—

(*1*) The amounts for the taxable period paid for wages, salaries, and other compensation of employees, and other expenses attributable to Possession Purchase Sales (other than amounts that are nondeductible under section 263A, interest, and research and development);

(*2*) Cost of goods sold attributable to Possession Purchase Sales during the taxable period; and

(*3*) Possession Purchase Sales for the taxable period.

(C) *Location of business activity.* For purposes of determining the location of the taxpayer's business activity within a possession, the following rules apply:

(*1*) *Sales.* Receipts from gross sales will be attributed to a possession under the provisions of paragraph (c)(2) of this section.

(*2*) *Cost of goods sold.* Payments for cost of goods sold will be properly attributable to gross receipts from sources within the possession only to the extent that the property purchased was manufactured, produced, grown, or extracted in the possession (within the meaning of section 954(d)(1)(A)).

(*3*) *Expenses.* Expenses will be attributed to a possession under the rules of §§ 1.861–8 through 1.861–14T.

(iii) *Examples.* The following examples illustrate the rules of paragraph (f)(3)(ii) of this section relating to the determination of source of gross income from business activity:

Example 1. (i) U.S. Co. purchases in a possession product X for $80 from A. A manufactures X in the possession. Without further production, U.S. Co. sells X in the United States for $100. Assume U.S. Co. has sales and administrative expenses in the possession of $10.

(ii) To determine the source of U.S. Co.'s gross income, the $100 gross income from sales of X is allocated entirely to U.S. Co.'s business activity. Forty-seven dollars of U.S. Co.'s gross income is sourced in the possession. [Possession expenses ($10) plus possession purchases (i.e., cost of goods sold) ($80) plus possessions sales ($0), divided by total expenses ($10) plus total purchases ($80) plus total sales ($100).] The remaining $53 is sourced in the United States.

Example 2. (i) Assume the same facts as in *Example 1,* except that A manufactures X outside the possession.

(ii) To determine the source of U.S. Co.'s gross income, the $100 gross income is allocated entirely to U.S. Co.'s business activity. Five dollars of U.S. Co.'s gross income is sourced in the possession. [Possession expenses ($10) plus possession purchases ($0) plus possession sales ($0), divided by total expenses ($10) plus total purchases ($80) plus total sales ($100).] The $80 purchase is not included in the numerator used to determine U.S. Co.'s business activity in the possession, since product X was not manufactured in the possession. The remaining $95 is sourced in the United States.

(4) *Determination of source of taxable income.* Once the source of gross income has been determined under paragraph (f)(2) or (3) of this section, the taxpayer must properly allocate and apportion separately under §§ 1.861–8 through 1.861–14T the amounts of its expenses, losses, and other deductions to its respective amounts of gross income from Section 863 Possession Sales determined separately under each method described in paragraph (f)(2) or (3) of this section. In addition, if the taxpayer deducts expenses for research and development under section 174 that may be attributed to its Section 863 Possession Sales under § 1.861–17, the taxpayer must separately allocate or apportion expenses, losses, and other deductions to its respective amounts of gross income from each relevant product category that the taxpayer uses in applying the rules of § 1.861–17. Thus, in the case of gross income from Section 863 Possession Sales determined under the IFP method or books and records method, a taxpayer must apply the rules of §§ 1.861–8 through 1.861–14T to properly allocate or apportion amounts of expenses, losses and other deductions, allocated and apportioned to such gross income, between gross income from sources within and without the United States. However, in the case of gross income from Possession Production Sales determined under the possessions 50/50 method or gross income from Possession Purchase Sales computed under the business activity method, the amounts of expenses, losses, and other deductions allocated and apportioned to such gross income must be apportioned between sources within and without the United States pro rata based on the relative amounts of gross income from sources within and without the United States determined under those methods, except that the rules regarding the allocation and apportionment of research and experimental expenditures in § 1.861–17 shall apply to such expenditures of taxpayers using the 50/50 method.

(5) *Special rules for partnerships.* In applying the rules of this paragraph (f) to transactions involving partners and partnerships, the rules of paragraph (g) of this section apply.

(6) *Election and reporting rules*—(i) *Elections under paragraph (f)(2) or (3) of this section.* If a taxpayer does not elect one of the methods specified in

paragraph (f)(2) or (3) of this section, the taxpayer must apply the possession 50/50 method in the case of Possession Production Sales or the business activity method in the case of Possession Purchase Sales. The taxpayer may elect to apply a method specified in either paragraph (f)(2) or (3) of this section by using the method on a timely filed original return (including extensions). Once a method has been used, that method must be used in later taxable years unless the Commissioner consents to a change. Permission to change methods from one year to another year will be granted unless the change would result in a substantial distortion of the source of the taxpayer's income.

(ii) *Disclosure on tax return.* A taxpayer who uses one of the methods described in paragraph (f)(2) or (3) of this section must fully explain in a statement attached to the tax return the methodology used, the circumstances justifying use of that methodology, the extent that sales are aggregated, and the amount of income so allocated.

* * * * *

(h) *Effective dates.* * * * However, the rules of paragraph (f) of this section apply to taxable years beginning on or after November 13, 1998.

Par. 3. In § 1.936–6, paragraph (a)(5) Q&A 7a is added to read as follows:

§ 1.936–6 Intangible property income when an election out is made: Cost sharing and profit split options; covered intangibles.

* * * * *

(a) * * *

(5) * * *

Q.7a: What is the source of the taxpayer's gross income derived from a sale in the United States of a possession product purchased by the taxpayer (or an affiliate) from a corporation that has an election in effect under section 936, if the income from such sale is taken into account to determine benefits under cost sharing for the section 936 corporation? Is the result different if the taxpayer (or an affiliate) derives gross income from a sale in the United States of an integrated product incorporating a possession product purchased by the taxpayer (or an affiliate) from the section 936 corporation, if the taxpayer (or an affiliate) processes the possession product or an excluded component in the United States?

A.7a: Under either scenario, the income is U.S. source, without regard to whether the possession product is a component, end-product, or integrated product. Section 863 does not apply in determining the source of the taxpayer's income. This Q&A 7a is applicable for taxable years beginning on or after November 13, 1998.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In § 602.101, paragraph (c) is amended in the table by revising the entry for 1.863–3 to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where	Current OMB identified and described control No.
* * * * *	
1.863–3	1545–1476 1545–1556
* * * * *	

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

Approved: September 18, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury for Tax Policy.

[FR Doc. 98–27395 Filed 10–13–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[SPATS No. IA–005–FOR]

Iowa Regulatory Program

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

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

SUMMARY: OSM is announcing receipt of an amendment to the Iowa regulatory program (Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Iowa proposes to add revegetation success guidelines, entitled ''Revegetation Success Standards and Statistically Valid Sampling Techniques,'' to its program. These guidelines include revegetation success standards, normal husbandry practices, and statistically valid sampling procedures and techniques for determining revegetation success on areas being restored to various land uses. Iowa intends to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

This document gives the times and locations that the Iowa program and the amendment to that program are available for public inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.s.t., November 13, 1998. If requested, we will hold a public hearing on the amendment on November 9, 1998. We will accept requests to speak at the hearing until 4:00 p.m., c.s.t. on October 29, 1998.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Perry L. Pursell, Mid-Continent Regional Coordinating Center, at the address listed below.

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

Perry L. Pursell, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463–6460.

Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Henry A. Wallace Building, Des Moines, Iowa 50319, Telephone: (515) 281–6147.

FOR FURTHER INFORMATION CONTACT: Perry L. Pursell, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet: ppursell@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Program

On January 21, 1981, the Secretary of Interior conditionally approved the Iowa program, effective April 10, 1981. You can find background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 21, 1981,

Federal Register (46 FR 5885). You can find later actions on the Iowa program at 30 CFR 915.10, 915.15, and 915.16.

II. Description of the Proposed Amendment

By letter dated September 28, 1998 (Administrative Record No. IA–441), Iowa sent us an amendment to its program under SMCRA. Iowa sent the amendment in response to our letter dated August 1, 1986 (Administrative Record No. IA–280), that we sent to Iowa under 30 CFR 732.17(c). Below is a summary of the revegetation success guidelines proposed by Iowa. The full text of the Iowa program amendment is available for public inspection at the locations listed above under **ADDRESSES**.

1. Part I. Introduction

Part I includes the purpose and scope of the revegetation success guidelines and the State and Federal regulations that apply to or address the requirements for revegetation success standards.

2. Part II. Terms

The following terms that apply to the revegetation success guidelines are defined in Part II: (1) Permittee; (2) Permit; (3) Reference Area; (4) Prime Farmland; (5) Control Area; (6) Statistically Valid; (7) USDA–NRCS or NRCS; (8) Significant Figures; (9) Erosion; (10) Rill Erosion; (11) Gully Erosion; (12) Sheet Erosion; and (13) Soil Map Unit.

3. Part III. General Requirements and Exclusions of Revegetation

Part III.A. contains information on the erosion and ground cover criteria that an area must meet before it is eligible for Phase II bond release.

Part III.B. includes sampling dates for Phase II ground cover and general revegetation requirements, and sampling and/or harvest dates for production data. It also includes dates for reporting the schedule of proposed revegetation activity and the results of the previous year's revegetation activities.

Part III.C. describes the general revegetation requirements for prime farmland; cropland; pasture land and forage crops; industrial, commercial, or residential lands; recreational, wildlife, and forested lands; and remined lands.

Part III.D. concerns requirements on averaging of sampling data to meet revegetation success standards.

Part III.E. excludes road surface areas and water covered surfaces of streams and impoundments from having to meet Iowa's revegetation success standards. This part also requires permanent impoundments to be constructed outside the prime farmland areas, but within the reclaimed permit area.

Part III.F. contains requirements for the use of reference areas for establishing revegetation success standards. Data from reference areas can be used for direct comparison only when Iowa has approved the use of reference areas in the permit.

Part III.G. requires that all revegetated areas meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws and regulations. The revegetated areas must meet these requirements before the collection of the data that is used to prove the establishment of any revegetation success standards. This part includes a list of primary and secondary noxious weeds that will not be allowed to grow on any area within the permit boundaries.

Part III.H. describes normal husbandry practices that can be used in the repair of rills and gullies without restarting the responsibility period. It includes requirements for terrace repair and maintenance; riprap repair and maintenance; land smoothing and reseeding; and liming, fertilizing and interseeding.

4. Part IV. Revegetation Success Standards

Part IV contains revegetation success standards and mitigation plan requirements for the land use categories of prime farmland; pasture land; cropland; industrial, commercial, or residential; recreational, wildlife, and forested lands; and remined lands.

5. Part V. Sampling Procedures and Techniques

Part V describes the sampling procedures and techniques for corn, soybeans, oats, and wheat crops; forage crops; ground cover; and trees and shrubs.

6. Part VI. Statistical Analysis of Sampling Data

Part VI explains the statistical analysis used to determine if the collected revegetation success sample data for production and ground cover meet the appropriate revegetation success standards.

7. Technical Documents

Iowa included the following technical documents in its revegetation guidelines: (1) Lucas County Soil Map Unit Yield Data; (2) Mahaska County Soil Map Unit Yield Data; (3) Marion County Soil Map Unit Yield Data; (4) Monroe County Soil Map Unit Yield Data; (5) Recommended Tree Planting Species in Iowa; (6) Iowa Soil Map Units That Qualify As Prime Farmland; and (7) Iowa State University, Cooperative Extension Service, Pamphlet PM–287, Take a Good Soil Sample.

III. Public Comment Procedures

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

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Mid-Continent Regional Coordinating Center.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.s.t. on October 29, 1998. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodation to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have spoken.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER**

INFORMATION CONTACT. All meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We also make a written summary of each meeting a part of the Administrative Record.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

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

National Environmental Policy Act

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

Paperwork Reduction Act

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

Regulatory Flexibility Act

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

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 2, 1998.

Brent Wahlquist,

Mid-Continent Regional Coordinating Center.

[FR Doc. 98–27503 Filed 10–13–98; 8:45 am]

BILLING CODE 4310–05–P; 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD05–98–084]

RIN 2115–AA98

Delaware River Safety Zone and Anchorage Regulations

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Army Corps of Engineers is dredging parts of the Delaware River, including the Marcus Hook Range Ship Channel. Because of the dredging operations, temporary additional requirements will be imposed in Marcus Hook Anchorage (Anchorage 7), the Deepwater Point Anchorage (Anchorage 6), and the Mantau Creek Anchorage (Anchorage 9). The Coast Guard is also establishing a temporary moving safety zone around the dredge vessel Essex that will be working in the Marcus Hook Range Ship Channel adjacent to Anchorage 7.

EFFECTIVE DATES: Paragraph (b)(11) in 33 CFR 110.157 is effective from October 6, 1998 until 6 a.m. on December 7, 1998. Section 165.T05–084 is effective from October 6, 1998 until 6 a.m. on December 7, 1998.

FOR FURTHER INFORMATION CONTACT: BMC R. L. Ward, Project Officer, U.S. Coast Guard Captain of the Port, 1 Washington Ave., Philadelphia, PA 19147–4395, Phone: (215) 271–4888.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rule Making (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. U.S. Army Corps of Engineers, Philadelphia District, informed the Coast Guard on September 22, 1998 that dredging operations would commence on October 6, 1998. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to protect mariners against potential hazards associated with the dredging operations in the Marcus Hook Range Ship Channel and to modify the anchorage regulations to facilitate vessel traffic.

Background and Purpose

The U.S. Army Corps of Engineers (ACOE) notified the Coast Guard that it needed to conduct dredging operations on the Delaware River, in the vicinity of the Marcus Hook Range Ship Channel. The dredging is needed to maintain the project depth of the channel. Similar dredging was conducted in 1995, 1996, and 1997. This period of dredging began October 6, 1998 and is anticipated to end on December 7, 1998.

The reduce the hazards associated with dredging the channel, vessel traffic that would normally transit through the Marcus Hook Range Ship Channel will be diverted through part of Anchorage 7, reducing available anchorage space by approximately one half. Vessels will continue to be allowed to anchor in available parts of Anchorage 7 during the dredging operations; however, permission to anchor must be obtained from the Captain of the Port, who will identify those parts of Anchorage 7 that are expected to be available.

For the protection of mariners transiting in the vicinity of dredging operations, the Coast Guard is also establishing a moving safety zone around the dredging vessel Essex. The safety zone will ensure mariners remain a safe distance from the dredging equipment that could potentially be dangerous.

Discussion of the Regulation

Section 110.157(b)(2) allows vessels to anchor for up to 48 hours in the anchorages listed in 110.157(a), which includes Anchorage 7. However, because of the limited anchorage space available in Anchorage 7, the Coast

Guard is adding a temporary paragraph 33 CFR 110.157(b)(11) to provide additional requirements and restrictions on vessels utilizing Anchorage 7. During the effective period, vessels desiring to use Marcus Hook Anchorage (7) must obtain permission from the Captain of the Port Philadelphia at least 24 hours in advance. The Captain of the Port will permit only one vessel at a time to anchor in Anchorage 7 and will grant permission on a ''first come, first serve'' basis. A vessel will be directed to a location within Anchorage 7 where it may anchor, and will not be permitted to remain in the Anchorage 7 for more than 12 hours.

The Coast Guard expects that vessels normally permitted to anchor in Anchorage 7 will use Anchorage 6 off Deepwater Point or Anchorage 9 near the entrance to Mantau Creek, because they are the closest anchorage to Anchorage 7. To control access to Anchorage 7, the Coast Guard is requiring that any vessel desiring to anchor in Anchorage 7 obtain advance permission from the Captain of the Port. To control access to Anchorages 6 and 9, the Coast Guard is requiring that any vessel 700 feet or greater in length obtain advance permission from the Captain of the Port before anchoring. The Coast Guard is also concerned that the holding ground in Anchorages 6 and 9 is not as good as in Anchorage 7. Therefore, a vessel 700 to 750 feet in length is required to have one tug standing alongside while at anchor, and a vessel of over 750 feet in length must have two tugs standing alongside. The tug(s) must have sufficient horsepower to prevent a vessel from swinging into the channel if necessary.

The Coast Guard is also establishing a moving safety zone within a 150-year radius of the dredging operations being conducted in the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7 by the dredge vessel Essex. The safety zone will protect mariners transiting the area from the potential hazards associated with dredging operations. Vessels transiting the Marcus Hook Range Ship Channel will have to divert from the main ship channel through Anchorage 7, and must operate at the minimum safe speed necessary to maintain steerage and reduce wake. No vessel may enter the safety zone unless it receives permission from the Captain of the Port.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation requires certain vessels to have at least one tug alongside while at anchor, the requirement only applies to vessels 700 feet or greater in length that are anchored in Anchorages 6 and 9. Vessels anchoring in Anchorage 7 are not required to have assist tugs alongside. Alternate anchorages, such as Anchorage A (Breakwater) and Anchorage 1 (Big Stone) in Delaware Bay, are also reasonably close and generally available. Vessels anchoring in Anchorages A and 1 are typically not required to have tug alongside. Furthermore, few vessels 700 feet or greater are expected to enter the port during the effective period. The majority of vessels expected are less than 700 feet and thus will not be required to have tugs alongside. The Captain of the Port, Philadelphia will direct anchoring of vessels so as not to significantly impede traffic flow in the vicinity of the dredging operations.

Environment

The Coast Guard considered the environmental impact of this temporary rule and concluded that under figure 2–1, paragraphs (34)(f)–(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Regulations that affect anchorage grounds and establish safety zones are excluded under that authority.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism Assessment

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this temporary final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, waterways.

Regulation

In consideration of the foregoing, the Coast Guard amends 33 CFR part 110 and CFR part 165 as follows:

PART 110—[AMENDED]

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

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.157, a new temporary paragraph (b)(11) is added to read as follows:

§ 110.157 Delaware Bay and River.

* * * * *

(b) * * *

(11) In addition to the requirements and restrictions of paragraph (b)(2), the provisions of this paragraph apply to the anchorages in paragraphs (a)(7), (a)(8), and (a)(10).

(i) Prior to anchoring in Anchorage 7 off Marcus Hook, as described in paragraph (a)(8) of this section, a vessel must first obtain permission from the Captain of the Port, Philadelphia, at least 24 hours in advance of arrival. Permission to anchor will be granted on a ''first-come, first-serve'' basis. The Captain of the Port will allow only one vessel at a time to anchor in Anchorage 7, and no vessel may remain within Anchorage 7 for more than 12 hours.

(ii) For Anchorage 6 as described in paragraph (a)(7) of this section, and Anchorage 9 as described in paragraph (a)(10) of this section.

(A) Any vessel 700 feet or greater in length requesting anchorage shall obtain permission from the Captain of the Port, Philadelphia, PA at least 24 hours in advance.

(B) Any vessel from 700 to 750 feet in length shall have on tug alongside at all times while the vessel is at anchor.

(C) Any vessel greater than 750 feet in length shall have two tugs alongside at all times while the vessel is at anchor.

(D) The master, owner, or operator of a vessel at anchor shall ensure that any tug(s) required by this section is of sufficient horsepower to assist with necessary maneuvers to keep the vessel clear of the navigation channel.

(iii) *Captain of the Port of COTP* means the Captain of the Port, Philadelphia, Pennsylvania or any Coast Guard commissioned, warrant, or petty officer authorized to act on his behalf.

(iv) This paragraph is effective from October 6, 1998 until 6 a.m. on December 7, 1998.

* * * * *

PART 165—[AMENDED]

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

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

4. A new § 165.T05–084 us added to read as follows:

§ 165.T05–085 Safey Zone: Delaware River, Marcus Hook Range Ship Channel.

(a) *Location:* The following area is a safety zone: All waters within 150 yards of the dredging vessel Essex operating in or near the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7.

(b) *Effective Dates:* This section is effective from October 6, 1998 until 6 a.m. on December 7, 1998.

(c) *Regulations:* The following regulations shall apply within the safety zone.

(1) In accordance with the general regulations in § 165.23, entry into this safety zone is prohibited unless authorized by the Captain of the Port. The general requirements of § 165.23 also apply to this regulation.

(2) The operator of any vessel in the safety zone shall proceeded as directed by the Captain of the Port.

(3) The Coast Guard vessel enforcing the safety zone may be contacted on channels 13 and 16 VHF–FM. The Captain of the Port, Philadelphia may be contacted at telephone number (215) 271–4940.

(d) *Captain of the Port or COTP* means The Captain of the Port, Philadephia, Pennsylvania or any Coast Guard commissioned, warrant, or petty officer authorized to act on his behalf.

Dated October 1, 1998.

Roger T. Rufe,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 98–27574 Filed 10–13–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–066]

RIN 2115–AE47

Drawbridge Operating Regulation; Buffalo Bayou, TX

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the operating regulation for the Lockwood Avenue Bridge across Buffalo Bayou, mile 2.3, in Houston, Harris County, Texas. The bridge was replaced with a fixed bridge and the drawbridge was removed in 1983 and the regulation governing its operation of the drawbridge is no longer applicable. The removal of this bridge also requires the change to the reference point for operating regulations on Buffalo Bayou. The Houston Belt and Terminal railroad bridge, mile 1.2, will become the reference point.

DATES: This regulation becomes effective on October 14, 1998.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. Commander (ob) maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION:

Background

The Lockwood Avenue Bridge across Buffalo Bayou was replaced with a fixed bridge and the drawbridge was removed in 1983. The elimination of this drawbridge necessitates the removal of the drawbridge operation regulation that pertained to this draw. This draw was used as a reference point to state that this bridge and all drawbridges downstream of this bridge shall open for the passage of vessels if at least 24 hours notice is given. As the Lockwood Avenue Bridge will be removed from this regulation, the Houston Belt and Terminal railroad bridge, mile 1.2, will become the reference point. The Houston Belt and Terminal railroad bridge, mile 1.2, and all drawbridges downstream of it shall continue to open on signal if at least 24 hours notice is given.

The Coast Guard has determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553) to forego notice and comment for this rulemaking because the drawbridge has been replaced with a fixed bridge and the regulation governing this bridge is no longer needed. The change in reference point is an administrative revision that is not a substantive change to the regulatory requirements for the other bridges governed by this section.

The Coast Guard, for the reason just stated, has also determined that good cause exists for this rule to become effective upon publication in the **Federal Register**.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget under that Order has not reviewed it. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include (1) small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less than 50,000.

Since the Lockwood Avenue Bridge across the Buffalo Bayou, mile 2.3 at Houston, Texas, has been replaced with a fixed bridge and the drawbridge has been removed, the rule governing this bridge is no longer needed. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under Figure 2–1, CE# 32(e) of the NEPA Implementing Procedures, COMDINST M16475.IC, this final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 105 Stat. 5039.

2. In § 117.955 revise paragraph (a) to read as follows:

§ 117.955 Buffalo Bayou.

(a) The draw of the Houston Belt and Terminal railroad bridge, mile 1.2 at Houston, and all drawbridges downstream of it, shall open on signal if at least 24 hours notice if given.

* * * * *

Dated: September 28, 1998.

Paul J. Pluta,

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

[FR Doc. 98–27575 Filed 10–13–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–064]

RIN 2115–AE47

Drawbridge Operating Regulation; Lafourche Bayou, LA

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule with request for comments.

SUMMARY: The Coast Guard is modifying the operating regulations for the SR1 vertical lift bridge (Galliano-Tarpon bridge), mile 30.6, and the SR1 pontoon bridge (Cote Blanche bridge), mile 33.9, near Cutoff, Lafourche Parish, Louisiana. This action is being taken at the request of the Greater Lafourche Port Commission. The modification of the operation regulation of these bridges will permit more efficient operation of the highway bridges and still provide for the reasonable needs of navigation.

DATES: This interim rule becomes effective on October 14, 1998. Comments must be received on or before December 14, 1998.

ADDRESSES: Comments may be mailed to Commander (ob), Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or deliver them to room 1313 at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. Commander (ob) maintains the public docket for this rulemkaing.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD08–98–064) and the specific section of the rule to which each comment applies, and the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose self-addressed stamped postcards or envelopes.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Maine Safety Council at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentation will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are David M. Frank, Project Manager, and LTJG Michele Woodruff, Project Attorney, Eighth Coast Guard District Legal Office.

Regulatory Information

This rule is being published as an interim rule and is being made effective on the date of publication. The Coast Guard had determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553) to forego notice of proposed rulemaking. The current regulation was established to assist in the safer and more timely transit of school buses and school children from school at the end of the school day. However, on August 14, 1998, the school system extended the school hours by 30 minutes, thus moving the end of day dismissal time outside of the present schedule for closure of the bridge to marine traffic. The change to the present operation regulations will coincide with the closure period with the new school hours and will not effect vessel traffic. The school year has already started and immediate relief is needed to offset traffic congestion.

The Coast Guard, for the reason just stated, has also determined that good cause exists for this rule to become effective upon publication in the **Federal Register**.

Background and Purpose

On August 21, 1995, a final rule was published in the **Federal Register** (60 FR 43373) stating that the draws of the SR 1 vertical lift bridge (Galliano-Tarpon bridge), mile 30.6, and the SR 1 pontoon bridge (Cote Blanche bridge), mile 33.9, both near Cutoff, shall open on signal except that, from 2 p.m. to 3 p.m., and from 4:30 p.m. to 5:30 p.m. Monday through Friday except Federal holidays, the draws need not open for the passage of vessels.

The purpose of the regulations was to provide relief for school bus traffic and other vehicular traffic that cross the bridges during peak hours of land traffic congestion. Since the establishment of the regulation, operations at the two bridges have run smoothly with no complaints or concerns expressed by either land or marine traffic. However, the school system has extended the hours of school by 30 minutes and the closure from 2 p.m. to 3 p.m. no longer conforms to the school bus operation schedule. The Greater Lafourche Port Authority has requested the modification of the existing regulation to reflect the change in the school hours. The Port Authority has requested that the closure hours from 2 p.m. to 3 p.m. be adjusted to 2:30 p.m. to 3:30 p.m. This modification of 30 minutes in the operating schedule will facilitate the movement of the school bus traffic

while still providing for the reasonable needs of navigation.

The SR 1 vertical lift bridge (Galliano-Tarpon bridge), mile 30.6, has averaged 383 bridge openings a month for vessel traffic over the past two years. This average out to less than 13 openings per day at the bridge. While statistics are not readily available for the other bridge, given its close proximity to the Tarpon bridge, its average opening should be similar or slightly lower as it is upstream of the SR 1 vertical lift bridge (Galliano-Tarpon bridge).

The SR 1 vertical lift bridge (Galliano-Tarpon bridge), mile 30.6, is owned and operated by the Louisiana Department of Transportation and Development (LDOTD). LDOTD has no objection to the modification of the operating schedule for the bridge.

The SR 1 ponton bridge (Cote Blanche bridge), mile 33.9, is owned and operated by Lafourche Parish. Lafourche Parish has no objection to the modification of the operating schedule for the bridge.

Discussion of Rules

The rule amends the existing regulation to adjust the time when the two bridges need not open for the passage of vessels. The regulations presently states that the draws of the SR 1 bridge, mile 30.6, and the SR 1 bridge, mile 33.9, both near Cutoff, shall open on signal except that, from 2 p.m. to 3 p.m., and from 4:30 p.m. to 5:30 p.m. Monday through Friday except Federal holidays, the draws need not open for the passage of vessels. The amended regulation modifies the times that the bridges need not open for the passage of vessels.

The modification to the regulation facilitates the movement of the school bus traffic while still providing for the reasonable needs of navigation. The amended regulation will require the draws of the SR 1 bridge, mile 30.6, and the SR 1 bridge, mile 33.9, both near Cutoff, shall open on signal except that, from 2:30 p.m. to 3:30 p.m., and from 4:30 p.m. to 5:30 p.m. Monday through Friday except Federal holidays, the draw need not open for the passage of vessels.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget under that Order has not reviewed it. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include (1) small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less than 50,000.

The amended regulation adjusts the hours that the bridges need not open for the passage of vessels by 30 minutes. Any impact the adjustment may have on small entities is not substantial. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under Figure 2–1 CE #32(e) of the NEPA Implementing Procedures, COMDINST M16475.IC, this final rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 105 Stat. 5039.

2. Amend § 117.465 to revise paragraph (a) to read as follows:

§ 117.465 Lafourche Bayou.

(a) The draws of the SR 1 bridge, mile 30.6, and the SR 1 bridge, mile 33.9, both near Cutoff, shall open on signal except that, from 2:30 p.m. to 3:30 p.m., and from 4:30 p.m. to 5:30 p.m. Monday through Friday except Federal holidays, the draws need not open for the passage of vessels.

* * * * *

Dated: September 28, 1998.

Paul J. Pluta,

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

[FR Doc. 98–27573 Filed 10–13–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Centers for Disease Control and Prevention

42 CFR Part 493

[HCFA–2024–FC]

RIN 0938–AI94

Medicare, Medicaid, and CLIA Programs; Extension of Certain Effective Dates for Clinical Laboratory Requirements Under CLIA

AGENCY: Centers for Disease Control and Prevention (CDC) and Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule extends certain effective dates for clinical laboratory requirements in regulations published on February 28, 1992, and subsequently revised December 6, 1994, and May 12, 1997, that implemented provisions of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). This rule extends the phase-in date of the quality control requirements applicable to moderate and high complexity tests and extends the date by which an individual with a doctoral degree must possess board certification to qualify as a director of a laboratory that performs high complexity testing.

These effective dates are extended to allow the Department additional time to issue revised quality control requirements and to determine whether changes are needed in the qualification requirements for individuals with doctoral degrees to serve as directors of laboratories performing high complexity testing. These effective date extensions do not reduce the current requirements for quality test performance.

DATES: *Effective Date:* October 14, 1998.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on December 14, 1998.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Centers for Disease Control and Prevention, Department of Health and Human Services, Attention: HCFA–2024–FC, 4770 Buford Hwy., NE., MS F11, Atlanta, Georgia 30341–3724.

If you prefer, you may deliver your written comments (1 original and 3 copies) to the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments may also be submitted electronically to the following e-mail address: HCFA2024FC@hcfa.gov. For e-mail comment procedures see the beginning of **SUPPLEMENTARY INFORMATION**. For further information on ordering copies of the **Federal Register** containing this document and on electronic access, see the beginning of **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Rhonda S. Whalen (CDC), (770) 488–8155.

Diane Milstead (HCFA), (410) 786–3531.

SUPPLEMENTARY INFORMATION:

E-Mail, Comments, Procedures, Availability of Copies, and Electronic Access

E-mail comments must include the full name and address of the sender. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address below.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2024–FC. Written comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: (202) 690–7890).

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I. Background

On February 28, 1992, we published in the **Federal Register** (57 FR 7002) final regulations with an opportunity for public comment. These regulations set forth the requirements for laboratories that are subject to the Clinical Laboratory Improvement Amendments of 1988 (CLIA). These regulations established uniform requirements for all laboratories regardless of location, size, or type of testing performed. In developing the regulations, we included requirements that would ensure the quality of laboratory services and be in the best interest of the public health. We recognized that a rule of this scope required time for laboratories to understand and to implement the new requirements. Therefore, certain requirements were phased-in and given prospective effective dates. We also planned to address the comments we received on the February 28, 1992 rule and make modifications, if necessary, in a subsequent final rule.

On December 6, 1994, and on May 12, 1997, we published in the **Federal Register** (59 FR 62606 and 62 FR 25855, respectively) final rules with opportunity for comment. These rules extended the phase-in of the quality control requirements applicable to moderate and high complexity tests and the date by which an individual with a doctoral degree must possess board certification to qualify as a director of a laboratory that performs high complexity testing. These changes were made due to the resource constraints that had prevented the Department of Health and Human Services from establishing the process to review manufacturers' test system quality control instructions for CLIA compliance and the inability of many laboratory directors to complete certification requirements within the time period originally specified.

II. Revisions to the Regulations

The date extensions provided by the May 12, 1997 rule have proven to be inadequate for the reasons set forth below. In addition, based on our evaluation of comments submitted in response to the May 12, 1997 rule and on advice from the Clinical Laboratory Improvement Advisory Committee (CLIAC) concerning the quality control requirements appropriate to ensure quality testing, and the qualification requirements for laboratory directors, we have found it necessary to make the following revisions to our regulations:

- We are extending from July 31, 1998, to December 31, 2000, the current phase-in quality control requirements for moderate and high complexity tests. The phase-in quality control requirements for unmodified, moderate complexity tests cleared by the Food and Drug Administration (FDA) (through 510(k) or premarket approval processes, unrelated to CLIA) are less stringent than the requirements applicable to high complexity and other moderate complexity tests.
- We are extending from July 31, 1998, to December 31, 2000, the date for laboratories to meet certain CLIA quality control requirements by following manufacturers' FDA CLIA-cleared test system instructions.
- We are extending from July 31, 1998, to December 31, 2000, the date by which individuals with doctoral degrees must obtain board certification to

qualify as director of a laboratory that performs high complexity tests.

These revisions are discussed in more detail below.

A. Quality Control Requirements

42 CFR 493.1202 contains the quality control requirements applicable to moderate and high complexity tests and allows a laboratory that performs tests of moderate complexity, using test systems cleared by the FDA through the section 510(k) or premarket approval processes, until July 31, 1998, to comply with the quality control provisions of part 493, subpart K, by meeting less stringent quality control requirements, as long as the laboratory has not modified the instrument, kit, or test system's procedure.

Section 493.1203, effective beginning July 31, 1998, establishes a mechanism for laboratories using commercial, unmodified tests to fulfill certain quality control requirements by following manufacturers' test system instructions that have been reviewed and determined by the FDA to meet applicable CLIA quality control requirements. Implementation of this review process, however, depended upon the availability of sufficient additional resources necessary to meet the projected workload. These resources were not available due to financial and other constraints of the program.

Following the publication of the December 1994 and May 12, 1997 final rules, we received comments that the current quality control requirements are not appropriate for some test methodologies and a comprehensive quality control regulation should be developed to address ''today's'' quality control needs. While a final rule addressing quality control issues raised by these commenters is under development, it will not be completed by July 31, 1998. Commenters raised issues that stressed the need to ensure that the quality control requirements are practical and flexible enough to accommodate different testing sites and test systems that range from current methodologies to new and emerging technologies, so as to not impede access. We must also, as the comments suggest, base the requirements on technical considerations as well as their impact on patient care.

To assist us in determining the types of quality control requirements necessary to monitor laboratory test performance, we will also consider advice provided by the CLIAC, as well as information obtained from a public meeting held in September 1996 for manufacturers and others to make presentations on quality control.

Concurrently, the FDA process for product clearance, an integral part of the CLIA quality control requirements published in 1992, is undergoing comprehensive changes (see **Federal Register** notices published January 21, 1998 (63 FR 3142) and February 2, 1998 (63 FR 5387)).

Due to the complexity of the issues that must be addressed, we are extending the July 31, 1998, sunset date for quality control standards in § 493.1202 to December 31, 2000, and extending the effective date for § 493.1203 from July 31, 1998, to December 31, 2000, to allow laboratories to continue to meet current regulations until we make further determinations regarding these requirements. We are extending the effective dates for these sections to December 31, 2000, to ensure that we have sufficient time to publish final rules concerning quality control. Extending the dates will allow sufficient time for publication of final regulations. Subsequent to the publication of the final regulations and prior to the actual implementation of the revised requirements, we must develop new surveyor guidelines, design new survey forms, reprogram the CLIA data system, conduct surveyor training, and inform and educate the laboratory community, CLIA exempt States and accreditation organizations. Time must be allocated for CLIA exempt States and approved accreditation organizations to review their requirements and determine whether they must make changes to maintain their overall equivalency with the CLIA requirements. CLIA exempt States may need to make changes to their State laws. Accreditation organizations may also need time to revise policies and requirements and have them approved by their organizations for adoption. Our implementation delay will provide States and accreditation organizations the time needed to make changes to their program requirements and for their subsequent review by CDC and HCFA. Failure to provide sufficient time for education and implementation could cause confusion and interfere with the laboratory community's continued compliance with CLIA requirements and jeopardize the continued equivalency of CLIA exempt States and accreditation organizations.

B. Laboratory Director Qualifications

Section 493.1443(b)(3) provides that a director of a laboratory performing high complexity testing, who has an earned doctoral degree in chemical, physical, biological, or clinical laboratory science from an accredited institution, must be certified by a board recognized by the Department as of July 31, 1998. The phase-in was designed to allow the Department adequate time to review requests for approval of certification programs and to ensure that a laboratory director with a doctoral degree had sufficient time to successfully complete the requirements for board certification.

As stated previously in the preamble to the December 1994 final rule, a number of comments to the February 1992 final rule suggested that board certification not be a mandatory requirement for currently employed individuals. In addition, CLIAC has suggested, and we are still considering, the development of alternative provisions to qualify currently employed individuals with a doctoral degree on the basis of laboratory training or experience, in lieu of requiring board certification.

We are extending the date by which an individual with a doctoral degree must possess board certification to qualify as a director of a laboratory that performs high complexity testing to December 31, 2000. This extension will allow time for review of the qualifications required for laboratory directors to determine whether modifications should be made for inclusion in the final rule being developed to address other CLIA personnel issues raised by commenters on the February 1992 final rule.

In summary, we are extending the phase-in period in § 493.1443(b)(3) from July 31, 1998, to December 31, 2000.

III. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on proposed rules. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

The revisions in this final rule are essential, because if the dates for quality control requirements are not extended, many laboratories performing moderate complexity testing will be faced unnecessarily with meeting more stringent and burdensome quality control requirements at a time when we are actively working to revise these same quality control requirements. While this activity has begun, the issues

we are addressing are many and complex, particularly in light of changing technologies. Since we will be revising the quality control requirements in rulemaking that should occur in the reasonably near future, to impose more stringent requirements now is unreasonable, unnecessary, and confusing. With respect to the personnel standards addressed in this rule, if the date is not extended, those individuals qualified as laboratory directors under the phase-in requirements based on their doctoral degree and laboratory training and work experience would no longer qualify to serve as directors of laboratories performing high complexity testing. Since we are considering revisions to the regulations which would allow individuals with a doctoral degree to qualify under alternative provisions that would recognize their laboratory training and experience, we would not want to disenfranchise these currently employed directors at this time. Extending the dates governing laboratory director qualifications will provide the opportunity for us to determine whether alternative provisions should be developed to qualify individuals with a doctoral degree who have laboratory training and experience, but do not have board certification. Accordingly, we believe that it is impracticable, unnecessary, and not in the public interest to engage in proposed rulemaking and believe there is good cause for doing so and to issue this final rule with a 60-day comment period. To do otherwise would create unnecessary confusion among laboratories in understanding the requirements they must meet with respect to quality control and laboratory director qualifications. It could also impose unnecessary burdens on laboratories and hardships on individuals affected by these requirements.

Also, because current regulations will expire on the July 31, 1998, additional urgency has been placed on the implementation of this rule. We, therefore, believe there is good cause to waive a delay in the effective date of this rule. To do otherwise would create unnecessary confusion among laboratories in understanding the requirements they must meet with respect to quality control and laboratory director qualifications. It could also impose unnecessary burdens on laboratories and hardships on individuals affected by these requirements.

IV. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all laboratories are considered to be small entities. Individuals and states are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. That analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Extending the phase-in periods will continue the quality control requirements in effect prior to July 31, 1998, allow adequate time for addressing all concerns with respect to revising quality control requirements, and not change costs, savings, burden, or opportunities to manufacturers, laboratories, individuals administering tests, or patients receiving the tests.

For these reasons, we have determined, and the Secretary certifies, that this regulation does not result in a significant impact on a substantial number of small entities and does not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits for any rule that may result in annual expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. The final rule has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this rule fall below these thresholds, as well.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. However, we will consider all comments we receive on the date extensions described in this rule by the date and time specified in the **ADDRESSES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 493

Grant programs-health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV, part 493 is amended as set forth below:

PART 493—LABORATORY REQUIREMENTS

1. The authority citation for part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), and the sentence following sections 1861(s)(11) through 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), and the sentence following 1395x(s)(11) through 1395x(s)(16)).

§ 493.1202 [Amended]

2. In § 493.1202, in the section heading, remove ''July 31, 1998.'' and add in its place ''December 31, 2000.''.

§ 493.1203 [Amended]

3. In § 493.1203, in the section heading, remove ''July 31, 1998.'' and add in its place ''December 31, 2000.''.

§ 493.1443 [Amended]

4. Section 493.1443 is amended as set forth below:

a. In § 493.1443(b)(3)(ii) introductory text, remove ''July 31, 1998,'' and add in its place ''December 31, 2000,''.

b. In § 493.1443(b)(3)(ii)(C), remove ''July 31, 1998,'' and add in its place ''December 31, 2000,''.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 20, 1998.

Claire V. Broome,

Acting Director, Centers for Disease Control and Prevention.

Dated: May 20, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: August 5, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–27523 Filed 10–13–98; 8:45 am]

BILLING CODE 4120–03–P
BILLING CODE 4160–18–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7269]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Calhoun and Talladega.	City of Oxford	August 20, 1998, August 27, 1998, *The Anniston Star.*	The Honorable Leon Smith, Mayor of the City of Oxford, P.O. Box 3383, Oxford, Alabama 36203–3383.	August 13, 1998 ..	010023 C
Connecticut: Fairfield.	City of Stamford ...	August 12, 1998, August 19, 1998, *The Advocate.*	The Honorable Dannel P. Malloy, Mayor of the City of Stamford, 888 Washington Boulevard, P.O. Box 10152, Stamford, Connecticut 06904–2152.	June 23, 1998	090015 C
Delaware: New Castle.	Unincorporated Areas.	September 8, 1998, September 15, 1998, *The News Journal.*	Mr. Thomas P. Gordon, Executive of New Castle County, Louis L. Redding City/County, Building 800 French Street, Wilmington, Delaware 19801.	December 14, 1998.	105085 F

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Georgia: Bibb and Jones.	City of Macon	August 18, 1998, August 25, 1998, *The Macon Telegraph*.	The Honorable Jim Marshall Mayor of the City of Macon, 700 Poplar Street, Macon, Georgia 31202.	August 12, 1998 ..	130011 D
Illinois:					
Will and DuPage.	Village of Bolingbrook.	August 5, 1998, August 12, 1998, *The Naperville Sun*.	The Honorable Roger C. Claar, Mayor of the Village of Bolingbrook, 375 West Briarcliff Road, Bolingbrook, Illinois 60440–0951.	June 17, 1998	170812 E
Cook	Village of Orland Park.	July 14, 1998, July 21, 1998, *Daily Southtown*.	The Honorable Daniel J. McLaughlin, Mayor of the Village of Orland Park, Village Hall, 14700 South Ravinia Avenue, Orland Park, Illinois 60462.	July 7, 1998	170140 B
Cook	Village of Palatine	July 27, 1998, July 31, 1998, *The Daily Herald*.	The Honorable Rita Mullins, Mayor of the Village of Palatine, 200 East Wood Street, Palatine, Illinois 60067–5339.	October 29, 1998	175170
Will	Village of Plainfield.	July 29, 1998, August 5, 1998, *The Enterprise*.	Mr. Terrance Burghard, Village of Plainfield Administrator, Lily Cache Plaza, 23145 West Lincoln Highway, Plainfield, Illinois 60544.	July 22, 1998	170771 E
Will	Unincorporated Areas.	July 31, 1998, August 7, 1998, *Herald-News*.	Mr. Charles R. Adelman, Will County Executive, 302 North Chicago Street, Joliet, Illinois 60432.	November 5, 1998	170695 E
Indiana:					
Marion	City of Indianapolis.	March 16, 1998, March 23, 1998, *Indianapolis Star*.	The Honorable Stephen Goldsmith, Mayor of the City of Indianapolis, 200 East Washington Street, Room 2501, Indianapolis, Indiana 46204–3357.	June 21, 1998	180159 D
Marion	City of Indianapolis.	July 2, 1998, July 9, 1998, *The Indianapolis Star*.	The Honorable Stephen Goldsmith, Mayor of the City of Indianapolis, 200 East Washington Street, Suite 2501, Indianapolis, Indiana 46204–3357.	June 26, 1998, ...	180159 D
Marion	City of Indianapolis.	August 18, 1998, August 25, 1998, *The Indianapolis Star*.	The Honorable Stephen Goldsmith, Mayor of the City of Indianapolis, 200 East Washington Street, City-County Building, Suite 2501, Indianapolis, Indiana 46204–3357.	November 23, 1998.	180159 D
Tippecanoe	City of Lafayette ...	August 20, 1998, August 27, 1998, *Journal & Courier*.	The Honorable Dave Heath, Mayor of the City of Lafayette, 20 North 6th Street, Lafayette, Indiana 47901.	August 12, 1998 ..	180253 B
Michigan: Wayne ...	Charter Township of Brownstown.	July 29, 1998, August 5, 1998, *The News-Herald*.	Mr. W. Curt Boller, Township Supervisor, 21313 Telegraph Road, Brownstown, Michigan 48183.	July 20, 1998	260218 B
Mississippi: DeSoto	City of Olive Branch.	July 16, 1998, July 23, 1998, *DeSoto Times*.	The Honorable Samuel P. Rickard, Mayor of the City of Olive Branch, City Hall, 9189 East Pigeon Roost Avenue, Olive Branch, Mississippi 38654.	July 7, 1998	280286 D
New Jersey: Cape May	Village of North Wildwood.	August 12, 1998, August 19, 1998, *The Wildwood Leader*.	The Honorable Aldo A. Palombo, Mayor of the City of North Wildwood, 901 Atlantic Avenue, Municipal Building, North Wildwood, New Jersey 08260.	August 4, 1998	345308 E
Middlesex	Township of South Brunswick.	August 6, 1998, August 13, 1998, *Central Post*.	The Honorable Edmund A. Luciano, Jr., Mayor of the Township of South Brunswick, P.O. Box 190, Monmouth Junction, New Jersey 08852.	November 11, 1998.	340278
North Carolina:					
Randolph	City of Archdale ...	August 13, 1998, August 20, 1998, *High Point Enterprise*.	The Honorable J. J. Warren, Mayor of the City of Archdale, 307 Balfour Drive, P.O. Box 14068, Archdale, North Carolina 27263.	August 6, 1998	370273 B
Cabarrus	Unincorporated Areas.	September 4, 1998, September 11, 1998, *The Independent Tribune*.	Mr. Frank Cliffton, Manager of Cabarrus County, P.O. Box 707, Concord, North Carolina 28026–0707.	December 10, 1998.	370036 D

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Mecklenburg ...	City of Charlotte ...	September 4, 1998, September 11, 1998, *Charlotte Observer*.	The Honorable Pat McCrory, Mayor of the City of Charlotte, 600 East 4th Street, Charlotte, North Carolina 28202.	August 28, 1998 ..	370159 B
Cabarrus	City of Concord	September 4, 1998, September 11, 1998, *The Independent Tribune*.	The Honorable George W. Liles, Mayor of the City of Concord, P.O. Box 308, Concord, North Carolina 28026.	December 10, 1998.	370037 D
Ohio: Mahoning	Unincorporated Areas.	July 6, 1998, July 13, 1998, *Vindicator*.	Mr. Frank A. Lordi, President, Mahoning County, Board of Commissioners, 120 Market Street, Youngstown, Ohio 44503.	October 11, 1998	390367 B
South Carolina: Richland.	City of Forest Acres.	August 21, 1998, *The State*.	The Honorable J. C. Rowe, Mayor of the City of Forest Acres, 5205 North Trenholm Road, Forest Acres, South Carolina 29206.	August 14, 1998 ..	450174 G
Virginia:					
Albemarle	Unincorporated Areas.	July 9, 1998, July 16, 1998, *The Daily Progress*.	Mr. Robert W. Tucker, Jr., Albemarle County Administrator, 401 McIntire Road, Charlottesville, Virginia 22901.	October 14, 1998	510006 B
Prince William	Unincorporated Areas.	August 21, 1998, August 28, 1998, *Manassas Journal Messenger*.	Mr. H. B. Ewert, Prince William County Executive, 1 County Complex Court, Prince William, Virginia 22192.	November 26, 1998.	510119 D
Loudoun	Unincorporated Areas.	July 29, 1998, August 5, 1998, *The Loudoun Times-Mirror*.	Mr. Kirby Bowers, Loudoun County Administrator, 1 Harrison Street, S.E., 5th Floor, P.O. Box 7000, Leesburg, Virginia 20177–7000.	November 3, 1998	510090 C
Loudoun	Unincorporated Areas.	August 19, 1998, August 26, 1998, *Loudoun Times-Mirror*.	The Honorable Kirby Bowers, County Administrator, County of Loudoun, P.O. Box 7000, Leesburg, Virginia 20177–7000.	November 24, 1998.	510090
West Virginia:					
Hardy	Unincorporated Areas.	August 12, 1998, August 19, 1998, *Moorefield Examiner*.	Mr. J. Michael Teets, President, Hardy County Commission, P.O. Box 209, Moorefield, West Virginia 26836.	August 4, 1998	540051 C
Hardy	Town of Moorefield.	August 12, 1998, August 19, 1998, *Moorefield Examiner*.	The Honorable Larry P. Snyder, Mayor of the Town of Moorefield, 206 Winchester Avenue, Moorefield, West Virginia 26836.	August 4, 1998	540052 E

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: October 7, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–27549 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster

Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification.

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CONNECTICUT	
Greenwich (Town), Fairfield County (FEMA Docket No. 7255)	
Long Island Sound:	
At intersection of Indian Harbor Drive and Oneida Drive	*13
Approximately 950 feet east of the intersection of River Avenue and Byram Shore Road (Captain Harbor)	*20
Maps available for inspection at the Town of Greenwich Planning & Zoning Department, 101 Field Point Road, Greenwich, Connecticut.	
DELAWARE	
Milford (City), Kent and Sussex Counties (FEMA Docket No. 7255)	
Mispillion River:	
Approximately 100 feet downstream of Washington Street	*10
Immediately upstream of U.S. Route 113	*13
Mullet Run:	
Approximately 500 feet upstream of confluence with Mispillion River	*11
Approximately 800 feet upstream of confluence with Mispillion River	*11
Presbyterian Branch:	
At confluence with Mispillion River	*13
Approximately 300 feet upstream of confluence with Mispillion River (At Kings Highway)	*13
Maps available for inspection at the Milford City Hall, 201 South Walnut Street, Milford, Delaware.	
DELAWARE	
Sussex County (Unincorporated Areas) (FEMA Docket No. 7255)	
Betts Pond/Shoals Branch:	
At downstream face of U.S. Route 113	*15
Approximately 250 feet upstream of County Road 432	*35
Maps available for inspection at the Sussex County Planning and Zoning Office, Sussex Administration #2 The Circle, Georgetown, Delaware.	
MAINE	
Trescott (Township), Washington County (FEMA Docket No. 7259)	
Whiting Bay:	
Approximately 1,200 feet north of intersection of Old Cross Road and State Route 189	*15
Approximately 2,100 feet west of intersection of Raft Cove Point Road and Crows Neck Road	*17
Straight Bay:	
Approximately 2,600 feet northwest of intersection of Timber Cove Road and Crow Neck Road	*15
At northeast side of Falls Island	*17
Atlantic Ocean:	
At shoreline of Moose River east of State Route 91	*13
At shoreline approximately 2,000 feet east of Hebron Head Ledges	*50
Maps available for inspection at the Washington County Registry of Deeds Office, 47 Court Street, Machias, Maine.	
MICHIGAN	
Owosso (Township), Shiawassee County (FEMA Docket No. 7255)	
Owasso Drain:	
At the downstream corporate limits	*740
Approximately 1,500 feet upstream of Delaney Road	*743
Maps available for inspection at the Owosso Township Hall, 2998 West M21, Owosso, Michigan.	
WEST VIRGINIA	
Monongalia County (Unincorporated Areas) (FEMA Docket No. 7255)	
Aaron Creek:	
Approximately 1,100 feet downstream of County Route 857	*845
Just downstream of Interstate 68	*949
Maps available for inspection at the Monongalia County Office of Emergency Management, 74 Vandervort Drive, Morgantown, West Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: October 7, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–27551 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 351

[Docket No. (MARAD–98–4433)]

RIN 2133–AB35

Use of Brokerage Firms as Depositories Under the Capital Construction Fund Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is amending its existing regulations to approve brokerage firms, under certain conditions, as acceptable depositories under the Capital Construction Fund (CCF) program. Since CCF fund holders may invest CCF funds in securities, brokerage firms should also be considered as acceptable depositories, under certain conditions.

EFFECTIVE DATE: October 16, 1998.

FOR FURTHER INFORMATION CONTACT: Philip Budwick, Division of Maritime Assistance Programs, Office of Chief Counsel, Maritime Administration, Room 7228, 400 7th Street, SW, Washington, DC 20590 (Telephone 202–366–5167; Fax 202–366–7485).

SUPPLEMENTARY INFORMATION:

Background

The CCF program assists owners and operators of U.S.-flag vessels in accumulating capital for the construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or other property placed into a CCF fund. Money placed into a CCF fund may be held in interest earning accounts or invested in securities, such as stocks and bonds, and such funds, as well as accumulated interest and earnings, may be used to construct, reconstruct, or acquire qualified vessels. CCF funds are held in depositories approved under the relevant regulations or as individually approved by the Maritime Administration

The regulations at 46 CFR part 351 provide that any depository which is a member of the Federal Deposit Insurance Corporation (FDIC) will be approved as a depository for any authorized maritime program, including the CCF program. Part 351 applies a general approach for approval of depositories under several maritime programs and is a general, but not exclusive, qualification for CCF depositories. It does not take into account the unique aspects of the CCF program, i.e., the statutory provisions regarding investment of CCF funds in securities. Since CCF fund holders may invest CCF funds in securities, brokerage firms should also be considered as acceptable depositories, under certain conditions. MARAD is hereby amending its regulations to allow CCF fund holders to select brokerage firms as acceptable depositories.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review), Department of Transportation Regulatory Policies and Procedures, and Pub. L. 104–121

This rulemaking is not considered to be an economically significant regulatory action under section 3(f) of Executive Order 12866, and is also not considered a major rule for purposes of Congressional review under Pub. L. 104–121, 5 U.S.C. 804. It is not considered to be a significant rule under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Accordingly, it has not been reviewed by the Office of Management and Budget.

MARAD has determined that this rulemaking presents no substantive issue which it could reasonably expect to produce meaningful public comment since it is merely conforming its regulations to the statutory provisions of the CCF program found at 46 App. U.S.C. 1177(c). Accordingly, MARAD has determined that the notice and public comment procedure otherwise required by the Administrative Procedure Act, 5 U.S.C. 553(c), is unnecessary and good cause exists, pursuant to 5 U.S.C. 553(d)(3), to make the changes effective 2 days after publication.

Federalism

MARAD has analyzed this rulemaking in accordance with principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility

The Maritime Administrator certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

MARAD has concluded that this rulemaking would have no environmental impact and that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no reporting requirement that is subject to OMB approval under 5 CFR part 320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501. *et seq.*).

List of Subjects in 46 CFR Part 351

Depositories, Maritime carriers.

Accordingly, Part 351 of 46 CFR Chapter II, Subchapter J is amended as follows:

PART 351—DEPOSITORIES

1. The authority citations following §§ 351.1 and 351.2 are removed, and an authority citation is added to part 351 to read as follows:

Authority: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114.

2. Section 351.2, Qualification of depository, is amended by revising paragraph (a) to read as follows:

§ 351.2 Qualification of depository.

(a) General qualification. Any depository which is a member of the Federal Deposit Insurance Corporation will be approved for deposit of funds under the maritime programs authorized by the Act. With respect to the Capital Construction Fund program, any depository which is a member of the Securities Investor Protection Corporation, and is organized as a corporation under the laws of the United States, any State, territory, or possession thereof or the District of Columbia, will also be approved for the deposit of funds.

* * * * *

Dated: October 6, 1998.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 98–27350 Filed 10–13–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF DEFENSE

48 CFR Parts 212, 215, 217, 225, 227, 230, 237, 242, 247, 252, and 253

[DFARS Case 97–D018]

Defense Federal Acquisition Regulation Supplement; Contracting by Negotiation; Part 215 Rewrite

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise procedures pertaining to contracting by negotiation. These amendments conform with amendments made to the Federal Acquisition Regulation (FAR) in Federal Acquisition Circular 97–02, which was published in the **Federal Register** on September 30, 1997.

EFFECTIVE DATE: October 14, 1998.

FOR FURTHER INFORMATION CONTACT: Defense Acquisition Regulations Council, Attn: Ms. Melissa Rider, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises DFARS Part 215 to align it with the reorganized format of FAR Part 15 that was published as a final rule in the **Federal Register** on September 30, 1997 (62 FR 51224). In addition to changes related to format, this rule makes the following changes to DFARS Part 215:

- Guidance on the four-step source selection process and the alternate source selection process have been removed, as the new guidance at FAR 15.101, Best value continuum, clearly allows such source selection processes.
- Requirements for obtaining approvals before requesting second or subsequent best and final offers have been removed in view of the new guidance on proposal revisions at FAR 15.307.
- Guidance on cost realism analysis has been revised to reflect the new guidance on cost realism analysis at FAR 15.404–1(d).
- Thresholds for requesting field pricing assistance have been added at 215.404–2. Similar guidance was removed from the FAR, but is still considered to be appropriate for DoD activities.
- Guidance on field pricing support has been revised to conform with the FAR revisions that eliminated standard content requirements for field pricing reports.

A proposed rule with request for comments was published in the **Federal Register** on November 26, 1997 (62 FR 63050). Thirty-six comments were received from five sources. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule primarily consists of conforming DFARS amendments, and implementing guidance for contracting officers, to reflect existing FAR policy on contracting by negotiation.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 212, 215, 217, 225, 227, 230, 237, 242, 247, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 212, 215, 217, 225, 227, 230, 237, 242, 247, 252, and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 212, 215, 217, 225, 227, 230, 237, 242, 247, 252, and 253 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.503 [Amended]

2. Section 212.503 is amended in paragraph (c)(ii) by revising the parenthetical to read ''(see FAR 15.403–4)''.

3. Part 215 is revised to read as follows:

PART 215—CONTRACTING BY NEGOTIATION

Sec.

215.000 Scope of part.

Subpart 215.2—Solicitation and Receipt of Proposals and Information

215.204–2 Part I—The Schedule.

Subpart 215.3—Source Selection

215.303 Responsibilities.
215.304 Evaluation factors and significant subfactors.
215.305 Proposal evaluation.

Subpart 215.4—Contract Pricing

215.403 Obtaining cost or pricing data.
215.403–1 Prohibition on obtaining cost or pricing data.
215.403–5 Instructions for submission of cost or pricing data or information other than cost or pricing data.
215.404 Proposal analysis.
215.404–1 Proposal analysis techniques.
215.404–2 Information to support proposal analysis.
215.404–3 Subcontract pricing considerations.
215.404–4 Profit.
215.404–70 DD Form 1547, Record of Weighted Guidelines Method Application.
215.404–71 Weighted guidelines method.
215.404–71–1 General.
215.404–71–2 Performance risk.
215.404–71–3 Contract type risk and working capital adjustment.
215.404–71–4 Facilities capital employed.
215.404–72 Modified weighted guidelines method for nonprofit organizations.
215.404–73 Alternate structure approaches.
215.404–74 Fee requirements for cost-plus-award-fee contracts.
215.404–75 Reporting profit and fee statistics.
215.406–1 Prenegotiation objectives.
215.406–3 Documenting the negotiation.
215.407–2 Make-or-buy programs.
215.407–3 Forward pricing rate agreements.
215.407–4 Should-cost review.
215.407–5 Estimating systems.
215.407–5–70 Disclosure, maintenance, and review requirements.
215.408 Slicitation provisions and contract clauses.
215.470 Estimated data prices.

215.000 Scope of part.

See 225.872 for additional guidance on procedures for purchasing form qualifying countries.

SUBPART 215.2—SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

215.204–2 Part I—The Schedule.

(g) When a contract contains both fixed-priced and cost-reimbursement line items or subline items, the contracting officer shall provide, in Section B, Supplies or Services and Prices/Costs, an identification of contract type specified for each contract line item or subline item to facilitate appropriate payment.

Subpart 215.3—Source Selection

215.303 Responsibilities.

(b)(2) For high-dollar value and other acquisitions, as prescribed by agency procedures, the source selection authority (SSA) shall approve a source

selection plan (SSP) before the solicitation is issued. The SSP—

(A) Shall be prepared and maintained by a person designated by the SSA or as prescribed by agency procedures;

(B) Shall be coordinated with the contracting officer and senior advisory group, if any, within the source selection organization; and

(C) Shall include, as a minimum—

(1) The organization, membership, and responsibilities of the source selection team;

(2) A statement of the proposed evaluation factors and any significant subfactors and their relative importance;

(3) A description of the evaluation process, including specific procedures and techniques to be used in evaluating proposals; and

(4) A schedule of significant events in the source selection process, including documentation of the source selection decision and announcement of the source selection decision.

215.304 Evaluation factors and significant subfactors.

(c)(i) In acquisitions that require use of the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the extent of participation of small and small disadvantaged businesses in performance of the contact shall be addressed in source selection.

(A) For acquisitions other than those based only on cost or price competition, the contracting officer shall evaluate the extent to which offerors identify and commit to small business and to small disadvantaged business, historically black college and university, or minority institution performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(B) Evaluation factors may include—

(1) The extent to which such firms are specifically identified in proposals;

(2) The extent of commitment to use such firms (for example, enforceable commitments are to be weighted more heavily than non-enforceable ones);

(3) The complexity and variety of the work small firms are to perform;

(4) The realism of the proposal;

(5) When not otherwise required by 215.305(a)(2), past performance of the offerors in complying with requirements of the clauses at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219–9, Small, Small Disadvantaged and Women-Owed Small Business Subcontracting Plan; and

(6) The extent of participation of such firms in terms of the value of the total acquisition.

(C) Proposals addressing the extent of small and small disadvantaged business performance may be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219–9 and should be structured to allow for consideration of offers from small businesses.

(D) When an evaluation includes the factor in paragraph (c)(i)(B)*(1)* of this section, the small, small disadvantaged, or women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219–9 to facilitate compliance with 252.219–7003(g).

(ii) The costs or savings related to contract administration and audit may be considered when the offeror's past performance or performance risk indicates the likelihood of significant costs or savings.

§ 215.305 Proposal evaluation.

(a)(1) *Cost or price evaluation.* Contracting officers shall ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided (see FAR 37.115) will not degrade the level of technical expertise required to fulfill the Government's requirements. When acquiring such services, contracting officers shall conduct a risk assessment, and evaluate for award on that basis, any proposals received that reflect factors such as—

(A) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(B) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

(2) *Past performance evaluation.* When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause. When a past performance evaluation is required by FAR 15.304, and the solicitation includes the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, the evaluation factors shall include the past performance of offerors in complying with requirements of that clause.

(b) Any determination to reject a proposal based on a violation or possible violation of Section 27 of the OFPP Act shall be made as specified in FAR 3.104.

Subpart 215.4—Contract Pricing

215.403 Obtaining cost or pricing data.

§ 215.403–1 Prohibition on obtaining cost or pricing data.

(c) *Standards for exceptions from cost or pricing data requirements*—(1) *Adequate price competition.* For acquisitions under dual or multiple source programs:

(A) The determination of adequate price competition must be made on a case-by-case basis. Even when adequate price competition exists, in certain cases it may be appropriate to obtain additional information to assist in price analysis.

(B) Adequate price competition normally exists when—

(i) Prices are solicited across a full range of step quantities, normally including a 0–100 percent split, from at least two offerors that are individually capable of producing the full quantity; and

(ii) The reasonableness of all prices awarded is clearly established on the basis of price analysis (see FAR 15.404–1(b)).

(4) *Waivers.* (A) DoD has waived the requirement for submission of cost or pricing data for the Canadian Commercial Corporation and its subcontractors.

(B) DoD has waived cost or pricing data requirements for nonprofit organizations (including education institutions) on cost-reimbursement-no-fee contracts. The contracting officer shall require—

(1) Submission of information other than cost or pricing data to the extent necessary to determine reasonableness and cost realism; and

(2) Cost or pricing data from subcontractors that are not nonprofit organizations when the subcontractor's proposal exceeds the cost or pricing data threshold at FAR 15.403–4(a)(1).

215.403–5 Instructions for submission of cost or pricing data or information other than cost or pricing data.

(b) When the solicitation requires contractor compliance with the Contractors Cost Data Reporting (CCDR) System (Army—AMCP 715–8, Navy—NAV PUB P–5241, and Air Force—AFMCP 800–15), require the contractor to submit DD Form 1921 or 1921–1 with its pricing proposal.

215.404 Proposal analysis.

215.404–1 Proposal analysis techniques.

(a) *General.* For spare parts or support equipment, perform an analysis of—

(i) Those line items where the proposed price exceeds by 25 percent or

more the lowest price the Government has paid within the most recent 12-month period based on reasonably available information;

(ii) Those line items where a comparison of the item description and the proposal price indicates a potential for overpricing;

(iii) Significant high-dollar-value items. If there are no obvious high-dollar-value items, include an analysis of a random sample of items; and

(iv) A random sample of the remaining low-dollar value items. Sample size may be determined by subjective judgment, e.g., experience with the offeror and the reliability of its estimating and accounting systems.

(d) *Cost realism analysis.* The contracting officer should determine what information other than cost or pricing data is necessary for the cost realism analysis during acquisition planning and development of the solicitation. Unless such information is available from sources other than the offerors (see FAR 15.402(a)(2)), the contracting officer will need to request data from the offerors. The contracting officer—

(i) Shall request only necessary data; and

(ii) May not request submission of cost or pricing data.

215.404–2 Information to support proposal analysis.

(a) *Field pricing assistance.* (i) The contracting officer should consider requesting field pricing assistance for—

(A) Fixed-price proposals exceeding the cost or pricing data threshold;

(B) Cost-type proposals exceeding the cost or pricing data threshold from offerors with significant estimating system deficiencies (see 215.407–5–70(a)(4) and (c)(2)(i)); or

(C) Cost-type proposals exceeding $10 million from offerors without significant estimating system deficiencies.

(ii) The contracting officer should not request field pricing support for proposed contracts or modifications in an amount less than that specified in paragraph (a)(i) of this subsection. An exception may be made when a reasonable pricing result cannot be established because of—

(A) A lack of knowledge of the particular offeror; or

(B) Sensitive conditions (e.g., a change in, or unusual problems with, an offeror's internal systems).

(c) *Audit assistance for prime contracts or subcontracts.* (i) If, in the opinion of the contracting officer or auditor, the review of a prime contractor's proposal requires further review of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor), the contracting officer should inform the administrative contracting officer (ACO) having cognizance of the prime contractor before the review is initiated.

(ii) Notify the appropriate contract administration activities when extensive, special, or expedited field pricing assistance will be needed to review and evaluate subcontractors' proposals under a major weapon system acquisition. If audit reports are received on contracting actions that are subsequently cancelled, notify the cognizant auditor in writing.

§ 215.404–3 Subcontract pricing considerations.

(a)(i) When obtaining field pricing assistance on a prime contractor's proposal, the contracting officer should request audit or field pricing assistance to analyze and evaluate the proposal of a subcontractor at any tier (notwithstanding availability of data or analyses performed by the prime contractor) if the contracting officer believes that such assistance is necessary to ensure the reasonableness of the total proposed price. Such assistance may be appropriate when, for example—

(A) There is a business relationship between the contractor and the subcontractor not conducive to independence and objectivity;

(B) The contractor is a sole source supplier and the subcontract costs represent a substantial part of the contract cost;

(C) The contractor has been denied access to the subcontractor's records;

(D) The contracting officer determines that, because of factors such as the size of the proposed subcontract price, audit or field pricing assistance for a subcontract at any tier is critical to a fully detailed analysis of the prime contractor's proposal;

(E) The contractor or higher-tier subcontractor has been cited for having significant estimating system deficiencies in the area of subcontract pricing, especially the failure to perform adequate cost analyses of proposed subcontract costs or to perform subcontract analyses prior to negotiation of the prime contract with the Government; or

(F) A lower-tier subcontractor has been cited as having significant estimating system deficiencies.

(ii) It may be appropriate for the contracting officer or the ACO to provide assistance to a contractor or subcontractor at any tier, when the contractor or higher-tier subcontractor has been denied access to a subcontractor's records in carrying out the responsibilities at FAR 15.404–3 to conduct price or cost analysis to determine the reasonableness of proposed subcontract prices. Under these circumstances, the contracting officer or the ACO should consider whether providing audit or field pricing assistance will serve a valid Government interest.

(iii) When DoD performs the subcontract analysis, DoD shall furnish to the prime contractor or higher-tier subcontractor, with the consent of the subcontractor reviewed, a summary of the analysis performed in determining any unacceptable costs included in the subcontract proposal. If the subcontractor withholds consent, DoD shall furnish a range of unacceptable costs for each element in such a way as to prevent disclosure of subcontractor proprietary data.

(iv) Price redeterminable or fixed-price incentive contracts may include subcontracts placed on the same basis. When the contracting officer wants to reprice the prime contract even though the contractor has not yet established final prices for the subcontracts, the contracting officer may negotiate a firm contract price—

(A) If cost or pricing data on the subcontracts show the amounts to be reasonable and realistic; or

(B) If cost or pricing data on the subcontracts are too indefinite to determine whether the amounts are reasonable and realistic, but—

(1) Circumstances require prompt negotiation; and

(2) A statement substantially as follows is included in the repricing modification of the prime contract:

> As soon as the Contractor establishes firm prices for each subcontract listed below, the Contractor shall submit (in the format and with the level of detail specified by the Contracting Officer) to the Contracting Officer the subcontractor's cost incurred in performing the subcontract and the final subcontract price. The Contractor and Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect the final subcontract price.

(v) If the selection of the subcontractor is based on a trade-off among cost or price and other non-cost factors rather than lowest price, the analysis supporting subcontractor selection should include a discussion of the factors considered in the selection (also see FAR 15.101 and 15.304 and 215.304). If the contractor's analysis is not adequate, return it for correction of deficiencies.

(vi) The contracting officer shall make every effort to ensure that fees negotiated by contractors for cost-plus-fixed-fee subcontracts do not exceed the fee limitations in FAR 15.404–4(c)(4).

215.404–4 Profit.

(b) *Policy.* (1) Departments and agencies shall use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action that requires cost analysis, except on cost-plus-award-fee contracts (see 215.404–74). There are three approaches—

(A) The weighted guidelines method;

(B) The modified weighted guidelines method; and

(C) An alternate structured approach.

(c) *Contracting officer responsibilities.* (1) Also, do not perform a profit analysis when assessing cost realism in competitive acquisitions.

(2) The contracting officer—

(A) Shall use the weighted guidelines method (see 215.404–71), unless—

(1) The modified weighted guidelines method applies; or

(2) An alternate approach is justified.

(B) Shall use the modified weighted guidelines method (see 215.404–72) on contract actions with nonprofit organizations.

(C) May use an alternate structured approach (see 215.404–73) when—

(1) The contract action is—

(i) Under $500,000;

(ii) For architect-engineer or construction work;

(iii) Primarily for delivery of material from subcontractors; or

(iv) A termination settlement; or

(2) The weighted guidelines method does not produce a reasonable overall profit objective and the head of the contracting activity approves use of the alternate approach in writing.

(D) Shall use the weighted guidelines method to establish a basic profit rate under a formula-type pricing agreement, and may then use the basic rate on all actions under the agreement, provided that conditions affecting profit do not change.

(E) Shall document the profit analysis in the contract file.

(5) Although specific agreement on the applied weights or values for individual profit factors shall not be attempted, the contracting officer may encourage the contractor to—

(A) Present the details of its proposed profit amounts in the weighted guidelines format or similar structured approached; and

(B) Use the weighted guidelines method in developing profit objectives for negotiated subcontracts.

(6) The contracting officer must also verify that relevant variables have not materially changed (e.g., performance risk, interest rates, progress payment rates, distribution of facilities capital).

(d) Profit-analysis factors.—(1) *Common factors.* The common factors are embodied in the DoD structured approaches and need not be further considered by the contracting officer.

§ 215.404–70 DD Form 1547, Record of Weighted Guidelines Method Application.

(a) The DD Form 1547—

(1) Provides a vehicle for performing the analysis necessary to develop of profit objectives;

(2) Provides a format for summarizing profit amounts subsequently negotiated as part of the contract price; and

(3) Serves as the principal source documents for reporting profit statistics to DoD's management information system.

(b) The military departments are responsible for establishing policies and procedures for feeding the DoD-wide management information system on profit and fee statistics (see 215.404–75).

(c) The contracting officer shall—

(1) Use and prepare a DD Form 1547 whenever a structured approach to profit analysis is required by 215.404–4(b) (see 215.404–71, 215.404–72, and 215.404–73 for guidance on using the structured approaches). Administrative instructions for completing the form are in 253.215.–70.

(2) Ensure that the DD Form 1547 is accurately completed. The contracting officer is responsible for the correction any errors detected by the management system auditing process.

§ 215.404–71 Weighted guidelines method.

§ 215.404–71–1 General.

(a) The weighted guidelines method focuses on three profit factors—

(1) Performance risk;

(2) Contract type risk; and

(3) Facilities capital employed.

(b) The contracting officer assigns values to each profit factor; the value multiplied by the base results in the profit objective for that factor. Each profit factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when compared to all goods and services acquired by DoD. The designated range provides values based on above normal or below normal conditions. In the negotiation documentation, the contracting officer need not explain assignment of the normal value, but should address conditions that justify assignment of other than the normal value.

§ 215.404–71–2 Performance risk.

(a) *Description.* this profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of three parts:

(1) Technical—the technical uncertainties of performance.

(2) Management—the degree of management effort necessary to ensure that contract requirements are met.

(3) Cost control—the contractor's efforts to reduce and control costs.

(b) *Determination.* The following extract from the DD Form 1547 is annotated to describe the process.

Item	Contractor risk factors	Assigned weighting	Assigned value	Base (item 18)	Profit objective
21.	Technical	(1)	(2)	N/A	N/A
22.	Management	(1)	(2)	N/A	N/A
23.	Cost control	(1)	(2)	N/A	N/A
24.	Performance risk (composite)	N/A	(3)	(4)	(5)

(1) Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the three weights equals 100 percent.

(2) Select a value for each element from the list in paragraph (c) of this subsection using the evaluation criteria in paragraphs (d), (e), and (f) of this subsection.

(3) Compute the composite as shown in the following example:

	Assigned weighting	Assigned value	Weighted value
Technical	30%	5.0%	1.5%
Management	30	4.0	1.2
Cost control	40	4.5	1.8
Composite value	100%		4.5%

(4) Insert the amount from Block 18 of the DD Form 1547. Block 18 is total contract costs, excluding general and administrative expenses, contractor independent research and development and bid and proposal expenses, and facilities capital cost of money.

(5) Multiply (3) by (4).

(c) *Values: Normal and designated ranges.*

	Normal value (percent)	Designated range (percent)
Standard	4	2 to 6
Alternate	6	4 to 8

(1) *Standard.* The standard designated range should apply to most contracts.

(2) *Alternate.* Contracting officers may use the alternate designated range for research and development and service contractors when these contractors require relatively low capital investment in buildings and equipment when compared to the defense industry overall. If the alternate designated range is used, do not give any profit for facilities capital employed (see 215.404–71–4(c)(3)).

(d) *Evaluation criteria for technical.* (1) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include—

(i) Technology being applied or developed by the contractor;

(ii) Technical complexity;

(iii) Program maturity;

(iv) Performance specifications and tolerances;

(v) Delivery schedule; and

(vi) Extent of a warranty or guarantee.

(2) *Above normal conditions.* (i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are—

(A) The contractor is either developing or applying advanced technologies;

(B) Items are being manufactured using specifications with stringent tolerance limits;

(C) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;

(D) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;

(E) The contractor's independent development and investment has reduced the Government's risk or cost;

(F) The contractor has accepted an accelerated delivery schedule to meet DoD requirements; or

(G) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(iii) The following may justify a maximum value—

(A) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(B) A high degree of development or production concurrency.

(3) *Below normal conditions.*

(i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low. Indicators are—

(A) Acquisition is for off-the-shelf items;

(B) Requirements are relatively simple;

(C) Technology is not complex;

(D) Efforts do not require highly skilled personnel;

(E) Efforts are routine;

(F) Programs are mature; or

(G) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal for—

(A) Routine services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government-furnished information; or

(D) Simple operations with Government-furnished property.

(e) *Evaluation criteria for management.* (1) The contracting officer should—

(i) Assess the contractor's management and internal control systems using contracting office information and reviews made by field contract administration offices or other DoD field offices;

(ii) Assess the management involvement expected on the prospective contract action;

(iii) Consider the degree of cost mix as an indication of the types of resources applied and value added by the contractor; and

(iv) Consider the contractor's support of Federal socioeconomic programs.

(2) *Above normal conditions.* (i) The contracting officer may assign a higher than normal value when the management effort is intense. Indicators of this are—

(A) The contractor's value added is both considerable and reasonably difficult;

(B) The effort involves a high degree of integration or coordination; or

(C) The contractor has a substantial record of active participation in Federal socioeconomic programs.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination (e.g., offsets with foreign vendors); or

(C) Has critically important milestones.

(3) *Below normal conditions.* (i) The contracting officer may assign a lower than normal value when the management effort is minimal Indicators of this are—

(A) The program is mature and many end item deliveries have been made;

(B) The contractor adds minimum value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor provides poor quality, untimely proposals;

(E) The contractor fails to provide an adequate analysis of subcontractor costs; or

(F) The contractor does not cooperate in the evaluation and negotiation of the proposal.

(ii) The following may justify a value significantly below normal—

(A) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

(f) *Evaluation criteria for cost control.* (1) The contracting officer should evaluate—

(i) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(ii) The contractor's cost reduction initiatives (e.g., competition advocacy programs, dual sourcing, spare parts pricing reform, value engineering);

(iii) The adequacy of the contractor's management approach to controlling cost and schedule; and

(IV) Any other factors that affect the contractor's ability to meet the cost targets (e.g., foreign currency exchange rates and inflation rates).

(2) *Above normal conditions.* The contracting officer may assign a higher than normal value if the contractor can demonstrate a highly effective cost control program. Indicator of this are—

(i) The contractor provides fully documented and reliable cost estimates;

(ii) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(iii) The contractor uses a high degree of subcontract competition (e.g., aggressive dual sourcing); or

(iv) The contractor has a proven record of cost tracking and control.

(3) *Below normal conditions.* The contracting officer may assign a lower normal value if the contractor demonstrates minimal concern for cost control. Indicators are—

(i) The contractor's cost estimating system is marginal;

(ii) The contractor has made minimal effort to initiate cost reduction programs;

(iii) The contractor's cost proposal is inadequate; or

(iv) The contractor has a record of cost overruns or other indication of unreliable cost estimates and lack of cost control.

§ 215.404–71–3 Contract type risk and working capital adjustment.

(a) *Description.* The contract type risk factor focuses on the degree of cost risk accepted by the contractor under varying contract types. The working capital adjustment is an adjustment added to the profit objective for contract type risk. It only applies to fixed-price contracts that provide for progress payments. Though it uses a formula approach, it is not intended to be an exact calculation of the cost of working capital. Its purpose is to give general recognition to the contractor's cost of working capital under varying contract circumstances, financing policies, and the economic environment.

(b) *Determination.* The following extract from the DD 1547 is annotated to explain the process.

Item	Contractor risk factors		Assigned value	Base (item 18)	Profit objective
25.	CONTRACT type risk		(1)	(2)	(3)
26.	WORKING capital (4)	Cost financed (5)	Length factor (6)	Interest rate (7)	(8)

(1) Select a value from the list of contract types in paragraph (c) of this subsection using the evaluation criteria in paragraph (d) of this subsection.

(2) Insert the amount from Block 18, i.e., the total allowable costs excluding general and administrative expenses, independent research and development and bid and proposal expenses, and facilities capital cost of money.

(3) Multiply (1) by (2).

(4) Only complete this block when the prospective contract is a fixed-price contract containing provisions for progress payments.

(5) Insert the amount computed per paragraph (e) of this subsection.

(6) Insert the appropriate figure from paragraph (f) of this subsection.

(7) Use the interest rate established by the Secretary of the Treasury (see 230.7101–1(a)). Do not use any other interest rate.

(8) Multiply (5) by (6) by (7). This is the working capital adjustment. It shall not exceed 4 percent of the contract costs in Block 20.

(c) *Values: Normal and designated ranges.*

Contract type	Notes	Normal value (percent)	Designated range (percent)
Firm-fixed-price, no financing	(1)	5	4 to 6
Firm-fixed-price, with financing	(2)	3	2 to 4
Fixed-priced-incentive, no financing	(1)	3	2 to 4
Fixed-priced with predeterminable provision	(3)	.....	.....
Fixed-price-incentive, with financing	(2)	1	0 to 2
Cost-plus-incentive-fee	(4)	1	0 to 2
Cost-plus-fixed-fee	(4)	.5	0 to 1
Time-and-materials contracts (including overhaul contracts priced on time-and-materials basis)	(5)	.5	0 to 1
Labor-hour contracts	(5)	.5	0 to 1
Firm-fixed-price-level-of-effort-term	(5)	.5	0 to 1

(1) ''No financing'' means that the contractor either does not provide progress payments, or provides them only on a limited basis, such as financing of first articles. Do not compute a working capital adjustment.

(2) ''With financing'' means progress payments. When progress payments are present, compute a working capital adjustment (Block 26).

(3) For the purposes of assigning profit values, treat a fixed-price contract with redeterminable provisions as if it were a fixed-price-incentive contract with below normal conditions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. They shall not receive the working capital adjustment in Block 26. However, they may receive higher than normal values within the designated range to the extent that portions of cost are fixed.

(d) *Evaluation criteria*—(1) *General.* The contracting officer should consider elements that affect contract type risk such as—

(i) Length of contract;

(ii) Adequacy of cost data for projections;

(iii) Economic environment;

(iv) Nature and extent of subcontracted activity;

(v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);

(vi) The ceilings and share lines contained in incentive provisions; and

(vii) Risk associated with contracts for foreign military sales (FMS) that are not funded by U.S. appropriations.

(2) *Mandatory.* The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract action (also see 217.7404–6(a)). The assessment shall include any reduced contractor risk on both the contract before definitization and the remaining portion of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0 percent, regardless of contract type.

(3) *Above normal conditions.* The contracting officer may assign a higher than normal value when there is substantial contract type risk. Indicators of this are—

(i) Efforts where there is minimal cost history;

(ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;

(iii) Incentive provisions (e.g., cost and performance incentives) that place a high degree of risk on the contractor; or

(iv) FMS sales (other than those under DoD cooperative logistics support arrangements or those made from U.S. Government inventories or stocks) where the contractor can demonstrate that there are substantial risk above those normally present in DoD contracts for similar items.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Indicators of this are—

(i) Very mature product line with extensive cost history;

(ii) Relatively short-term contracts;

(iii) Contractual provisions that substantially reduce the contractor's risk; or

(iv) Incentive provisions that place a low degree of risk on the contractor.

(e) *Costs financed.* (1) Costs financial equal total costs multiplied by the portion (percent) of costs financed by the contractor.

(2) Total costs equal Block 20 (i.e., all allowable costs, including general and administrative and independent research and development/bid and proposal, but excluding facilities capital cost of money), reduced as appropriate when—

(i) The contractor has little cash investment (e.g., subcontractor progress payments liquidated late in period of performance);

(ii) some costs are covered by special financing provisions, such as advance payments; or

(iii) The contract is multiyear and there are special funding arrangements.

(3) The portion financed by the contractor is generally the portion not covered by progress payments, i.e., 100 percent minus the customary progress payment rate (see FAR 32.501). For example, if a contractor receives progress payments at 75 percent, the portion financed by the contractor is 25 percent. On contracts that provide flexible progress payments (see 252.232–7003) or progress payments to small businesses, use the customary progress payment rate for large businesses.

(f) *Contract length factor.* (1) This is the period of time that the contractor has a working capital investment in the contract. It—

(i) Is based on the time necessary for the contractor to complete the substantive portion of the work;

(ii) Is not necessarily the period of time between contract award and final delivery (or final payment), as periods of minimal effort should be excluded;

(iii) Should not include periods of performance contained in option provisions; and

(iv) Should not, for multiyear contracts, include periods of performance beyond that required to complete the initial program year's requirements.

(2) The contracting officer—

(i) Should use the following table to select the contract length factor;

(ii) Should develop a weighted average contract length when the contract has multiple deliveries; and

(iii) May use sampling techniques provided they produce a representative result.

TABLE

Period to perform substantive portion (in months)	Contract length factor
21 or less	.40
22 to 27	.65
28 to 33	.90
34 to 39	1.15
40 to 45	1.40
46 to 51	1.65
52 to 57	1.90
58 to 63	2.15
64 to 69	2.40
70 to 75	2.65
76 or more	2.90

(3) Example: A prospective contract has a performance period of 40 months with end items being delivered in the 34th, 36th, 38th, and 40th months of the contract. The average period is 37 months and the contract length factor is 1.15.

215.404–71–4 Facilities capital employed.

(a) *Description.* This factor focuses on encouraging and rewarding aggressive capital investment in facilities that benefit DoD. It recognizes both the facilities capital that the contractor will employ in contract performance and the contractor's commitment to improving productivity.

(b) *Determination.* The following extract from the DD Form 1547 has been annotated to explain the process.

Item	Contractor facilities capital employed	Assigned value	Amount employed	Profit objective
27.	LAND	N/A	(2)	N/A
28.	BUILDINGS	(1)	(2)	(3)
29.	EQUIPMENT	(1)	(2)	(3)

(1) Select a value from the list in paragraph (c) of this subsection using the evaluation criteria in paragraph (d) of this subsection.

(2) Use the allocated facilities capital attributable to land, buildings, and equipment, as derived in DD Form 1861,

Contract Facilities Capital Cost of Money (see 230,7001).

(i) In addition to the net book value of facilities capital employed, consider facilities capital that is part of a formal investment plan if the contractor submits reasonable evidence that—

(A) Achievable benefits to DoD will result from the investment; and

(B) The benefits of the investment are included in the forward pricing structure.

(ii) If the value of intracompany transfers has been included in Block 18 at cost (i.e., excluding general and administrative (G&A) expenses and profit), add to the contractor's allocated facilities capital, the allocated facilities capital attributable to the buildings and equipment of those corporate divisions supplying the intracompany transfers. Do not make this addition if the value of intracompany transfers has been included in Block 18 at price (i.e., including G&A expenses and profit).

(3) Multiply (1) by (2).

(c) Values: Normal and designated ranges.

Notes	Asset type	Normal value (percent)	Designated range (percent)
(1)	Land	0	N/A
(1)	Buildings	15	10 to 20
(1)	Equipment	35	20 to 50
(2)	Land	0	N/A
(2)	Buildings	5	0 to 10
(2)	Equipment	20	15 to 25
(3)	Land	0	N/A
(3)	Buildings	0	0
(3)	Equipment	0	0

(1) These are the normal values and ranges. They apply to all situations except those noted in (2) and (3).

(2) These alternate values and ranges apply to situations where a highly facilitized manufacturing firm will be performing a research and development or services contract. They balance the method used to allocate facilities capital cost of money, which may produce disproportionate allocation of assets to these types of efforts.

(3) When using a value from the alternate designated range for the performance risk factor (see 215.404–71–2(c)(2)), do not allow profit on facilities capital employed.

(d) *Evaluation criteria.* (1) In evaluating facilities capital employed, the contracting officer—

(i) Should relate the usefulness of the facilities capital to the goods or services being acquired under the prospective contract;

(ii) Should analyze the productivity improvements and other anticipated industrial base enhancing benefits resulting from the facilities capital investment, including—

(A) The economic value of the facilities capital, such as physical age, undepreciated value, idleness, and expected contribution to future defense needs; and

(B) The contractor's level of investment in defense related facilities as compared with the portion of the contractor's total business that is derived from DoD;

(iii) Should consider any contractual provisions that reduce the contractor's risk of investment recovery, such as termination protection clauses and capital investment indemnification; and

(iv) Shall ensure that increases in facilities capital investments are not merely asset revaluations attributable to mergers, stock transfers, take-overs, sales of corporate entities, or similar actions.

(2) *Above normal conditions.* (i) The contracting officer may assign a higher than normal value if the facilities capital investment has direct, identifiable, and exceptional benefits. Indicators are—

(A) New investments in state-of-the-art technology that reduce acquisition cost of yield other tangible benefits such as improved product quality or accelerated deliveries;

(B) Investments in new equipment for research and development applications; or

(C) Contractor demonstration that the investments are over and above the normal capital investments necessary to support anticipated requirements of DoD programs.

(ii) The contracting officer may assign a value significantly above normal when there are direct and measurable benefits in efficiency and significantly reduced acquisition cost on the effort being priced. Maximum values apply only to those cases where the benefits of the facilities capital investment are substantially above normal.

(3) *Below normal conditions.* (i) The contracting officer may assign a lower than normal value if the facilities capital investment has little benefit to DoD. Indicators are—

(A) Allocations of capital apply predominantly to commercial item lines;

(B) Investments are for such things as furniture and fixtures, home or group level administrative offices, corporate aircraft and hangars, gymnasiums; or

(C) Facilities are old or extensively idle.

(ii) The contracting officer may assign a value significantly below normal when a significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, and labor-intensive capital equipment.

215.404–72 Modified weighted guidelines method for nonprofit organizations.

(a) *Definitions* As used in this subpart, a nonprofit organization is a business entity—

(1) That operates exclusively for charitable, scientific, or educational purposes;

(2) Whose earnings do not benefit any private shareholder or individual;

(3) Whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and

(4) That is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(b) For nonprofit organizations that are Federally Funded Research and Development Centers (FFRDCs), the contracting officer—

(1) Should consider whether any fee is appropriate. Considerations shall include the FFRDC's—

(i) Proportion of retained earnings (as established under generally accepted accounting methods) that relates to DoD contracted effort;

(ii) Facilities capital acquisition plans;

(iii) Working capital funding as assessed on operating cycle cash needs;

(iv) Contingency funding; and

(v) Provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

(2) Shall, when a fee is considered appropriate, compute the fee objective using the weighted guidelines method in 215.404–71, with the following modifications:

(i) *Modifications to performance risk (Blocks 21–243 of the DD Form 1547).* (A) If the contracting officer assigns a value from the standard designated range (see 215.404–71–2(c)), reduce the fee objective by an amount equal to 1 percent of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(B) If the contracting officer assigns a value from the alternate designated range, reduce the fee objective by an amount equal to 2 percent of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount of the DD Form 1547.

(ii) *Modifications to contract type risk (Block 25 of the DD Form 1547).* Use a designated range of –1 percent to 0 percent in lieu of the values in 215.404–71–3. There is no normal value.

(c) For nonprofit organizations that are entities that have been identified by the Secretary of Defense or a Secretary of a Department as receiving sustaining support on a cost-plus-fixed-fee basis from a particular DoD department or agency, compute a fee objective for covered actions using the weighted guidelines method in 215.404–71, modified as described in paragraph (b)(2) of this subsection.

(d) For all other nonprofit organizations, compute a fee objective for covered actions using the weighted guidelines method in 215.404–71, modified as described in paragraph (b)(2)(i) of this subsection.

215.404–73 Alternate structured approaches.

(a) The contracting officer may use an alternate structured approach under 215.404–4(c).

(b) The contracting officer may design the structure of the alternate, but it shall include—

(1) Consideration of the three basic components of profit—performance risk, contract type risk (including working capital), and facilities capital employed. However, the contracting officer is not required to complete Blocks 21 through 30 of the DD Form 1547.

(2) Offset for facilities capital cost of money.

(i) The contracting officer shall reduce the overall prenegotiation profit objective by the lesser of 1 percent of total cost or the amount of facilities capital cost of money. The profit amount in the negotiation summary of the DD Form 1547 must be net of the offset.

(ii) This adjustment is needed for the following reason: The values of the profit factors used in the weighted guidelines method were adjusted to recognize the shift in facilities capital cost of money from an element of profit to an element of contract cost (see FAR 31.205–10) and reductions were made directly to the profit factors for performance risk. In order to ensure that this policy is applied to all DoD contracts that allow facilities capital cost of money, similar adjustments shall be made to contracts that use alternate structured approaches.

215.404–74 Fee requirements for cost-plus-award-fee contracts.

In developing a fee objective for cost-plus-award-fee contracts, the contracting officer shall—

(a) Follow the guidance in FAR 16.405–2 and 216.405–2;

(b) Not use the weighted guidelines method or alternate structured approach;

(c) Apply the offset policy in 215.404–73(b)(2) for facilities capital cost of money, i.e., reduce the base fee by the lesser of 1 percent of total costs or the amount of facilities capital cost of money; and

(d) Not complete a DD Form 1547.

215.404–75 Reporting profit and fee statistics.

(a) Contracting officers in contracting offices that participate in the management information system for profit and fee statistics send completed DD Forms 1547 on actions of $500,000 or more , where the contracting officer used either the weighted guidelines method, an alternate structured approach, or the modified weighted guidelines method, to their designated office within 30 days after contract award.

(b) Participating contracting offices and their designated offices are—

Contracting office	Designated officer
ARMY	
All	U.S. Army, Contracting Support Agency, ATTN: SARD—RS, 5109 Leesburg Pike, Suite 916, Falls Church, VA 22041–3201
NAVY	
*Naval Air Systems Command	Commander, Fleet and Industrial Supply Center, Norfolk Washington Detachment, Code 402, Washington Navy Yard, Washington, DC 20374–5000
*Naval Sea Systems Command	
*Space and Naval Warfare Systems Command	
*Naval Facilities Engineering Command	
*Naval Supply Systems Command	
*Office of Naval Research	
*Headquarters, United States Marine Corps	
*Strategic Systems Programs Office	
*Military Sealift Command	
*Automatic Data Processing Selection Office	
*Navy Regional Data Automation Center	
*Naval Research Laboratory	
*Navy Commercial Communications Center	
*Naval Aviation Depot Operations Center	

Contracting office	Designated officer
AIR FORCE	
Air Force Materiel Command (all field offices)	Air Force Materiel Command, 645 CCSG/SCOS, ATTN: J010 Clerk, 2721 Sacramento Street, Wright-Patterson Air Force Base, OH 45433–5006

*Includes all subordinate field offices

(c) When negotiation of a contract action over $500,000 has been delegated to another contracting agency (e.g., to an ACO), that agency shall ensure that a copy of the DD Form 1547 is provided to the delegating office for reporting purposes within 30 days from negotiation of the contract action.

(d) Contracting offices outside the United States, its possessions, and Puerto Rico are exempt from reporting.

(e) Designated offices send a quarterly (non-cumulative) report of DD Form 1547 data to—

Washington Headquarters Services, Directorate for Information Operations and Reports, (WHS/DIOR), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302

(f) In preparing and sending the quarterly report, designated offices—

(1) Perform the necessary audits to ensure information accuracy;

(2) Do not enter classified information;

(3) Transmit the report via computer magnetic tape using the procedures, format, and editing process issued by the Director of Defense Procurement; and

(4) Send the reports not later than the 30th day after the close of the quarterly reporting periods.

(g) These reporting requirements have been assigned report control symbol: A&T (Q) 1751.

215.406–1 Prenegotiation objectives.

(a) Also consider—

(i) Data resulting from application of work measurement systems in developing prenegotiation objectives; and

(ii) Field pricing assistance personnel participation in planned prenegotiation and negotiation activities.

(b) Prenegotiation objectives, including objectives related to disposition of findings and recommendations contained in preaward and postward contract audit and other advisory reports, shall be documented an reviewed in accordance with Departmental procedures.

215.406–3 Documenting the negotiation.

(a)(7) Include the principal factors related to the disposition of findings and recommendation contained in preaward and postaward contract audit and other advisory reports.

(10) The documentation—

(A) Must address significant deviations from the prenegotiation profit objective;

(B) Should include the DD Form 1547, Record of Weighted Guidelines Application (see 215.404–70), if used, with supporting rationale; and

(C) Must address the rationale for not using the weighted guidelines method when its use would otherwise be required by 215.404–70.

215.407–2 Make-or-buy programs.

(e) *Program requirements*—(1) *Items and work included.* The minimum dollar amount is $1 million.

215.407–3 Forward pricing rate agreements.

(b)(i) Use forward pricing rate agreement (FPRA) rates when such rates are available, unless waived on a case-by-case basis by the head of the contracting activity.

(ii) Advise the ACO of each case waived.

(iii) Contact the ACO for questions on FPRAs or recommended rates.

215.407–4 Should-cost review.

(b) *Program should-cost review.* (2) DoD contracting activities should consider performing a program should-cost review before award of a definitive contract for a major system as defined by DoDI 5000.2R. See DoDI 5000.2R regarding industry participation.

(c) *Overhead should-cost review.* (1) Contact the DCMC/DLA Overhead Center, Fort Belvoir, VA 22060–6621, at (703) 767–3387, for questions on overhead should-cost analysis.

(2)(A) The Defense Contract Management Command/Defense Logistics Agency (DCMC/DLA), or the military department responsible for performing contract administration functions (e.g., Navy SUPSHIP), should consider, based on risk assessment, performing an overhead should-cost review of a contractor business unit (as defined in FAR 31.001) when all of the following conditions exist—

(*1*) Projected annual sales to DoD exceed $1 billion;

(*2*) Projected DoD versus total business exceeds 30 percent;

(*3*) Level of sole source DoD contracts is high;

(*4*) Significant volume of proposal activity is anticipated;

(*5*) Production or development of a major weapon system or program is anticipated; and

(*6*) Contractor cost control/reduction initiatives appear inadequate.

(B) The head of the contracting activity may request an overhead should-cost review for a business unit that does not meet the criteria in paragraph (c)(2)(A) of this subsection.

(C) Overhead should-cost reviews are labor intensive. These reviews generally involve participation by the contracting, contract administration, and contract audit elements. The extent of availability of military department, contract administration, and contract audit resources to support DCMC/DLA led teams should be considered when determining whether a review will be conducted. Overhead should-cost reviews generally shall not be conducted at a contractor business segment more frequently than every 3 years.

215.407–5 Estimating systems.

215.407–5–70 Disclosure, maintenance, and review requirements.

(a) *Definitions.*

(1) *Acceptable estimating system* means an estimating system that—

(i) Is established, maintained, reliable, and consistently applied; and

(ii) Produces verifiable, supportable, and documented cost estimates.

(2) *Contractor* means a business unit as defined in FAR 31.001.

(3) *Estimating system* is as defined in the clause at 252.215–7002, Cost Estimating System Requirements.

(4) *Significant estimating system deficiency* means a shortcoming in the estimating system that is likely to consistently result in proposal estimates for total cost or a major cost element(s) that do not provide an acceptable basis for negotiation of fair and reasonable prices.

(b) *Applicability.* (1) DoD policy is that all contractors have estimating systems that—

(i) Are acceptable;

(ii) Consistently produce well-supported proposals that are acceptable

as a basis for negotiation of fair and reasonable prices;

(iii) Are consistent with and integrated with the contractor's related management systems; and

(iv) Are subject to applicable financial control systems.

(2) A large business contractor is subject to estimating system disclosure, maintenance, and review requirements if—

(i) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totaling $50 million or more for which cost or pricing data were required; or

(ii) In its preceding fiscal year, the contractor received DoD prime contracts or subcontracts totaling $10 million or more (but less than $50 million) for which cost or pricing data were required and the contracting officer, with concurrence or at the request of the ACO, determines it to be in the best interest of the Government (e.g., significant estimating problems are believed to exist or the contractor's sales are predominantly Government).

(c) *Responsibilities.* (1) The contracting officer shall—

(i) Through use of the clause at 252.215–7002, Cost Estimating System Requirements, apply the disclosure, maintenance, and review requirements to large business contractors meeting the criteria in paragraph (b)(2)(i) of this subsection;

(ii) Consider whether to apply the disclosure, maintenance, and review requirements to large business contractors under paragraph (b)(2)(ii) of this subsection; and

(iii) Not apply the disclosure, maintenance, and review requirements to other than large business contractors.

(2) The cognizant ACO, for contractors subject to paragraph (b)(2) of this subsection, shall—

(i) Determine the acceptability of the disclosure and system; and

(ii) Pursue correction of any deficiencies.

(3) The cognizant auditor, on behalf of the ACO, serves as team leader in conducting estimating system reviews.

(4) A contractor subject to estimating system disclosure, maintenance, and review requirements shall—

(i) Maintain an acceptable system;

(ii) Describe its system to the ACO:

(iii) Provide timely notice of changes in the system; and

(iv) Correct system deficiencies identified by the ACO.

(d) *Characteristics of an acceptable estimating system—(1) General.* An acceptable system should provide for the use of appropriate source data, utilize sound estimating techniques and good judgment, maintain a consistent approach, and adhere to established policies and procedures.

(2) *Evaluation.* In evaluating the acceptability of a contractor's estimating system, the ACO should consider whether the contractor's estimating system, for example—

(i) Establishes clear responsibility for preparation, review, and approval of cost estimates;

(ii) Provides a written description of the organization and duties of the personnel responsible for preparing, reviewing, and approving cost estimates;

(iii) Assures that relevant personnel have sufficient training, experience, and guidance to perform estimating tasks in accordance with the contractor's established procedures;

(iv) Identifies the sources of data and the estimating methods and rationale used in developing cost estimates;

(v) Provides for appropriate supervision throughout the estimating process;

(vi) Provides for consistent application of estimating techniques;

(vii) Provides for detection and timely correction of errors;

(viii) Protects against cost duplication and omissions;

(ix) Provides for the use of historical experience, including historical vendor pricing information, where appropriate;

(x) Requires use of appropriate analytical methods;

(xi) Integrates information available from other management systems, where appropriate;

(xii) Requires management review including verification that the company's estimating policies, procedures, and practices comply with this regulation;

(xiii) Provides for internal review of and accountability for the acceptability of the estimating system, including the comparison of projected results to actual results and an analysis of any differences;

(xiv) Provides procedures to update cost estimates in a timely manner throughout the negotiation process; and

(xv) Addresses responsibility for review and analysis of the reasonableness of subcontract prices.

(3) *Indicators of potentially significant estimating deficiencies.* The following examples indicate conditions that may produce or lead to significant estimating deficiencies—

(i) Failure to ensure that historical experience is available to and utilized by cost estimators, where appropriate;

(ii) Continuing failure to analyze material costs or failure to perform subcontractor cost reviews as required;

(iii) Consistent absence of analytical support for significant proposed cost amounts;

(iv) Excessive reliance on individual personal judgments where historical experience or commonly utilized standards are available;

(v) Recurring significant defective pricing findings within the same cost element(s);

(vi) Failure to integrate relevant parts of other management systems (e.g., production control or cost accounting) with the estimating system so that the ability to generate reliable cost estimates is impaired; and

(vii) Failure to provide established policies, procedures, and practices to persons responsible for preparing and supporting estimates.

(e) *Review procedures.* Cognizant audit and contract administration activities shall—

(1) Establish and manage regular programs for reviewing selected contractors' estimating systems.

(2) Conduct reviews as a team effort.

(i) The contract auditor will be the team leader.

(ii) The team leader will—

(A) Coordinate with the ACO to ensure that team membership includes qualified contract administration technical specialists.

(B) Advise the ACO and the contractor of significant findings during the conduct of the review and during the exit conference.

(C) Prepare a team report.

(1) The ACO or a representative should—

(i) Coordinate the contract administration activity's review;

(ii) Consolidate findings and recommendations; and

(iii) When appropriate, prepare a comprehensive written report for submission to the auditor.

(2) The contract auditor will attach the ACO's report to the team report.

(3) Tailor reviews to take full advantage of the day-to-day work done by both organizations.

(4) Conduct a review, every 3 years, of contractors subject to the disclosure requirements. The ACO and the auditor may lengthen or shorten the 3-year period based on their joint risk assessment of the contractor's past experience and current vulnerability.

(f) *Disposition of survey team findings*—(1) *Reporting of survey team findings.* The auditor will document the findings and recommendations of the survey team in a report to the ACO. If there are significant estimating deficiencies, the auditor will recommend disapproval of all or portions of the estimating system.

(2) *Initial notification to the contractor.* The ACO will provide a copy of the team report to the contractor and, unless there are no deficiencies mentioned in the report, will ask the contractor to submit a written response in 30 days, or a reasonable extension.

(i) If the contractor agrees with the report, the contractor has 60 days from the date of initial notification to correct any identified deficiencies or submit a corrective action plan showing milestones and actions to eliminate the deficiencies.

(ii) If the contractor disagrees, the contractor should provide rationale in its written response.

(3) *Evaluation of contractor's response.* The ACO, in consultation with the auditor, will evaluate the contractor's response to determine whether—

(i) The estimating system contains deficiencies that need correction;

(ii) The deficiencies are significant estimating deficiencies that would result in disapproval of all or a portion of the contractor's estimating system; or

(iii) The contractor's proposed corrective actions are adequate to eliminate the deficiency.

(4) *Notification of ACO determination.* The ACO will notify the contractor and the auditor of the determination and, if appropriate, of the Government's intent to disapprove all or selected portions of the system. The notice shall—

(i) List the cost elements covered;

(ii) Identify any deficiencies requiring correction; and

(iii) Require the contractor to correct the deficiencies within 45 days or submit an action plan showing milestones and actions to eliminate the deficiencies.

(5) *Notice of disapproval.* If the contractor has neither submitted an acceptable corrective action plan nor corrected significant deficiencies within 45 days, the ACO shall disapprove all or selected portions of the contractor's estimating system. The notice of disapproval must—

(i) Identify the cost elements covered;

(ii) List the deficiencies that prompted the disapproval; and

(iii) Be sent to the cognizant auditor, and each contracting and contract administration officer having substantial business with the contractor.

(6) *Monitoring contractor's corrective action.* The auditor and the ACO will monitor the contractor's progress in correcting deficiencies. If the contractor fails to make adequate progress, the ACO shall take whatever action is necessary to ensure that the contractor corrects the deficiencies. Examples of actions the ACO can take are: bringing the issue to the attention of higher level management, reducing or suspending progress payments (see FAR 32.503–6), and recommending nonaward of potential contracts.

(7) *Withdrawal of estimating system disapproval.* The ACO will withdraw the disapproval when the ACO determines that the contractor has corrected the significant system deficiencies. The ACO will notify the contractor, the auditor, and affected contracting and contract administration activities of the withdrawal.

(g) *Impact of estimating system deficiencies on specific proposals.* (1) Field pricing teams will discuss identified estimating system deficiencies and their impact in all reports on contractor proposals until the deficiencies are resolved.

(2) The contracting officer responsible for negotiation of a proposal generated by an estimating system with an identified deficiency shall evaluate whether the deficiency impacts the negotiations. If it does not, the contracting officer should proceed with negotiations. If it does, the contracting officer should consider other alternatives, e.g.—

(i) Allowing the contractor additional time to correct the estimating system deficiency and submit a corrected proposal;

(ii) Considering another type of contract, e.g., FPIF instead of FFP;

(iii) Using additional cost analysis techniques to determine the reasonableness of the cost elements affected by the system's deficiency;

(iv) Segregating the questionable areas as a cost reimbursable line item;

(v) Reducing the negotiation objective for profit or fee; or

(vi) Including a contract (reopener) clause that provides for adjustment of the contract amount after award.

(3) The contracting officer who incorporates a reopener clause into the contract is responsible for negotiating price adjustments required by the clause. Any reopener clause necessitated by an estimating deficiency should—

(i) Clearly identify the amounts and items that are in question at the time of negotiation;

(ii) Indicate a specific time or subsequent event by which the contractor will submit a supplemental proposal, including cost or pricing data, identifying the cost impact adjustment necessitated by the deficient estimating system;

(iii) Provide for the contracting officer to unilaterally adjust the contract price if the contractor fails to submit the supplemental proposal; and

(iv) Provide that failure of the Government and the contractor to agree to the price adjustment shall be a dispute under the Disputes clause.

215.408 Solicitation provisions and contract clauses.

(1) Use the clause at 252.215–7000, Pricing Adjustments, in solicitations and contracts that contain the clause at—

(i) FAR 52.215–11, Price Reduction for Defective Cost or Pricing Data—Modifications;

(ii) FAR 52.215–12, Subcontractor Cost or Pricing Data; or

(iii) FAR 52.215–13, Subcontractor Cost or Pricing Data—Modifications.

(2) Use the clause at 252.215–7002, Cost Estimating System requirements, in all solicitations and contracts to be award on the basis of cost or pricing data.

215.470 Estimated data prices.

(a) DoD requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product, or engineering value.

(b) When data are required to be delivered under a contract, the solicitation will include DD Form 1423, Contract Data Requirements List. The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons—

(1) Differences in business practices in competitive situations;

(2) Differences in accounting systems among offerors;

(3) Use of factors or rates on some portions of the data;

(4) Application of common effort to two or more data items; and

(5) differences in data preparation methods among offerors.

(c) Data price estimates should not be used for contract pricing purposes without further analysis.

(d) The contracting officer shall ensure that the contract does not include a requirement for data that the contractor has delivered or is obligated to deliver to the government under another contract or subcontract, and that the successful offeror identifies any such data required by the solicitation. However, where duplicate data are

desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

PART 217—SPECIAL CONTRACTING METHODS

4. Section 217.7103–3 is amended by revising paragraph (b) to read as follows:

217.7103–3 Solicitation for job orders.

* * * * *

5. Section 217.7103–4 is revised to read as follows:

217.7103–4 Award of a job order.

Award job orders in accordance with FAR Subpart 14.4 or 15.5.

217.7406 [Amended]

6. Section 217.7406 is amended in paragraph (b) in the last sentence by removing ''15.804–1'' and inserting in its place ''15.403–1, 15.403–2, or 15.403–3''.

PART 225—FOREIGN ACQUISITION

225.872–3 [Amended]

7. Section 225.872–3 is amended in paragraph (g) in the first sentence by revising the parenthetical to read ''(see FAR 14.207 and 15.201(c)''

225.872–6 [Amended]

8. Section 225.872–6 is amended in paragraph (c) introductory text by removing ''215.805–5(c)(1)'' and inserting in its place ''215.404–2(c)''.

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.7203–10 [Amended]

9. Section 227.7203–10 is amended in paragraph (a)(1) at the end of the first sentence by revising the phrase ''release or disclosure'' to read ''release, or disclosure''; and at the end of the fifth sentence by removing ''15.607'' and inserting in its place ''15.306(a)''.

PART 230—COST ACCOUNTING STANDARDS

230.7002 [Amended]

10. Section 230.7002 is amended in paragraph (b) by removing ''215.970–1(c)'' and inserting in its place ''215.404–71–4''.

§ 230.7004–1 [Amended]

11. Section 230.7004–1 is amended by inserting a period after the section heading; and in paragraph (a) by revising the parenthetical to read ''(see FAR Subpart 42.17)''.

§ 230.7103 [Amended]

12. Section 230.7103 is amended by removing ''Subpart 15.9'' and inserting in its place ''15.404–4''.

PART 237—SERVICE CONTRACTING

13. Section 237.7204 is amended under the heading ''GENERAL PROVISIONS'' by revising paragraph 7. to read as follows:

§ 237.7204 Format and clauses for educational service agreements.

* * * * *

GENERAL PROVISIONS

* * * * *

7. FAR 52.215–8, Order of Precedence—Uniform Contract Format.

* * * * *

PART 242—CONTRACT ADMINISTRATION

§ 242.7205 [Amended]

14. Section 242.7205 is amended in paragraph (b)(4)(iv) by revising the parenthetical to read ''(see 215.407–5)''.

PART 247—TRANSPORTATION

15. Section 247.572–2 is amended by revising the first sentence of paragraph (f)(3)(i) and by revising paragraph (f)(3)(ii) to read as follows:

§ 247.572–2 Direct purchase of ocean transportation services.

* * * * *

(f) * * *

(3) * * *

(i) An analysis of the carrier's cost in accordance with FAR Subpart 15.4, or profit in accordance with 215.404–4.

* * *

(ii) A description of efforts taken pursuant to FAR 15.405, to negotiate a reasonable price. For the purpose of FAR 15.405(d), this report is the referral to a level above the contracting officer; and

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

§ 252.215–7000 [Amended]

16. Section 252.215–7000 is amended in the introductory text by removing ''215.804–8'' and inserting in its place ''215.408(1)''.

17. Section 252.215–7002 is amended by revising the introductory text, the clause date, paragraph (c) introductory text, paragraph (d)(2) introductory text, paragraph (d)(2)(ii), and paragraph (e)(1) introductory text to read as follows:

252.215–7002 Cost estimating system requirements.

As prescribed in 215.408(2), use the following clause:

Cost Estimating System Requirements (Oct 1998)

* * * * *

(c) *Applicability.*

Paragraphs (d) and (e) of this clause apply if the Contractor is a large business and either—

* * * * *

(d) * * *

(2) An estimating system disclosure is acceptable when the Contractor has provided the ACO with documentation that—

* * * * *

(ii) Provides sufficient detail for the Government to reasonably make an informed judgment regarding the acceptability of the Contractor's estimating practices.

* * * * *

(e) * * *

(1) The Contractor shall respond to a written report from the Government that identifies deficiencies in the Contractor's estimating system as follows:

* * * * *

252.217–7027 [Amended]

18. Section 252.217–7027 is amended by revising the clause date to read ''OCT 1998)''; and in paragraph (c) in the first sentence by removing ''15.8'' and inserting its place ''15.4''.

252.219–7005 [Amended]

19. Section 252.219–7005 is amended by revising the clause date to read ''(OCT 1998)''; and in paragraph (c) by removing ''Subpart 15.9'' and inserting in its place ''15.404–4''.

20. Section 252.243–7000 is amended by revising the clause date and paragraph (c)(1) to read as follows:

252.243–7000 Engineering change proposals.

* * * * *

Engineering Change Proposals (Oct 1998)

* * * * *

(c) * * *

(1) A contract pricing proposal using the format in Table 15–2, Section 15.408, of the Federal Acquisition Regulation; and

* * * * *

PART 253—FORMS

253.204–70 [Amended]

21. Section 253.204–70 is amended in paragraph (b)(6)(1) introductory text in the first sentence by removing ''52.215–20'' and inserting in its place ''52.215–6''.

22. Section 253.215–70 is amended by revising paragraphs (a) and (b)(4); by removing paragraph (b)(7) and redesignating paragraphs (b)(8) and (b)(9) as paragraphs (b)(7) and (b)(8), respectively; by revising paragraphs (c)(12) and (c)(14); and by revising the last sentence of paragraph (c)(15) and the last sentence of paragraph (c)(16) to read as follows:

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

(a) Use the DD Form 1547 as prescribed in 215.404–70.

(b) * * *

(4) If the contracting office is exempt from reporting to the DoD management information system on profit and fee statistics (see 215.404–75), do not complete Block 1, 4, 5, 6, 7, 8, 9, 10, 11, or 12.

* * * * *

(c) * * *

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

Description	Code
Standard weighted guidelines method (215.404–71)	2
Alternate performance risk, no facilities employed (215.404–71–2(c)(2))	1
Alternate facilities capital employed (215.404–71–4(c)(2))	3
Alternate structure approach (215.404–73)	4
Modified weighted guidelines approach, (215.404–72)	5

* * * * *

(14) *Blocks 21 through 29—weighted guidelines profit factors.* Enter the amounts determined in 215.404–71 or 215.404–72. This section is not required to be completed when using an alternate structured approach (215.404–73).

(15) * * * This section is not required to be completed when using an alternate structured approach (215.404–73).

(16) * * * When using an alternate structured approach, see 215.404–73(b)(2) for offsets.

* * * * *

[FR Doc. 98–27091 Filed 10–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[I.D.100598B]

RIN 0648–AH97

Sea Turtle Conservation; Shrimp Trawling Requirements

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

ACTION: Notification of an exemption and request for comments.

SUMMARY: NMFS issues this rule to allow the use of limited tow times by shrimp trawlers in inshore waters in Alabama as an alternative to the requirement to use Turtle Excluder Devices (TEDs). This area was affected by Hurricane Georges on and about September 27 to 29, 1998. NMFS has been notified by the Director of the Marine Resources Division of the Alabama Department of Conservation and Natural Resources that large amounts of debris in Alabama's bays in the aftermath of the hurricane are causing extraordinary difficulty with the performance of TEDs. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area and to determine whether impacts from the hurricane continue to make TED use impracticable.

DATES: This rule is effective from October 7, 1998 through October 31, 1998, when tow times must be limited to no more than 55 minutes measured from the time trawl doors enter the water until they are retrieved from the water, and from November 1, 1998 until November 6, 1998, when tow times must be limited to no more than 75 minutes. Comments on this rule are requested, and must be received by November 6, 1998.

ADDRESSES: Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312, or Barbara A. Schroeder, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take of these species, as a result of shrimp trawling activities, have been documented in the Gulf of Mexico and along the Atlantic. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 227.72. Existing sea turtle conservation regulations (50 CFR part 227, subpart D) require most shrimp trawlers operating in the Gulf and Atlantic areas to have a NMFS-approved TED installed in each net rigged for fishing, year round.

The regulations provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 227.72 (e)(3)(ii) specify that the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), may authorize ''compliance with tow time restrictions as an alternative to the TED requirement, if [he] determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable.'' The provisions of 50 CFR 227.72(e)(3)(i) specify the maximum tow times that may be used when authorized as an alternative to the use of TEDs. The tow times may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31. NMFS has selected these tow time limits to minimize the level of mortality of sea turtles that are captured by trawl nets that are not equipped with TEDs.

Recent Events

On September 27, Hurricane Georges hit the Mississippi and Alabama coasts. The hurricane remained nearly stationary over the coastal area and South Alabama for about two days and deposited as much as 36 inches of rain on some areas. The combination of heavy rains and hurricane storm surge produced severe flooding in south Mississippi and South Alabama rivers. The Director of the Marine Resources Division of the Alabama Department of Conservation and Natural Resources (Alabama Director) stated in a September 30 letter to the NMFS Southeast Regional Administrator that the flooding ''has deposited a tremendous amount of debris in Alabama's bays.'' He further stated that the ''inordinate amount of debris is causing extraordinary difficulty with the performance of TEDs in these areas'' and that ''the debris clogs the TEDs making them inoperable for the exclusion of turtles and reduces the catch of shrimp.'' His letter requested that NMFS use its authority to allow the use of 55–minute tow times as an alternative to TEDs for a 30-day period in Alabama's inshore waters that are open to shrimping.

Coastal areas in Louisiana and Mississippi were also affected by Hurricane Georges. NMFS has been consulting with the Louisiana

Department of Wildlife and Fisheries and the Mississippi Department of Marine Resources to determine the extent of debris problems that may have resulted from the storm's passage. At this time, no requests for exemption have been submitted from these states and the temporary TED exemption is only for inshore waters of Alabama.

Special Environmental Conditions

The Assistant Administrator finds that the impacts of Hurricane Georges have created special environmental conditions that may make trawling with TED-equipped nets impracticable. Therefore, the Assistant Administrator issues this rule to authorize the use of restricted tow times as an alternative to the use of TEDs in the inshore waters of Alabama. The State of Alabama is continuing to monitor the situation and is cooperating with NMFS in determining the ongoing extent of the debris problem in Alabama inshore waters. Moreover, the Alabama Director has stated that Alabama's enforcement officers would assist with the enforcement of the restricted tow times. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the commitment from the Alabama Director to provide additional enforcement of the tow time restrictions is an important factor enabling NMFS to issue this authorization.

Continued Use of TEDs

NMFS encourages shrimp trawlers in Alabama inshore waters who are authorized under this rule to use restricted tow times to continue to use TEDs if possible. NMFS studies have shown that the problem of clogging by seagrass, algae or by other debris is not unique to TED-equipped nets. When fishermen trawl in problem areas, they may experience clogging with or without TEDs. A particular concern of fishermen, however, is that clogging in a TED-equipped net may hold open the turtle escape opening and increase the risk of shrimp loss. On the other hand, TEDs also help exclude certain types of debris and allow shrimpers to conduct longer tows.

NMFS' gear experts provide several operational recommendations to fishermen to maximize the debris exclusion ability of TEDs that may allow some fishermen to continue using TEDs without resorting to restricted tow times. NMFS has had good experience with hard TEDs made of either solid rod or hollow pipe that incorporate a bent angle at the escape opening and recommends use of this type of TED, in a bottom-opening configuration, to help exclude debris. In addition, the installation angle of a hard TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can result in debris clogging the bars of the TED; NMFS recommends an installation angle of 45°, relative to the normal horizontal flow of water through the trawl, to optimize the TED's ability to exclude turtles and debris. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Lastly, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly: the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris.

All of the preceeding recommendations represent legal configurations of TEDs for shrimpers in the inshore areas of Alabama (not subject to special requirements effective in the Gulf Shrimp Fishery-Sea Turtle Conservation area). This rule authorizes the use of restricted tow times as an alternative to the required use of TEDs. This rule does not authorize any other departure from the TED requirements, including any illegal modifications to TEDs. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

Alternative to Required Use of TEDs

The authorization provided by this rule applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 227.72(e)(2) who are operating in inshore waters of the State of Alabama, in areas which the State has opened to shrimping. ''Inshore waters'', as defined at 50 CFR 217.12, means the marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80. Instead of the required use of TEDs, shrimp trawlers may opt to comply with the sea turtle conservation regulations by using restricted tow times. Through October 31, 1998, a shrimp trawler utilizing this authorization must limit tow times to no more than 55 minutes, measured from the time trawl doors enter the water until they are retrieved from the water. From November 1, 1998 until November 6, 1998, tow times must be limited to no more than 75 minutes measured from the time trawl doors enter the water until they are retrieved from the water.

Additional Conditions

NMFS expects that shrimp trawlers operating in Alabama inshore waters without TEDs in accordance with this authorization will retrieve debris that is caught in their nets and return it to shore for disposal or to other locations defined by the Alabama Director, rather than simply disposing the debris at sea. Proper disposal of debris should help the restoration of the shrimping grounds in the wake of the hurricane. Shrimp trawlers are reminded that regulations under 33 U.S.C. 1901 *et seq.* (Act to Prevent Pollution From Ships) may apply to disposal at sea.

Alternative to Required Use of TEDs; Termination

The Assistant Administrator, at any time, may modify the alternative conservation measures through publication in the **Federal Register**, if necessary to ensure adequate protection of endangered and threatened sea turtles. Under this procedure, the Assistant Administrator may modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times or synchronized tow times, if the Assistant Administrator determines that the alternative authorized by this rule is not sufficiently protecting turtles, as evidenced by observed lethal takes of turtles aboard shrimp trawlers, elevated sea turtle strandings, or insufficient compliance with the authorized alternative. The Assistant Administrator may also terminate this authorization for these same reasons, or if compliance cannot be monitored effectively, or if conditions do not make trawling with TEDs impracticable. The Assistant Administrator may modify or terminate this authorization, as appropriate, at any time. A document will be published in the **Federal Register** announcing any additional sea turtle conservation measures or the termination of the tow time option in Alabama inshore waters. This authorization will expire automatically on November 6, 1998, unless it is explicitly extended through another notice published in the **Federal Register**.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The AA has determined that this action is necessary to respond to an emergency situation to allow more

efficient fishing for shrimp, while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and other applicable law.

Pursuant to section 553(b)(B) of the Administrative Procedures Act (APA), the Assistant Administrator finds that there is good cause to waive prior notice and opportunity to comment on this rule. It is impracticable, unnecessary, and contrary to the public interest to provide prior notice and opportunity for comment. The Assistant Administrator finds that an unusually large amount of debris exists in the aftermath of Hurricane George, creating special environmental conditions that may make trawling with TED-equipped nets impracticable. The Assistant Administrator has determined that the use of limited tow times for the described area and time would not result in a significant impact to sea turtles. Notice and comment are contrary to the public interest in this instance because providing notice and comment would prevent the agency from providing relief within the necessary timeframe. Furthermore, the public had notice and an opportunity to comment on 50 CFR 227.72(e)(3)(ii) when that regulation was finalized.

Pursuant to section 553(d)(1) of the APA, for the reasons cited above, and because this action relieves a restriction, this rule is effective immediately. As prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of 5 U.S.C. 601 *et. seq.* are inapplicable.

The Assistant Administrator prepared an Environmental Assessment (EA) for the final rule (57 FR 57348, December 4, 1992) requiring TED use in shrimp trawls and creating the regulatory framework for the issuance of actions such as this. Copies of the EA are available (see **ADDRESSES**).

Dated: October 7, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–27408 Filed 10–7–98; 4:37 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 198
Wednesday, October 14, 1998

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 63

Availability of Staff Recommendations to the Commission: Draft Regulations for Disposal of High-Level Radioactive Wastes at a Proposed Geologic Repository at Yucca Mountain, Nevada

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Availability of staff recommendations for draft regulations.

SUMMARY: The NRC is making available NRC staff recommendations for draft regulations governing disposal of high-level radioactive wastes at a proposed geologic repository at Yucca Mountain, Nevada. The Commission is presently reviewing these staff recommendations, and has not yet approved publication of the recommended draft regulations as a proposed rule. The Commission is making the staff recommendations available now to enable all stakeholders to have preliminary access to the document. When the Commission has approved a proposed rule, it will be published in the **Federal Register** for formal public comment.

ADDRESSES: A copy of the staff recommendations can be obtained electronically at the NRC Technical Conference Forum Website under the topic ''Draft Proposed Rule for Disposal of High-Level Radioactive Wastes at a Proposed Geologic Repository at Yucca Mountain, Nevada'' at http://techconf.linl.gov/cgi-bin/topics or from the NRC's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555; telephone 202–634–3273; fax 202–634–3343. To view the working paper at the Website, select ''Draft Proposed Rule for Disposal of High-Level Radioactive Waste at a Proposed Geologic Repository at Yucca Mountain, Nevada.''

Comments may be posted electronically on the NRC Technical Conference Forum Website mentioned above. Comments submitted electronically can also be viewed at that Website. Comments may also be mailed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203; e.mail cwp@nrc.gov.; or Timothy McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6681; e-mail tjm3@nrc.gov.

Dated at Rockville, Maryland this 6th day of October, 1998.

For the Nuclear Regulatory Commission.

Frederick C. Combs,

Acting Director, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 98–27489 Filed 10–13–98; 8:45 am]

BILLING CODE 7590–01–M

FEDERAL ELECTION COMMISSION

11 CFR Parts 102, 103, and 106

[Notice 1998–15]

Prohibited and Excessive Contributions; ''Soft Money''

AGENCY: Federal Election Commission.

ACTION: Change of Public Hearing Date.

SUMMARY: On July 13, 1998, the Federal Election Commission published proposed rules and announced a public hearing relating to funds received by party committees outside the prohibitions and limitations of the Federal Election Campaign Act, also known as ''soft money.'' 63 FR 37721 (July 13, 1998). The Commission subsequently extended the comment period and changed the public hearing date. 63 FR 48452 (September 10, 1998). The commission has decided to reschedule the public hearing for November 18, 1998 at 10:00 a.m. in order to avoid scheduling conflicts related to November 3, 1998 general election. The comment period has not been extended.

DATES: The hearing will be held on November 18, 1998 at 10:00 a.m. The comment period ended on October 2, 1998 and has not been extended.

ADDRESSES: The hearing will be held in the Commission's public hearing room, 999 E Street, N.W., Washington, DC, Ninth Floor.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Paul Sanford, Staff Attorney, 999 E Street, N.W., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

Scott E. Thomas,

Acting Chairman, Federal Election Commission.

[FR Doc. 98–27496 Filed 10–13–98; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–36]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. ALF502 and LF507 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of two existing airworthiness directives (ADs), applicable to AlliedSignal Inc. ALF502 and LF507 series turbofan engines, that currently require rework or replacement of No. 4 and 5 bearing oil system hardware, initial and repetitive inspections of the oil system, optional installation of an improved oil filter bypass valve, and repetitive inspection of No. 4 and 5 bearing oil inlet tube, to ensure the integrity of the reduction gear system and overspeed protection system. This action would require replacement of the existing power turbine bearing housing assembly with a new, improved power turbine bearing housing assembly, and installation of a reworked or modified fourth turbine rotor disk assembly as a part of a design change to the new No. 4 bearing configuration that eliminates the requirement for repetitive inspections of oil system and No. 4 and 5 bearing oil inlet tube assembly. This proposal is prompted by one report of a contained power turbine rotor shaft separation forward of the Stage 4 low pressure turbine (LPT) rotor on an AlliedSignal

Inc. ALF502R–5 engine. The LPT failure was caused by improper inspection of the engine oil system required by AD 97–05–11 R1. The actions specified by the proposed AD are intended to prevent No. 4 and 5 duplex bearing failure, which can result in a Stage 4 LPT rotor failure, an uncontained engine failure, and damage to the aircraft.

DATES: Comments must be received by December 14, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–ANE–36, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Raymond Vakili, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–ANE–36.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 96–ANE–36, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On December 9, 1980, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 80-22–53, amendment 39–3995 (45 FR 83202, December 18, 1980), applicable to AlliedSignal Inc. (formerly Avco Lycoming) ALF502L and L2 series turbofan engines, to require installation of improved fourth turbine nozzle and fire shield, and replacement and repetitive inspection of the No. 4 and 5 bearing oil inlet tubes.

On July 17, 1987, the FAA also issued AD 87–06–52 R1, amendment 39–5688 (52 FR 31979, August 25, 1987), applicable to AlliedSignal Inc. (formerly Avco Lycoming Textron) ALF502R series turbofan engines, to require initial and repetitive inspections of the oil system chip detectors and oil filter bypass valve, and optional installation of an improved oil filter bypass valve, to ensure the integrity of the reduction gear system and overspeed protection system. That action was prompted by reports of power turbine overspeed and uncontained blade failure resulting from reduction gear system decouple and inaccurate power turbine overspeed signal generation. That condition, if not corrected, could result in No. 4 and 5 duplex bearing failure, which can result in a stage 4 low pressure turbine (LPT) rotor failure, an uncontained engine failure, and damage to the aircraft.

Since the issuance of AD 87–06–52 R1, the FAA received reports of four additional failures of the stage 4 LPT rotor on AlliedSignal Inc. ALF502 series turbofan engines. The LPT failures were caused by failure of the No. 4 and 5 duplex bearing, causing bearing seizures and LPT shaft separation between the two bearings forward of the stage 4 LPT rotor. In one incident the stage 4 LPT shaft separation caused an uncontained rotor failure. On July 23, 1997, the FAA issued AD 97–05–11 R1, Amendment 39–10091 (62 FR 41262, August 1, 1997), to supersede AD 87–06–52 R1 to require more stringent oil system inspection of the full flow chip detector, oil filter impending bypass button, oil acid number, oil color, and oil quantity.

Since the issuance of AD 97–05–11 R1, the FAA has received one report of a contained power turbine rotor shaft separation forward of Stage 4 LPT rotor on an AlliedSignal Inc. ALF–502-R5 engine. The LPT failure was caused by improper inspection of the engine oil system required by AD 97–05–11 R1.

The FAA has reviewed and approved the technical contents of the accomplishment instructions paragraphs of AlliedSignal Inc. Service Bulletin (SB) No. ALF/LF 72–1030, Revision 1, dated February 23, 1998, and AlliedSignal Inc. SB No. ALF/LF 72–1040, dated October 20, 1997, that describe procedures for installation of a reworked or modified fourth turbine rotor disk assembly, and that describes procedures for replacement of the existing power turbine bearing housing assembly with a new, improved power turbine bearing housing assembly.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede ADs 80–22–53 and 97–05–11 R1 to require replacement of the existing power turbine bearing housing assembly with a new, improved power turbine bearing housing assembly, and installation of a reworked or modified fourth turbine rotor disk assembly as a part of design change to the new No. 4 bearing configuration, that will eliminate the requirements for repetitive inspections of oil system and No. 4 and 5 bearing oil inlet tube assembly.

There are approximately 1,500 engines of the affected design in the worldwide fleet. The FAA estimates that 300 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $30,000 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $9,540,000.

The regulations proposed herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–3995 (45 FR 83202, December 18, 1980), and amendment 39–10091 (62 FR 41262, August 1, 1997) and by adding a new airworthiness directive to read as follows:

AlliedSignal Inc.: Docket No. 96–ANE–36. Supersedes AD 80–22–53, Amendment 39–3995, and AD 97–05–11 R1, Amendment 39–10091.

Applicability: AlliedSignal Inc. (formerly Textron Lycoming, Avco Lycoming) Model ALF502 and LF507 series turbofan engines, installed on but not limited to British Aerospace BAe 146–100A, BAe 146–200A, BAe 146–300A, AVRO 146–RJ70A, AVRO 146–RJ85A, AVRO 146–RJ100A, and Canadair Model CL–600–1A11 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a Stage 4 low pressure turbine (LPT) rotor failure, an uncontained engine failure, and damage to the aircraft, accomplish the following:

(a) For AlliedSignal Inc. (formerly Textron Lycoming and Avco Lycoming) ALF502L and ALF502L2 series engines, prior to further flight, rework or replace the following parts and reassemble in accordance with Avco Lycoming Service Bulletin (SB) No. ALF502–72–0008, Revision 1, dated October 14, 1980, and SB No. ALF502–72–0010, dated October 14, 1980:

(1) Remove No. 4 and 5 bearing inlet tube assembly, part number (P/N) 2–141–380–07/–08/–11/–12 and replace with P/N 2–141–380–13/–14.

(2) Remove adapter assembly, P/N 2–141–640–01 and replace with P/N 2–141–640–02.

(3) If not previously incorporated, install: Bracket, P/N 2–143–049–01, spacer P/N 2–143–051–01, two bolts P/N STD3061–11, Clamp P/N TA1501H05, Bolt P/N MS9565–06, Nut P/N STD3073–3, and Washer P/N STD3035C2.

(4) Rework fourth stage turbine nozzle, P/N 2–141–150–38, to P/N 2–141–150–42, or P/N 2–141–150–39 to P/N 2–141–150–41 in accordance with SB No. ALF502–72–0010.

(5) Rework upper half of fire shield, P/N 2–163–990–04 to 2–163–990–07, or P/N 2–163–990–05 to 2–163–990–08 in accordance with SB No. ALF502–72–0010.

(6) Install: Washer, P/N 2–163–585–01, and Spring P/N 2–163–586–01, and Retainer P/N 2–163–584–01.

(7) Remove oil feed line, P/N 2–173–240–02 and replace with P/N 2–303–377–01.

(8) Remove jam nut, P/N R44118P05W. (The function of the jam nut is accomplished by the parts in paragraphs (a)(6) and (a)(7) of this AD.)

(9) Remove oil inlet support bracket, P/N 2–141–335–02 and replace with P/N 2–141–335–03.

(b) After replacement of the No. 4 and 5 bearing oil inlet tube and associated hardware in accordance with paragraph (a) of this AD, inspect the No. 4 and 5 bearing oil inlet tube at intervals not to exceed 100 hours time in service (TIS) since last inspection for chafing, in accordance with Avco Lycoming SB No. ALF502–72–0008, Revision 1, dated October 14, 1980. Prior to further flight, replace oil inlet tubes which exhibit chafing in excess of 0.010 inch deep with serviceable parts.

(c) For ALF502R series engines equipped with oil filter bypass valve, P/N 2–303–432–01, accomplish the following:

(1) Inspect the engine oil filter bypass valve for leakage within the next 25 hours TIS or 25 flights in service, whichever occurs first, from the effective date of this AD, in accordance with Avco Lycoming Textron SB No. ALF 502R–79–0162, Original, dated March 23, 1987, or Revision 1, dated May 26, 1987. Prior to further flight, remove from service oil filters exhibiting any leakage and replace with serviceable parts.

(2) Thereafter, inspect the oil filter bypass valve for any leakage in accordance with Avco Lycoming Textron SB No. ALF 502R–79–0162, Original, dated March 23, 1987, or Revision 1, dated May 26, 1987, at intervals not to exceed 50 hours TIS or 50 flights in service since last inspection, whichever occurs first, and at the same time accomplish the following:

(i) Visually inspect the following engine chip detectors for metal contamination:

(A) For engines with a full flow chip detector installed, inspect the full flow chip detector.

(B) For engines without a full flow chip detector installed, inspect the chip detectors located in the accessory gearbox, Number 2 bearing scavenge line, and No. 4 and 5 bearing scavenge line.

(ii) For engines with engine chip detectors exhibiting Condition 3, or Condition 2, or Condition 1 where the oil filter bypass indicator is extended, prior to further flight, remove oil filter bypass valves exhibiting any leakage and replace with a serviceable part.

Note 2: Chip detector conditions are described in Avco Lycoming Textron SB No. ALF502R–72–0160, Revision 1, dated March 23, 1987, Figures 1, 2 and 3.

(3) At the next engine shop visit, or within 2,500 hours TIS after the effective date of this AD, whichever occurs first, conduct the oil filter bypass valve spring compression force check, in accordance with Avco Lycoming Textron SB No. ALF 502R–79–0162, Original, dated March 23, 1987. Oil filter bypass valves which do not comply with the spring compression force limits contained in Avco Lycoming Textron SB No. ALF 502R–79–0162, Original, dated March 23, 1987, must be removed and replaced with oil filter bypass valve, P/N 2–303–432–02. Replacement of oil filter bypass valve, P/N 2–303–432–01, with the improved oil filter bypass valve, P/N 2–303–432–02, constitutes terminating action for the inspection requirements of paragraphs (c)(1) and (c)(2) of this AD.

(4) For the purpose of this AD, an engine shop visit is defined as engine maintenance that entails any of the following:

(i) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle reverser. Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a ''shop visit.''

(ii) Removal of a disk, hub, or spool.

(iii) Removal of the fuel nozzles.

(d) For ALF502R, ALF502L, LF507–1F, and LF507–1H series engines, equipped with the No. 4 and 5 duplex bearing assembly numbers 2–141–930–01, 2–141–930–02, or 2–141–930–03, perform the repetitive oil system maintenance and inspections in accordance with the intervals and procedures

described in the Accomplishment Instructions paragraphs of the applicable AlliedSignal Inc. SBs referenced in paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) of this AD, within the next 25 hours TIS or 25 flights in service, whichever occurs first, from the effective date of this AD.

(1) For ALF502R series engines, in accordance with AlliedSignal Inc. SB No. ALF502R 79–9, Revision 1, dated November 27, 1996.

(2) For ALF502L series engines, in accordance with AlliedSignal Inc. SB No. ALF502L 79–0171, Revision 1, dated November 27, 1996.

(3) For LF507–1F series engines, in accordance with AlliedSignal Inc. SB No. LF507–1F–79–5, Revision 1, dated November 27, 1996.

(4) For LF507–1H series engines, in accordance with AlliedSignal SB No. LF507–1H–79–5, Revision 1, dated November 27, 1996.

(e) Modify the fourth turbine rotor disk assembly at the next access to the No. 4 and 5 duplex bearing assembly during the engine shop visit not to exceed 6,000 cycles in service (CIS) or 6,000 hours TIS, whichever occurs first, from the effective date of this AD, in accordance with the accomplishment instructions paragraph of AlliedSignal Inc. SB No. ALF/LF 72–1030, Revision 1, dated February 23, 1998.

(f) Modify the power turbine bearing housing assembly at the next access to the No. 4 and 5 duplex bearing assembly during the engine shop visit not to exceed 6,000 CIS or 6,000 hours TIS, whichever occurs first, from the effective date of this AD, in accordance with the accomplishment instructions paragraph of AlliedSignal Inc. SB No. ALF/LF 72–1040, dated October 20, 1997.

(g) Performance of the modifications described in paragraphs (e) and (f) of this AD constitutes terminating action to the repetitive inspection requirements of paragraphs (b), (c), and (d) of this AD.

Note 3: Installation of a reworked or modified fourth turbine rotor disk assembly as a part of a design change to the new No. 4 bearing configuration that eliminates the requirements for repetitive inspections of oil system does not relieve the operators from accomplishment of the engine oil system inspection in accordance with the engine manufacturer's applicable maintenance documents.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

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

Issued in Burlington, Massachusetts, on October 6, 1998.

Ronald L. Vavruska,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–27462 Filed 10–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–261–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120RT and –120ER Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120RT and –120ER series airplanes. This proposal would require repetitive visual inspections to detect discrepancies of the brake assemblies on the main landing gear (MLG), and replacement of the brake assemblies with new brake assemblies, if necessary. This proposal is prompted by reports of fatigue cracking or splitting of the brake stator disk at the cut-out slots. The actions specified by the proposed AD are intended to prevent failure of the brake assemblies of the MLG due to cracking or splitting of the stator disk, which could result in loss of brake effectiveness and could cause the airplane to leave the runway surface.

DATES: Comments must be received by November 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–261–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from BFGoodrich, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio, 45373. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Rob Capezutto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–261–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–261–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that certain EMBRAER Model EMB–120RT and –120ER series airplanes have experienced failures in

the brake assemblies of the main landing gear (MLG) due to cracking or splitting of the stator disk of the brake assemblies. At this time, the exact cause of the cracking or splitting has not been determined. Such cracking or splitting, if not corrected, could result in loss of brake effectiveness and could cause the airplane to leave the runway surface.

Explanation of Relevant Service Information

The FAA has reviewed and approved BFGoodrich Service Bulletin 2–1585–32–1, Revision 1, dated June 17, 1998 [for airplanes equipped with brake assembly part number (P/N) 2–1585], and Service Bulletin 2–1479–32–2, Revision 1, dated June 17, 1998 (for airplanes equipped with brake assembly P/N 2–1479–1). These service bulletins describe procedures for repetitive visual inspections to detect discrepancies (i.e., locking or hanging up, broken or damaged stators, and wear of plates) of the brake assemblies on the MLG. These service bulletins also recommend contacting BFGoodrich in the event that a discrepant brake assembly is detected.

U.S. Type Certification of Airplane

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below. The proposed AD also would require that operators report results of the inspection findings to BFGoodrich.

Differences Between Proposed Rule and Service Bulletins

Operators should note that, although the service bulletins specify that BFGoodrich, the manufacturer of the brake assemblies, be contacted if any discrepant brake assembly is detected, this proposal would require replacement of any discrepant brake assembly to be accomplished in accordance with the EMBRAER EMB–120 Brasilia Maintenance Manual.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 227 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $13,620, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 98–NM–261–AD.

Applicability: Model EMB–120RT and –120ER series airplanes, equipped with BFGoodrich brake assemblies having part number (P/N) 2–1585 or 2–1479–1; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the brake assemblies of the main landing gear (MLG) due to cracking or splitting of the stator disk, which could result in loss of brake effectiveness and could cause the airplane to leave the runway surface, accomplish the following:

(a) At the next MLG wheel removal, but no later than 300 landings after the effective date of this AD, perform visual inspections for discrepancies (i.e., locking or hanging up, broken or damaged stators, and wear of plates) of the brake assemblies on the MLG, in accordance with paragraph (a)(1) or (a)(2), of this AD, as applicable. Repeat the inspections thereafter at each wheel change, but not to exceed an interval of 300 landings.

(1) For airplanes equipped with BFGoodrich main brake assemblies having P/N 2–1479–1: Inspect in accordance with BFGoodrich Service Bulletin 2–1479–32–2, Revision 1, dated June 17, 1998.

(2) For airplanes equipped with BFGoodrich main brake assemblies having P/N 2–1585: Inspect in accordance with BFGoodrich Service Bulletin 2–1585–32–1, Revision 1, dated June 17, 1998.

(b) If any discrepancy is detected during any inspection required by paragraph (a) of this AD, prior to further flight, replace the brake assembly with a new brake assembly, in accordance with section 32–41–05 of EMBRAER EMB–120 Brasilia Maintenance Manual, dated April 30, 1992. Repeat the inspections required by paragraph (a) of this AD thereafter at each wheel change, but not to exceed an interval of 300 landings.

(c) Within 10 days after accomplishing any inspection required by this AD, if a discrepant brake assembly is detected, submit a report of the inspection results, to BFGoodrich, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

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

Issued in Renton, Washington, on October 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–27461 Filed 10–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–125–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A310 series airplanes, that would have required repetitive inspections and tests to detect missing or damaged vespel bushes on the slat system universal joint assemblies of the left-and right-hand wings; and replacement of the universal joints with new joints, if necessary. That proposal was prompted by a report of loose and migrated vespel bushes and partial cracking within unsupported bush areas found on the slat system universal joint assemblies. This new action revises the proposed rule by adding an optional terminating modification for the repetitive inspection and test requirements, and by expanding the applicability to include additional airplanes. The actions specified by this new proposed AD are intended to prevent rupture of the universal joints, which could result in inadvertent movement of the slats, and consequent reduced controllability of the airplane.

DATES: Comments must be received by November 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 93–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 93–NM–125–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 93–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A310 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on November 12, 1993 (58 FR 59965). That NPRM would have required repetitive inspections and tests to detect missing or damaged vespel bushes on the slat system universal joint assemblies of the left-and right-hand wings; and replacement of the universal joints with new joints, if necessary. That NPRM was prompted by a report of loose and migrated vespel bushes and partial cracking within unsupported bush areas found on the slat system universal joint assemblies. That condition, if not corrected, could result in rupture of the universal joints, inadvertent movement of the slats, and consequent reduced controllability of the airplane.

New Service Information

Since the issuance of the NPRM, the manufacturer has issued Airbus Service Bulletin A320–27–2061, Revision 01, dated October 3, 1997. This service bulletin is essentially identical to the original issue of the service bulletin, and contains only minor administrative changes.

The manufacturer also has issued Airbus Service Bulletin A310–27–2060, Revision 01, dated October 3, 1997, which describes procedures for modification of the slat system universal joint assemblies by replacement of the vespel SP 21 bushes and pins on the slat system universal joint and shaft assemblies of the left-and right-hand wings with new bushes and pins. Accomplishment of this modification eliminates the need for the repetitive

inspections and tests described in Airbus Service Bulletin A310–27–2061, dated November 4, 1992, and Revision 01, dated October 3, 1997.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

The Direction Gónórale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified Airbus Service Bulletin A320–27–2061, Revision 01, dated October 3, 1997, as mandatory and issued French airworthiness directive 92–275–139(B)R1, dated December 17, 1997, in order to assure the continued airworthiness of these airplanes in France.

Explanation of Correction Made to NPRM

In the applicability of the original NPRM, the FAA inadvertently listed all Airbus Model A310–222 and –324 series airplanes, as listed in French airworthiness directive 92–275–139(B), dated December 23, 1992 (which was referenced in the original NPRM). The FAA has revised the applicability of this supplemental NPRM to match the revised French airworthiness directive 92–275–139(B)R1, dated December 17, 1997, to read ''Airbus Model A310 series airplanes, except those on which Airbus Modification 10092 (Airbus Service Bulletin A310–27–2060, Revision 01, dated October 3, 1997) has been accomplished.''

FAA's Conclusions

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the supplemental NPRM has been revised to add an optional modification, which would constitute terminating action for the repetitive inspection and test requirements.

Cost Impact

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $55 per work hour to $60 per work hour. The cost impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

The FAA estimates that 41 airplanes of U.S. registry would be affected by the proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed inspection and test, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection and test proposed by this AD on U.S. operators is estimated to be $49,200 or $1,200 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions proposed in this AD were to be conducted as ''stand alone'' actions. However, in actual practice, these actions for the most part would be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary ''additional'' work hours would be minimal in many instances. Additionally, any costs associated with special airplane scheduling would be expected to be minimal.

Should an operator elect to accomplish the optional terminating modification that would be provided by this AD action, it would take approximately 11 work hours to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the optional terminating modification would be $660 per airplane.

Regulatory Impact

The regulations proposed herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 93–NM–125–AD.

Applicability: Model A310 series airplanes, except those on which Airbus Modification 10092 (Airbus Service Bulletin A310–27–2060, Revision 01, dated October 3, 1997) has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the universal joints, which could result in inadvertent movement of the slats, and consequent reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 15,000 total landings, or within 400 flight hours after the effective date of this AD, whichever occurs later, perform a visual inspection and an electrical continuity test to detect missing or damaged vespel bushes on the slat system universal joint assemblies of the left- and right-hand wings, in accordance with Airbus Service Bulletin A310–27–2061, dated November 4, 1992, or Revision 01, dated October 3, 1997. Repeat this inspection and test thereafter at intervals not to exceed 15,000 landings.

(b) If any vespel bushes are missing or damaged, prior to further flight, replace the universal joint with a new joint in accordance with Airbus Industrie Service Bulletin A310–27–2061, dated November 4, 1992, or Revision 01, dated October 3, 1997. After replacement, continue to repeat the inspection and test required by paragraph (a) of this AD at intervals not to exceed 15,000 landings.

(c) Modification of the slat system universal joint and shaft assemblies in accordance with Airbus Service Bulletin A310–27–2060, Revision 01, dated October 3, 1997, constitutes terminating action for the repetitive inspection and test requirements of this AD.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in French airworthiness directive 92–275–139(B)R1, dated December 17, 1997.

Issued in Renton, Washington, on October 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–27458 Filed 10–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–153–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes, that would have required repetitive inspections to detect cracks in the angle fitting at frame 40 of the center wing box, and corrective actions, if necessary; and eventual modification of that angle fitting, which would terminate the repetitive inspections. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises certain compliance times in the proposed rule. The actions specified by this new proposed AD are intended to prevent cracks in the center wing box angle fitting, which could result in the failure of the center wing box at frame 40, and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by November 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–153–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 4, 1998 (63 FR 10576). That NPRM would have required repetitive inspections to detect cracks in the angle fitting at frame 40 of the center wing box, and corrective

actions, if necessary; and eventual modification of that angle fitting, which would terminate the repetitive inspections. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by that NPRM are intended to prevent cracks in the center wing box angle fitting, which could result in the failure of the center wing box at frame 40, and consequent reduced structural integrity of the airplane.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has become aware of a typographical error that appeared in Table 1 of the proposal. The initial inspection threshold for airplanes having an average flight time (AFT) of 5.50–5.99 should be 3,200 flight cycles instead of 2,300 flight cycles. Table 1 of this supplemental NPRM has been revised accordingly.

Comment Received

Due consideration has been given to the comment received in response to the NPRM.

Request for Correction to Compliance Time

One commenter requests a correction to another compliance time that appeared in Table 1 of the proposed AD. The initial inspection interval for airplanes having an AFT of 2.10–2.49, should be 5,300 flight cycles instead of 6,300 flight cycles. The commenter notes that the data listed in Table 1 of the proposal did not match the data the manufacturer submitted to the FAA on October 17, 1997.

The FAA concurs with the commenter's request to correct the compliance time listed in the original NPRM. Table 1 of this supplemental NPRM has been revised accordingly.

Conclusion

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 54 Model A300–600 series airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 36 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $116,640, or $2,160 per airplane, per inspection cycle.

It would take approximately 754 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $11,605 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $3,069,630, or $56,845 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 97–NM–153–AD.

Applicability: Model A300–600 series airplanes on which Airbus Modification 10453 has not been installed; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracks in the center wing box angle fitting, which could result in the failure of the center wing box at frame 40, and consequent reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of the threshold specified in Table 1 of this AD, as applicable, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later: Perform a detailed visual, eddy current, or liquid penetrant inspection to detect cracking in the angle fitting of frame 40 (both left and right), with the nut removed, in accordance with Airbus Service Bulletin A300–57–6052, Revision 1, dated July 22, 1996. Thereafter, repeat the inspections at the interval specified in Table 1 of this AD, as applicable, until the actions required by paragraph (c) of this AD have been accomplished.

TABLE 1

Average flight time (AFT): flight hours/flight cycles	Threshold (flight cycles)	Visual inspection interval (flight cycles)	Eddy current/liquid penetrant inspection interval (flight cycles)
2.10–2.49	5,900	4,700	5,300
2.50–2.99	5,600	4,400	4,900
3.00–3.49	5,200	4,100	4,600
3.50–3.99	4,800	3,800	4,200
4.00–4.49	4,400	3,500	3,900
4.50–4.99	4,000	3,200	3,500
5.00–5.49	3,600	2,800	3,200
5.50–5.99	3,200	2,500	2,800
6.00–6.50	2,800	2,200	2,500

(b) Except as provided by paragraph (d) of this AD, if any crack is found during an inspection required by paragraph (a) of this AD, prior to further flight, accomplish follow-on corrective actions in accordance with the procedures specified in Airbus Service Bulletin A300–57–6052, Revision 1, dated July 22, 1996.

(c) Within 4 years after the effective date of this AD, modify the angle fitting at frame 40 (both left and right) in accordance with Airbus Service Bulletin A300–57–6053, Revision 1, dated October 31, 1995. Accomplishment of the modification constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

(d) If any crack is found during an inspection required by paragraph (a) of this AD, and the applicable service bulletin specifies to contact the manufacturer for an appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

Note 3: The subject of this AD is addressed in French airworthiness directive (CN) 95–111–181(B) R1, dated October 23, 1996.

Issued in Renton, Washington, on October 7, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–27477 Filed 10–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–243–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 series airplanes. This proposal would require inspections to verify correct installation of certain fasteners located on the trailing edges of the horizontal and vertical stabilizer; replacement of the existing fasteners with new fasteners installed with wet sealant; and follow-on actions, if necessary. This proposal is prompted by reports indicating that, during manufacture of the horizontal and vertical stabilizers, certain fasteners attaching the aluminum ribs and brackets to the trailing edges on the empennage were not correctly installed with wet sealant. The actions specified by the proposed AD are intended to prevent corrosion and possible cracking of those aluminum parts, which could result in loss of the attachment of the elevator and rudder to the empennage and consequent reduced controllability of the airplane.

DATES: Comments must be received by November 30, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–243–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice

must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–243–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–243–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that, during manufacture of the horizontal and vertical stabilizers, which are made primarily of graphite composite, certain fasteners attaching the aluminum ribs and brackets to the trailing edges on the empennage were not correctly installed with wet sealant. If moisture is present this lack of sealant results in an electrolytic path between the aluminum components and composite structure that could cause corrosion of the aluminum components. Such corrosion could lead to the initiation of fatigue cracks. This condition, if not corrected, could result in loss of the attachment of the elevator and rudder to the empennage and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–55A0005, Revision 1, dated June 4, 1998, which describes procedures for visual inspections to verify correct installation of certain fasteners located on the trailing edges of the horizontal and vertical stabilizer, and replacement of the existing fasteners with new fasteners installed with wet sealant, if necessary. The alert service bulletin also describes follow-on procedures for oversizing the fastener holes and applying primer prior to installation of fasteners. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

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

Cost Impact

There are approximately 18 airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 331 work hours per airplane to accomplish the proposed inspection of the horizontal stabilizer, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $39,720, or $19,860 per airplane.

It would take approximately 206 work hours per airplane to accomplish the proposed inspection of the vertical stabilizer, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $24,720, or $12,360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein 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.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 98–NM–243–AD.

Applicability: Model 777–200 series airplanes, line numbers 15 through 33, excluding line number 18; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion and possible cracking of the aluminum ribs and brackets of the trailing edges on the empennage, which could result in loss of the attachment of the elevator and rudder to the empennage and consequent reduced controllability of the airplane, accomplish the following:

(a) Within five years since the date of manufacture of the airplane, perform visual inspections of the specified number of fasteners installed in each zone on the aluminum ribs and brackets located on the trailing edges of the horizontal and vertical stabilizer to verify correct installation of fasteners with wet sealant, in accordance with Boeing Alert Service Bulletin 777–55A0005, Revision 1, dated June 4, 1998. Following the inspection, oversize the holes for all removed fasteners, apply primer, and install new, oversize fasteners with wet sealant, in accordance with the alert service bulletin.

(1) If the fasteners are correctly installed with wet sealant, no further action is required for that zone.

(2) If the fasteners are not correctly installed with wet sealant in any zone, remove the remaining fasteners in that zone, oversize the holes, apply primer, and install new, oversize fasteners with wet sealant, in accordance with the alert service bulletin.

(3) If it cannot be determined that the fasteners are correctly installed with wet sealant, remove and inspect the specified number of additional fasteners in that zone, oversize the holes, apply primer, and install new, oversize fasteners with wet sealant, in accordance with the alert service bulletin.

(i) If, after removal, all additional fasteners inspected in that zone are found to be correctly installed with wet sealant, no further action is required for that zone.

(ii) If, after removal, the fasteners in that zone are found to be incorrectly installed, remove all other fasteners in the zone, oversize the holes, apply primer, and install new, oversize fasteners with wet sealant, in accordance with the alert service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

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

Issued in Renton, Washington, on October 7, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–27481 Filed 10–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 315 and 601

[Docket No. 98N–0040]

Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to November 16, 1998, the comment period on a proposed rule that was published in the **Federal Register** of May 22, 1998 (63 FR 28301). The document proposed to amend the drug and biologics regulations by adding provisions that would clarify the evaluation and approval of in vivo radiopharmaceuticals used for diagnosis and monitoring. The agency is taking this action to provide interested persons additional time to submit comments to FDA on the proposed rule.

DATES: Written comments by November 16, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210, or

Brian L. Pendleton, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5649.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 22, 1998 (63 FR 28301), FDA published a proposed rule to amend the drug and biologics regulations by adding provisions that would clarify the evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis and monitoring of diseases. The proposed regulations would describe certain types of indications for which FDA may approve diagnostic radiopharmaceuticals. The proposed rule would also include criteria that the agency would use to evaluate the safety and effectiveness of a diagnostic radiopharmaceutical under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act. FDA provided until August 5, 1998, to submit comments on the proposed rule.

In the **Federal Register** of August 3, 1998 (63 FR 41219), FDA extended the comment period on the proposed rule until October 15, 1998, to allow interested persons additional time to submit comments on the proposed rule. FDA finds it appropriate to further extend the comment period to November 16, 1998, to permit interested persons the opportunity to consider the proposed rule in light of the agency's draft guidance for industry entitled ''Developing Medical Imaging Drugs and Biologics.'' Notice of the availability of this draft guidance is published elsewhere in this issue of the **Federal Register**.

Interested persons may, on or before November 16, 1998, submit to the Dockets Management Branch (address above) written comments regarding this proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 2, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–27494 Filed 10–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 315 and 601

[Docket No. 98D–0785]

Draft Guidance for Industry on Developing Medical Imaging Drugs and Biologics; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Availability of guidance.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Developing Medical Imaging Drugs and Biologics.'' This draft guidance is intended to assist developers of drug and biological products used for medical imaging, as well as radiopharmaceutical drugs used in disease diagnosis, in planning and coordinating the clinical investigations of, and submitting various types of applications for, such products. The draft guidance also provides information on how the agency will interpret and apply provisions in the proposed regulations for in vivo radiopharmaceuticals used for diagnosis and monitoring, which published in the **Federal Register** of May 22, 1998 (63 FR 28301).

DATES: Written comments on the draft guidance may be submitted by December 14, 1998. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401

Rockville Pike, Rockville, MD 20852–1448, FAX 888–CBERFAX or 301–827–3844. Send two self-addressed adhesive labels to assist the office in processing your request. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Robert K. Leedham, Jr., Center for Drug Evaluation and Research (HFD–160), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 30857, 301–443–3500, or George Q. Mills, Center for Biologics Evaluation and Research (HFM–573), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–5097.

SUPPLEMENTARY INFORMATION:

I. Description of the Guidance

FDA is announcing the availability of a draft guidance document entitled ''Developing Medical Imaging Drugs and Biologics.'' It references other CDER and CBER guidance documents that relate to the development of medical imaging drugs and biologics, including CBER's ''Points to Consider in the Manufacture and Testing of Monoclonal Antibody Products for Human Use'' (62 FR 9196, February 28, 1997). The draft guidance is intended to assist developers of drug and biological products used for medical imaging, as well as radiopharmaceutical drugs used in disease diagnosis, in planning and coordinating the clinical investigations of, and submitting various types of applications for, such products. The draft guidance applies to medical imaging drugs that are used for diagnosis and monitoring and that are administered in vivo. Such drugs include contrast agents used with medical imaging techniques such as radiography, computed tomography, ultrasonography, and magnetic resonance imaging, as well as radiopharmaceuticals used with imaging procedures, such as single-photon emission computed tomography and positron emission tomography. The draft guidance is not intended to apply to possible therapeutic uses of these drugs or to in vitro diagnostic products.

CDER's Division of Medical Imaging and Radiopharmaceutical Drug Products presented a preliminary version of this draft guidance document to the Medical Imaging Drug Advisory Committee (MIDAC) on October 26, 1996. Following that meeting, FDA worked with MIDAC to develop this draft guidance. As part of this process, FDA considered proposals submitted by an ad hoc group representing contrast agent manufacturers and by the Council on Radionuclides and Radiopharmaceuticals, Inc.

On November 21, 1997, President Clinton signed into law the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). Section 122(a)(1) of the Modernization Act directs FDA to issue regulations on the approval of diagnostic radiopharmaceuticals. In the **Federal Register** of May 22, 1998 (63 FR 28301), FDA published a proposed rule on the evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis and monitoring of diseases. The proposed rule describes certain types of indications for which FDA would approve diagnostic radiopharmaceuticals and lists factors that the agency would consider in evaluating the safety and effectiveness of a diagnostic radiopharmaceutical under the Federal Food, Drug, and Cosmetic Act (the act) or the Public Health Service Act (the PHS Act). This draft guidance document provides information on how FDA intends to interpret and apply various sections of the proposed rule.

In the **Federal Register** of August 3, 1998 (63 FR 41219), FDA published a document extending the comment period on the proposed rule on in vivo radiopharmaceuticals from August 5, 1998, to October 15, 1998. In a separate document published elsewhere in this issue of the **Federal Register**, FDA is further extending the comment period to November 16, 1998. FDA hopes that the issuance of this draft guidance on medical imaging drugs and biologics, in conjunction with the extension of the comment period on the proposed rule, will assist interested persons in preparing their comments on the proposed rule. Persons will have additional time to submit comments on the draft guidance after the comment period on the proposed rule closes.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on the development of medical imaging drugs and biologics. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

II. Comments

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the draft guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. The draft guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act of 1995

This draft 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 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is provided in the following paragraphs with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comment on the following: (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 on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry on Developing Medical Imaging Drugs and Biologics

Description: FDA is issuing a draft guidance on the development of medical imaging drugs and biologics. The draft guidance is intended to assist developers of drug and biological products used for medical imaging, as well as radiopharmaceutical drugs used in disease diagnosis, in planning and coordinating the clinical investigations of, and submitting various types of applications for, such products. The draft guidance provides information on

how the agency will interpret and apply provisions of the existing regulations regarding the content and format of an application for approval of a new drug (21 CFR 314.50) and the content of a biological product application (21 CFR 601.25). In addition, the draft guidance provides information on how the agency will interpret and apply the proposed rule on the evaluation and approval of in vivo radiopharmaceuticals used for diagnosis and monitoring (63 FR 28301). The proposed rule, by adding part 315, would clarify existing FDA requirements for the evaluation and approval of drug and biological radiopharmaceuticals already in place under the authority of the act and the PHS Act.

Existing regulations, which appear primarily in parts 314 and 601 (21 CFR parts 314 and 601), specify the information that manufacturers must submit so that FDA may properly evaluate the safety and effectiveness of new drugs and biological products. This information is usually submitted as part of a new drug application (NDA) or a biologics license application (BLA), or as a supplement to an approved application. This draft guidance supplements these regulations. Under the proposed rule and the draft guidance, information required under the act and the PHS Act and needed by FDA to evaluate safety and effectiveness would still have to be reported.

Description of Respondents: Manufacturers of medical imaging drugs and biologics, including contrast drug products and diagnostic radiopharmaceuticals.

Burden Estimate: The proposed rule on in vivo radiopharmaceuticals used for diagnosis and monitoring sets forth an estimated annual reporting burden on the industry that would result from that rulemaking (63 FR 28301 at 28305 to 28306). This draft guidance on the development of medical imaging drugs and biologics is in part intended to explain how FDA will interpret and apply the proposed rule. Thus, the estimated annual reporting burden of the draft guidance, as provided in the chart below, is the same as that of the proposed rule, with one change. In addition to the diagnostic radiopharmaceuticals that are the subject of the proposed rule, the draft guidance also addresses the development of contrast drug products, which FDA evaluates and approves under part 314, but which are not affected by the proposed rule.

The chart below provides an estimate of the annual reporting burden for diagnostic radiopharmaceuticals and is based on the estimate described in the proposed rule (63 FR 28301 at 28306). The chart also provides an estimate for the annual reporting burden for contrast drug products. FDA estimates that the potential number of respondents who would submit applications or supplements for contrast drug products would be one. Although FDA did not approve any NDA's for contrast drugs (there are no biological contrast drug products) in fiscal year 1997 (FY 1997), for purposes of estimating the annual reporting burden, the agency assumes that it will approve one contrast drug each fiscal year. The annual frequency of responses for contrast drugs is estimated to be one response per application or supplement. The hours per response, which is the estimated number of hours that an applicant would spend preparing the information to be submitted for a contrast drug in accordance with this draft guidance, is estimated to be approximately 2,000 hours.

The draft guidance would not impose any additional reporting burden because safety and effectiveness information is already required by existing regulations. In fact, clarification by the draft guidance of FDA's standards for evaluation of medical imaging drugs and biologics is expected to reduce the overall burden of information collection. FDA invites comments on this analysis of information collection burdens.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	
Diagnostic Radiopharmaceuticals	8	1	8	2,000	16,000
Contrast Drugs	1	1	1	2,000	2,000
Total					18,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In compliance with section 3507(d) of the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this draft guidance to OMB for review. Interested persons are requested to send comments on this information collection by November 13, 1998, to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

IV. Electronic Access

An electronic version of this draft guidance document is available on the Internet using the World Wide Web (WWW) at ''http://www.fda.gov/cder/guidance/index.htm'' or ''http://www.fda.gov/cber/guidelines.htm''.

Dated: October 6, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–27495 Filed 10–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

[OJP (OJJDP)–1158]

RIN 1121–AA46

Juvenile Accountability Incentive Block Grants

AGENCY: Office of Juvenile Justice and Delinquency Prevention (OJJDP), Office of Justice Programs, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes procedures under which an eligible State, or unit of local government that receives a subgrant from the State, is

required to provide notice to the Attorney General regarding the proposed use of funds available under the Juvenile Accountability Incentive Block Grants (JAIBG) program, a new block grant program designed to promote greater accountability in the juvenile justice system. The Attorney General, through the Assistant Attorney General for the Office of Justice Programs (OJP), has delegated the authority to administer the JAIBG program to the Administrator of the Office of Juvenile Justice and Delinquency Prevention.

DATES: Comments will be received no later than November 13, 1998.

ADDRESSES: Comments should be sent to: Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention, 810 7th Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Rodney L. Albert, Deputy Director, State Relations and Assistance Division, OJJDP, 810 7th Street, NW, Washington, DC 20531. Phone: (202) 307–5924.

SUPPLEMENTARY INFORMATION: Public Law 105–119, November 26, 1997, Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1998, and for other Purposes (Appropriations Act) appropriated $250,000,000 for the Juvenile Accountability Incentive Block Grants (JAIBG) program described in Title III of H.R. 3, as passed by the House of Representatives on May 8, 1997.

Funds are available under JAIBG in FY 1998 for State and local grants to support the following program purposes as set forth in Section 1801(b)(1)–(11) of H.R. 3:

(1) Building, expanding, renovating, or operating temporary or permanent juvenile correction or detention facilities, including the training of correctional personnel;

(2) Developing and administering accountability-based sanctions for juvenile offenders;

(3) Hiring additional juvenile judges, probation officers, and court-appointed defenders, and funding pre-trial services for juveniles, to ensure the smooth and expeditious administration of the juvenile justice system;

(4) Hiring additional prosecutors, so that more cases involving violent juvenile offenders can be prosecuted and backlogs reduced;

(5) Providing funding to enable prosecutors to address drug, gang, and youth violence more effectively;

(6) Providing funding for technology, equipment, and training to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders;

(7) Providing funding to enable juvenile courts and juvenile probation offices to be more effective and efficient in holding juvenile offenders accountable and reducing recidivism;

(8) The establishment of court-based juvenile justice programs that target young firearms offenders through the establishment of juvenile gun courts for the adjudication and prosecution of juvenile firearms offenders;

(9) The establishment of drug court programs for juveniles so as to provide continuing judicial supervision over juvenile offenders with substance abuse problems and to provide the integrated administration of other sanctions and services;

(10) Establishing and maintaining interagency information sharing programs that enable the juvenile and criminal justice system, schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts;

(11) Establishing and maintaining accountability-based programs that work with juvenile offenders who are referred by law enforcement agencies, or which are designed, in cooperation with law enforcement officials, to protect students and school personnel from drug, gang, and youth violence; and,

(12) Implementing a policy of controlled substance testing for appropriate categories of juveniles within the juvenile justice system.

Eligible applicants in FY 1998 are States whose Governor (or other Chief Executive Officer for the eligible jurisdictions that are not one of the 50 States but defined as such for purposes of this program under § 1808(3) of Title III of H.R. 3) certifies, consistent with guidelines established by the Attorney General in consultation with Congress and incorporated into OJJDP's Program Guidance Manual, that the State is actively considering (or already has in place), or will consider within one year from the date of such certification, legislation, policies, or practices which, if enacted, would qualify the State for a grant under Section 1802 of H.R. 3. Specific information regarding Section 1802 qualifications can be found in the JAIBG Program Guidance Manual.

The Chief Executive of each State is required to designate a State agency to apply for, receive, and administer JAIBG funds. The designated State agency will administer funds allocated to the State based on relative population of people under 18 years of age, with no more than 25% of the funds retained at the State level, absent a waiver, and with 75% or more allocated and subgranted to units of local government within the State. Specific information regarding ''waiver'' qualifications can be found in the JAIBG Program Guidance Manual.

JAIBG funds awarded to a State and expended at the State level or subgranted by a State to a unit of local government, other than funds set aside for administrative costs, may be expended only for programs or projects under one or more of the twelve purpose areas established by law.

Detailed information regarding all other requirements of the JAIBG program is available to eligible applicants in OJJDP's JAIBG Program Guidance Manual. The manual is available on the OJJDP homepage at www.ncjrs.org/ojjhome.htm.

Executive Order 12866

This proposed regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Justice Programs has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons:

(1) The proposed Rule provides the procedures under which eligible applicants are required to provide notice regarding the proposed use of funds available under the JAIBG program; and

(2) The award of such funds imposes no requirements on small business or on small entities.

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

National Environmental Policy Act

This proposed rule has been reviewed in accordance with OJP's Procedures for Implementing the National Environmental Policy Act, 28 CFR Part 61. The Assistant Attorney General for OJP has determined that this regulation does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Paperwork Reduction Act

The collection of information requirements contained in this proposed regulation will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3504(h)).

List of Subjects in 28 CFR Part 31

Grant programs—law, Juvenile delinquency, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 28 CFR Part 31 is proposed to be amended as follows:

PART 31—OJJDP GRANT PROGRAMS

1. The Heading for Part 31 is revised as set forth above.

2. The authority citation for Part 31 is revised to read as follows:

Authority: 42 U.S.C. 5601 *et seq.*; Pub.L. 105–119, 111 Stat. 2440.

3. The designations ''Subpart A'' through ''Subpart E'' are removed and the headings remain as undesignated centerheadings.

4. Sections 31.1 through 31.403, and the undesignated centerheadings, are designated as Subpart A and a new subpart heading is added to read as follows:

Subpart A—Formula Grants

5. Section 31.1 is amended by revising ''This part'' to read ''This subpart''.

6. Part 31 is amended by adding a new Subpart B consisting of §§ 31.500 through 31.503 to read as follows:

Subpart B—Juvenile Accountability Incentive Block Grants

Sec.
31.500 Program purposes.
31.501 Eligible applicants.
31.502 Assurances and plan information.
31.503 Notice of proposed use of funds.

Subpart B—Juvenile Accountability Incentive Block Grants

§ 31.500 Program purposes.

Funds are available under the Juvenile Accountability Incentive Block Grants (JAIBG) in FY 1998 for State and local grants to support the following program purposes:

(a) Building, expanding, renovating, or operating temporary or permanent juvenile correction or detention facilities, including the training of correctional personnel;

(b) Developing and administering accountability-based sanctions for juvenile offenders;

(c) Hiring additional juvenile judges, probation officers, and court-appointed defenders, and funding pre-trial services for juveniles, to ensure the smooth and expeditious administration of the juvenile justice system;

(d) Hiring additional prosecutors, so that more cases involving violent juvenile offenders can be prosecuted and backlogs reduced;

(e) Providing funding to enable prosecutors to address drug, gang, and youth violence more effectively;

(f) Providing funding for technology, equipment, and training to assist prosecutors in identifying and expediting the prosecution of violent juvenile offenders;

(g) Providing funding to enable juvenile courts and juvenile probation offices to be more effective and efficient in holding juvenile offenders accountable and reducing recidivism;

(h) The establishment of court-based juvenile justice programs that target young firearms offenders through the establishment of juvenile gun courts for the adjudication and prosecution of juvenile firearms offenders;

(i) The establishment of drug court programs for juveniles so as to provide continuing judicial supervision over juvenile offenders with substance abuse problems and to provide the integrated administration of other sanctions and services;

(j) Establishing and maintaining interagency information sharing programs that enable the juvenile and criminal justice system, schools, and social services agencies to make more informed decisions regarding the early identification, control, supervision, and treatment of juveniles who repeatedly commit serious delinquent or criminal acts;

(k) Establishing and maintaining accountability-based programs that work with juvenile offenders who are referred by law enforcement agencies, or which are designed, in cooperation with law enforcement officials, to protect students and school personnel from drug, gang, and youth violence; and

(l) Implementing a policy of controlled substance testing for appropriate categories of juveniles within the juvenile justice system.

§ 31.501 Eligible applicants.

(a) *Eligible applicants.* Eligible applicants in FY 1998 are States whose Governor (or other Chief Executive Officer for the eligible jurisdictions that are not one of the 50 States but defined as such for purposes of this program) certifies, consistent with guidelines established by the Attorney General in consultation with Congress and incorporated into OJJDP's Program Guidance Manual, that the State is actively considering (or already has in place), or will consider within one year from the date of such certification, legislation, policies, or practices which, if enacted, would qualify the State for a grant. Specific information regarding qualifications can be found in the JAIBG Program Guidance Manual (which can be obtained from the Juvenile Justice Clearinghouse at 1–800–638–8736 or on the OJJDP homepage at www.ncjrs.org/ojjhome.htm).

(b) *Qualifications.* Each State Chief Executive Officer must designate a state agency to apply for, receive, and administer JAIBG funds.

§ 31.502 Assurances and plan information.

(a) In its application for a Juvenile Accountability Incentive Block Grant (JAIBG), each State must provide assurances to the Office of Juvenile Justice and Delinquency Prevention

(OJJDP), absent a waiver as provided in the JAIBG Program Guidance Manual, that:

(1) The State will subgrant at least 75% of the State's allocation of funds to eligible units of local government to implement authorized programs at the local level; and

(2) The State, and each unit of local government applying for a subgrant from the State, will expend not less than 45% of any grant provided to such State or unit of local government, other than funds set aside for administration, for program purposes 3–9 set forth in § 31.500 of this subpart, and will not spend less than 35% for program purposes 1, 2, and 10 set forth in § 31.500 of this subpart, unless the State certifies to OJJDP, or the unit of local government certifies to the State, that the interests of public safety and juvenile crime control would be better served by expending the grant award for purposes set forth in the twelve program areas in a different ratio. Such certification shall provide information concerning the availability of existing structures or initiatives within the intended areas of expenditure (or the availability of alternative funding sources for those areas), and the reasons for the State or unit of local government's alternative use.

(b) Following award of JAIBG funds to a State by OJJDP, but prior to obligation of program funds by the State or of subgrant funds by a unit of local government for any authorized program purpose, a State administering JAIBG funds must provide to OJJDP information that demonstrates that the State, or a unit of local government that receives JAIBG funds, has established a coordinated enforcement plan for reducing juvenile crime, developed by a Juvenile Crime Enforcement Coalition (JCEC).

(c)State coordinated enforcement plans must be developed by a Juvenile Crime Enforcement Coalition consisting of representatives of law enforcement and social service agencies involved in juvenile crime prevention. To assist in developing the State's coordinated enforcement plan, States may choose to utilize members of the State Advisory Group (SAG) established by the State's Chief Executive under Section 223(a)(3) of Part B of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, codified at 42 U.S.C. 5633(a)(3), if appropriate membership exists, or use or establish another planning group that constitutes a coalition of law enforcement and social service agencies.

(d)(1) When establishing a local Juvenile Crime Enforcement Coalition (JCEC), units of local government must include, unless impracticable, individuals representing:

(i) Police;
(ii) Sheriff;
(iii) Prosecutor;
(iv) State or local probation services;
(v) Juvenile court;
(vi) Schools;
(vii) Business; and (viii) Religious affiliated, fraternal, nonprofit, or social service organizations involved in crime prevention.

(2) Units of local government may utilize members of Prevention Policy Boards established pursuant to Section 505(b)(4)of Title V of the JJDP Act, codified at 42 U.S.C. 5784(b)(4), to meet the JCEC requirement, provided that each JCEC meets the membership requirements listed in paragraph (d)(1) of this section.

§ 31.503 Notice of proposed use of funds.

The mechanism for a State to report on the proposed use of funds by the State or by a subgrantee unit of local government is by electronic submission of a ''Follow Up Information Form'' to be provided to each participating State. Upon receipt and review of the ''Follow Up Information Form'' by OJJDP, States may obligate program funds retained for expenditure at the State level. Similarly, the State shall require that each recipient unit of local government submit its proposed use of non-administrative funds to the State prior to drawdown of subgrant funds to implement local programs and projects. Upon receipt and review of the local unit of government's proposed fund use, the State shall authorize the local unit of government to obligate local subgrant funds. The State shall electronically submit a copy of the local subgrant information to OJJDP, as provided in the award package, within 30 days of the date that the local unit of government is authorized to obligate program funds under its subgrant award.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 98–27183 Filed 10–13–98; 8:45 am]

BILLING CODE 4410–18–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7267]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental

Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Connecticut	Ridgefield (Town), Fairfield County.	Miry Brook	Approximately 0.25 mile downstream of George Washington Highway.	None	*470
			Approximately 240 feet upstream of North Ridgebury Road.	None	*560
		Norwalk River	Approximately 365 feet downstream of Portland Avenue.	*345	*344
			Approximately 840 feet upstream of footbridge (at revised cross section L).	*371	*368
		Unnamed Tributary to Saugatuck River.	Approximately 0.73 mile downstream of Rock Dam.	None	*530
			At Windwing Lake Dam	None	*603
		South Branch	At confluence with Unnamed Tributary to Saugatuck River.	None	*537
		Unnamed Tributary to Saugatuck River.	At upstream side of Fox Hill Lake Dam	None	*557
		Lake Windwing	For its entire shoreline within the community.	None	*603
		Fox Hill Lake	For its entire shoreline within the community.	None	*557
		Split Flow	At confluence with Unnamed Tributary to Saugatuck River.	None	*587
			At Lake Windwing	None	*603
		Cooper Pond Brook	At confluence with the Norwalk River	*350	*349
			Approximately 115 feet downstream of Shopping Center Access Road.	*350	*349
Maps available for inspection at the Ridgefield Town Hall, 66 Prospect Street, Ridgefield, Connecticut.					
Send comments to Mr. Abraham Morelli, First Selectman of the Town of Ridgefield, 400 Main Street, Ridgefield, Connecticut 06877.					
Connecticut	Vernon (Town), Tolland County.	Tankerhoosen River	At confluence with Hockanum River	*180	*181
			Approximately 2,025 feet upstream of Tunnel Road.	*289	*290
		Lower Hockanum River	Approximately 700 feet downstream of Wells Road.	*174	*176
			Approximately 2,250 feet upstream of Windsorville Road.	*217	*216
		Upper Hockanum River	Approximately 640 feet downstream of Union Street.	*237	*238
			Approximately 650 feet upstream of River Street bridge.	*259	*258

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Vernon Town Hall, 14 Park Place, Vernon, Connecticut. Send comments to Mr. Paul Mazzaccaro, Vernon Town Administrator, 14 Park Place, Vernon, Connecticut 06066.					
Georgia	Lowndes County (Unincorporated Areas).	Three Mile Branch	Approximately 0.50 mile downstream of Country Club Drive.	None	*138
			Approximately 0.72 mile upstream of Country Club Drive.	None	*195
Maps available for inspection at the Lowndes County Board of Commissioners Administrative Building, Engineering Department, 325 West Savannah Avenue, Valdosta, Georgia. Send comments to Ms. Inez M. Pendleton, Chairperson of the Lowndes County Board of Commissioners, P.O. Box 1349, Valdosta, Georgia 31603.					
Maine	Temple (Town), Franklin County.	Temple Stream	At downstream Farmington/Temple corporate limit.	None	*457
			At upstream Avon/Temple corporate limits.	None	*957
		Henry Mitchell Brook	At confluence with Temple Stream	None	*550
			Approximately 0.6 mile upstream of Mitchell Brook Road.	None	*848
		Gus Mitchell Brook	At confluence with Temple Stream	None	*553
			Approximately 1,500 feet upstream of Intervale Road.	None	*592
		Edes Brook	At confluence with Temple Stream	None	*592
			Approximately 2,350 feet upstream of Intervale Road.	None	*683
		Drury Pond Outlet	At confluence with Temple Stream	None	*556
			Approximately 700 feet upstream of Waltonen Road.	None	*556
		Mud Pond Outlet	At confluence with Drury Pond	None	*556
			At Mud Pond Dam	None	* 604
		Unnamed Brook	At confluence with Drury Pond	None	*556
			Approximately 100 feet upstream of Staples Pond Road.	None	*647
		Staples Pond Outlet	At confluence with Mud Pond	None	*604
			At Staples Pond Dam	None	*705
		Drury Pond	Entire shoreline within community	None	*556
		Mud Pond	Entire shoreline within community	None	*604
		Staples Pond	Entire shoreline within community	None	*705
		Varnam Pond	Entire shoreline within community	None	*758
Maps available for inspection at the Temple Town Hall, 258 Temple Road, Temple, Maine. Send comments to Mr. Robert Stevens, Chairman of the Town of Temple Board of Selectmen, P.O. Box 549, Temple, Maine 04984.					
Minnesota	Blue Earth County (Unincorporated Areas).	Minnesota River	Approximately 1.2 miles downstream of downstream county boundary.	None	*769
			Approximately 3.7 miles upstream confluence of Minneopa Creek.	*786	*787
		Blue Earth River	At Mankato corporate limits	*782	*785
			Approximately 1.06 miles upstream of U.S. Highway 169.	*784	*785
Maps available for inspection at the Blue Earth County Government Center, 410 South Fifth Street, Mankato, Minnesota. Send comments to Mr. David Twa, Blue Earth County Administrator, P.O. Box 8608, Mankato, Minnesota 56002–8608.					
Minnesota	Courtland (City), Nicollet County.	Minnesota River	At the downstream corporate limits	None	*800
			At the upstream corporate limits	None	*804
Maps available for inspection at the Courtland City Recreation Hall, Council Chambers/Clerks Office, 300 Railroad Street, Courtland, Minnesota. Send comments to The Honorable Gene Retka, Mayor of the City of Courtland, 300 Railroad Street, Courtland, Minnesota 56021.					
Minnesota	Kasota (City), Le Sueur County.	Minnesota River	Approximately 325 feet downstream of confluence of Shanaska Creek.	*762	*764
			Approximately 1,800 feet upstream of the confluence with the Minnesota River along Shanaska Creek.	None	*764

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1.06 miles upstream of confluence of Shanaska Creek.	*763	*765
Maps available for inspection at the Kasota City Hall, 200 North Webster, Kasota, Minnesota.					
Send comments to The Honorable Sandy Lynch, Mayor of the City of Kasota, P.O. Box 218, Kasota, Minnesota 56050.					
Minnesota	Le Sueur (City), Le Sueur County.	Minnesota River	Approximately 0.57 mile upstream of downstream corporate limits.	*743	*742
			Upstream corporate limits	*749	*748
Maps available for inspection at the Le Sueur City Hall, 203 South 2nd Street, Le Sueur, Minnesota.					
Send comments to The Honorable Ed Rasmusen, Mayor of the City of Le Sueur, P.O. Box 176, Le Sueur, Minnesota 56058.					
Minnesota	Le Sueur County (Unincorporated Areas).	Minnesota River	Approximately 1.55 miles upstream of Minnesota Highway 19.	*739	*740
			Approximately 0.35 mile downstream from upstream county limits.	*769	*770
		White Water Creek	At Waterville corporate limits	*1,017	*1,013
			Approximately 1,300 feet upstream from Waterville corporate limits.	*1,019	*1,016
Maps available for inspection at the Le Sueur County Planning and Zoning Administration, Environmental Services Building, 88 South Park, Le Center, Minnesota.					
Send comments to Mr. Robert Culhane, Chairman of the Le Sueur County Board of Commissioners, 88 South Park, Le Center, Minnesota 56057–1620.					
Minnesota	Mankato (City), Blue Earth & Nicollet Counties.	Minnesota River	Approximately 4,700 feet downstream of U.S. Highway corporate limits.	*773	*774
			Approximately 2.1 miles upstream of U.S. Highway 169 corporate limits.	*784	*786
		Blue Earth River	Approximately 4,000 feet downstream of U.S. Highway 169 with Minnesota River.	*783	*785
			Approximately 2,250 feet upstream of U.S. Highway 169.	*792	*785
Maps available for inspection at the Mankato City Hall, 10 Civic Center Plaza, Mankato, Minnesota.					
Send comments to The Honorable Stan T. Christ, Mayor of the City of Mankato, P.O. Box 3368, Mankato, Minnesota 56002.					
Minnesota	Nicollet County, (Unincorporated Areas).	Minnesota River	At the downstream county boundary	*749	*748
			Approximately 0.45 mile downstream of the Chicago & North Western Railroad.	*806	*805
Maps available for inspection at the Nicollet County Courthouse, 501 South Minnesota Avenue, St. Peter, Minnesota.					
Send comments to Mr. Clifford Wenner, Nicollet County Commissioners Chair, 501 South Minnesota Avenue, St. Peter, Minnesota 56082.					
Minnesota	North Mankato (City), Nicollet Count.	Minnesota River	Approximately 0.9 mile upstream of U.S. Highway 14.	*776	*777
			Approximately 2 miles upstream of U.S. Highway 169.	None	*786
Maps available for inspection at the North Mankato City Hall, 1001 Belgrade Avenue, North Mankato, Minnesota.					
Send comments to The Honorable Nancy Knutson, Mayor of the City of North Mankato, P.O. Box 2055, North Mankato, Minnesota 56002.					
Minnesota	St. Peter (City), Nicollet County.	Minnesota River	Approximately 1,500 feet downstream of State Highway 99.	*758	*759
			At the upstream corporate limits	*763	*765
Maps available for inspection at the City of St. Peter Public Works Department, St. Julian Street, St. Peter, Minnesota.					
Send comments to Mr. Todd Prafke, St. Peter City Administrator, 227 Front Street, St. Peter, Minnesota 56082.					
Mississippi	Jackson (City), Hinds, Rankin, and Madison Counties.	White Oak Creek	Approximately 739 feet upstream of Old Canton Road.	*283	*284

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 230 feet upstream of Illinois Central Railroad.	*314	*313
Maps available for inspection at the Department of Public Works, 200 South President Street, Jackson, Mississippi.					
Send comments to The Honorable Harvey Johnson, Mayor of the City of Jackson, P.O. Box 17, Jackson, Mississippi 39205–0017.					
New Jersey	Absecon (City), Atlantic County.	Absecon Bay	At the intersection of Mill Road and Mays Landing Road.	*10	*9
			Approximately 500 feet east of the intersection of Delilah Road and Absecon Boulevard.	*10	*12
		Atlantic City Reservoir	Approximately 200 feet north of the intersection of Mays Landing Road and Mill Road.	Zone D	*14
Maps available for inspection at the City of Absecon Municipal Complex, 500 Mill Road, Absecon, New Jersey 08201.					
Send comments to The Honorable Peter Elco, Mayor of the City of Absecon, 500 Mill Road, Absecon, New Jersey 08201.					
New York	Buffalo (City), Erie County.	Buffalo River	Approximately 150 feet downstream of downstream bridge of Norfolk and Western Railway.	*582	*581
			Approximately 650 feet upstream of South Ogden Street.	*593	*591
Maps available for inspection at the Buffalo City Hall, Planning Division, Room 901, Buffalo, New York.					
Send comments to The Honorable Anthony M. Masiello, Mayor of the City of Buffalo, City Hall, Room 201, Buffalo, New York 14202.					
New York	Ellicottville (Town), Cattaraugus County.	Great Valley Creek	At private drive	*1,544	*1,543
			Approximately 70 feet upstream of Chessie System.	None	*1,554
Maps available for inspection at the Ellicottville Town Hall, 1 West Washington Street, Ellicottville, New York.					
Send comments to Mr. John N. Widger, Ellicottville Town Supervisor, P.O. Box 610, Ellicottville, New York 14731.					
New York	LaGrange (Town), Dutchess County.	Wappinger Creek	Approximately 4,500 feet downstream of New Hackensack Road.	*126	*122
			Approximately 13,700 feet upstream of Daria Drive.	*196	*192
Maps available for inspection at the LaGrange Town Hall, Zoning Office, 120 Stringham Road, LaGrangeville, New York.					
Send comments to Mr. Arthur McCluskey, LaGrange Town Supervisor, 120 Stringham Road, LaGrangeville, New York 12540.					
New York	Poughkeepsie (Town), Dutchess County.	Wappinger Creek	Approximately 320 feet downstream of New Hamburg Road.	*10	*9
			Approximately 1.4 miles upstream of the confluence of Branch 6 Wappinger Creek.	*196	*192
		Branch 4	At confluence with Wappinger Creek	*123	*120
		Wappinger Creek	Approximately 880 feet upstream of confluence with Wappinger Creek.	*123	*122
Maps available for inspection at the Poughkeepsie Town Hall, Department of Planning, 1 Overocker Road, Poughkeepsie, New York.					
Send comments to Mr. Thomas Murphy, Poughkeepsie Town Supervisor, 1 Overocker Road, Poughkeepsie, New York 12603.					
Wisconsin	Blue River (Village), Grant County.	Wisconsin River	Approximately 1 mile downstream of East Street.	None	*667
			Approximately 0.2 mile upstream of East Street.	None	*669
Maps available for inspection at the Community Building, 201 Clinton Street, Blue River, Wisconsin.					
Send comments to Mr. Rodney Johnson, President of the Village of Blue River, 5017 West Street, Blue River, Wisconsin 53518.					

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: October 7, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–27550 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–170; FCC 98–232]

Truth-in-Billing and Billing Format

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission adopted a Notice of Proposed Rulemaking (NPRM) seeking comment on how to make telephone bills more readable and accurate to enable consumers to make informed choices in a competitive telecommunications marketplace. Problems with bill clarity make it difficult for consumers to detect fraud and to compare carrier rates. The NPRM outlines three guidelines to help promote ''truth-in-billing:'' telephone bills should be clearly organized and highlight any new charges or changes to the consumer's service; telephone bills should contain full and non-misleading descriptions of all charges and clear identification of service providers; telephone bills should contain clear and conspicuous disclosure of all information a consumer may need to make inquiries about charges. The NPRM seeks comment on proposals that would follow these guidelines.

DATES: Written comments by the public on the NPRM and the proposed information collections are due on or before November 13, 1998. Reply comments are due on or before November 30, 1998. Written comments by OMB on the proposed information collections are due on or before December 14, 1998.

ADDRESSES: Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Suite 222, Washington, DC 20554, with a copy to Anita Cheng, Federal Communications Commission, Common Carrier Bureau, Enforcement Division, Formal Complaints and Investigations Branch, 2025 M Street, NW., Room 6334, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, NW., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Anita Cheng, Federal Communications Commission, Common Carrier Bureau, Enforcement Division, Formal Complaints and Investigations Branch, 2025 M Street, NW., Room 6334, Washington, DC 20554, (202) 418–0960. For additional information concerning the information collections contained in this NPRM contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's NPRM in CC Docket No. 98–170, adopted and released on September 17, 1998. The full text of the NPRM, including separate Commissioners' statements, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC The complete text of this decision may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037.

Paperwork Reduction Act

This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due December 14, 1998. Comments should address: (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 estimates; (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.

OMB Approval Number: None.

Title: Truth-in-Billing and Billing Format.

Form No.: NA.

Type of Review: New collection.

Respondents: Business or other for-profit.

Annual proposed collections	Respondents	Estimated time per response	Total burden
1. Bill organization	1,800	100	180,000
2. Full & non-misleading descriptions	1,800	2	3,600
3. Provision of consumer complaint/inquiry information	1,800	1	1,800

Total Annual Burden: 185,400 hours.

Estimated costs per respondent: $1,000–$5,000.

Needs and Uses: The information will be used by consumers to help them understand their telephone bills. Consumers need this information to protect themselves against fraud and to compare carrier rates to obtain the best value for themselves. The proposals will also enable consumers to resolve billing disputes on their own.

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on other issues in this NPRM.

1. *Need for and Objectives of the Proposed Rules.* This NPRM seeks comment on whether the Commission should promulgate specific rules

concerning billing disclosures. Comment is requested on proposals regarding: (1) the manner in which carriers organize their telephone bills; (2) descriptions of services and carriers; and (3) the provision of the names and toll-free telephone numbers of service providers for the receipt of consumer inquiries and complaints. This NPRM seeks comment on the extent to which consumers need clearer and more accurate information, and on specific proposals. Based upon the comments received in the NPRM, the Commission may issue new rules regarding billing information.

2. *Legal Basis.* The proposed action is supported by sections 1, 4(i) and (j), 201, 208, 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201, 208, 254, and 303(r).

3. *Description and Estimate of the Number of Small Entities That May Be Affected by this NPRM.* The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

4. The small entities possibly affected by the proposed rules, if adopted, include wireline, wireless, satellite, and other entities, as described below. The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities having no more than 1,500 employees. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not ''small entities'' or ''small business concerns'' under the RFA. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term ''small ILECs'' to refer to any ILECs that arguably might be defined by the SBA as ''small business concerns.''

5. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). According to data in the most recent report, there are 3,459 interstate carriers. These carriers include, *inter alia,* local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

6. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules, if adopted.

7. *Wireline Carriers and Service Providers.* We estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules, if adopted.

8. *Local Exchange Carriers.* We estimate that fewer than 1,371 local exchange carriers or small ILECs may be affected by the proposed rules, if adopted.

9. *Interexchange Carriers.* We estimate that there are fewer than 143 small entity IXCs that may be affected by the proposed rules, if adopted.

10. *Competitive Access Providers.* We estimate that there are fewer than 109 small entity CAPs that may be affected by the proposed rules, if adopted.

11. *Resellers.* (including debit card providers). We estimate that there are fewer than 339 small entity resellers that may be affected by the proposed rules, if adopted.

12. *International Services.* The applicable definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts. According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $9,999 million. The Census report does not provide more precise data.

13. *Cellular Licensees.* We estimate that there are fewer than 804 small cellular service carriers that may be affected by the proposed rules, if adopted.

14. *220 Mhz Radio Services.* We will consider the approximately 1,500 incumbent licensees in this service as small businesses under the SBA definition.

15. *Private and Common Carrier Paging.* We estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

16. *Mobile Service Carriers.* We estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

17. *Broadband Personal Communications Service.* We estimate that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

18. *Narrowband PCS.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

19. *Rural Radiotelephone Service.* There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

20. *Specialized Mobile Radio (SMR).* The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years. In the context of 900 MHz SMR, this regulation defining ''small entity'' has been approved by the SBA; approval concerning 800 MHz SMR is being sought. We do not know how many firms provide 800 MHz or

900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

21. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. In the recently concluded 800 MHz SMR auction there were 524 licenses awarded to winning bidders, of which 38 were won by small or very small entities.

22. *Wireless Communications Services.* The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the proposed rules, if adopted, include eight entities.

23. *Telex.* We estimate that there are fewer than 7 telex providers that may be affected by the proposed rules, if adopted.

24. *Message Telephone Service.* We estimate that there are fewer than 1,092 message telephone service providers that may be affected by the proposed rules, if adopted.

25. The SBA has developed a definition of small entities for cable and other pay television services that includes all such companies generating no more than $11 million in revenue annually. According to the Census Bureau, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We note that cable system operators are included in our analysis due to their ability to provide telephony.

26. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* We seek comment on methods to provide complete, accurate, and understandable information to consumers in their telephone bills. Comment is requested on proposals regarding: (1) the manner in which carriers organize their telephone bills; (2) descriptions of services and carriers; and (3) the provision of the names and toll-free telephone numbers of service providers for the receipt of consumer inquiries and complaints.

27. *Steps taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.* As noted, we seek comment on proposals regarding: (1) the manner in which carriers organize their telephone bills; (2) descriptions of services and carriers; and (3) the provision of the names and toll-free telephone numbers of service providers for the receipt of consumer inquiries and complaints. Such proposals could provide consumers with the necessary information to enable them to reap the benefits of the competitive telecommunications marketplace while at the same time protecting themselves from unscrupulous competitors. We seek comment on any alternatives that might be especially beneficial to small entities.

28. *Federal Rules that May Duplicate, Overlap, or Conflict With the NPRM:* None.

Summary of Notice of Proposed Rulemaking

I. Introduction

29. One of the primary goals of the Telecommunications Act of 1996 (1996 Act) is to make available to consumers new services and technologies by promoting the development of competition in all aspects of telecommunications services. In today's marketplace, increased competition has generated many new telephone-related services. While the nature of the charges appearing on consumers' telephone bills has changed dramatically due to the proliferation of services and service providers, the bills themselves do not seem to reflect this new era. Increasingly, consumers are concerned about telephone bills that do not provide sufficient information in a user-friendly format to enable them to understand the services being provided and the charges assessed therefor, and to identify the entities providing those services.

30. A review of the bills we have received in conjunction with consumer complaints demonstrates that even the most sophisticated consumer would often be unable, based on the information provided in the bills, to identify the services for which the consumer is being charged or the providers of those services. Similarly, we have received many complaints and inquiries resulting from the practice of some carriers of including in their bills line item charges for universal service or access charges, without adequate explanation of the basis for these charges.

31. The difficulty experienced by consumers in understanding their telephone bills is not simply an inconvenience. Rather, consumers must have adequate information about the services they are receiving, and the alternatives available to them, if they are to reap the benefits of a competitive market. Conversely, the rapid growth of competitive options in the telecommunications market, without an equivalent development in the area of consumer education, clearly has been a significant contributing factor in the growth of telecommunications-related fraud. Complaints filed with the Commission also demonstrate that consumers are frustrated frequently in their efforts to resolve problems with charges on their bills because the bills themselves do not provide the necessary information for identifying and contacting the responsible company.

32. We are not alone in our concerns in this area. The National Association of Regulatory Utilities Commissions (NARUC), for example, recently issued a ''White Paper'' emphasizing the increased importance of providing consumers with information in an understandable manner in order to allow them ''to make the most of a competitive marketplace.'' NARUC has also passed a resolution expressing its concern about certain interstate carriers that have passed the costs of their universal service contributions directly on to consumers in the form of line item charges, stating that some of these carriers identify such charges as being mandated by the Commission even though the Commission did not mandate the method of recovery of such charges.

33. Several members of Congress and consumer interest groups have also expressed concern about the failure of telephone bills to provide consumers with important information. Congressional concern over confusing and misleading telephone bills has resulted in pending legislation to regulate telephone bill format, including requirements that carriers make certain disclosures when notifying subscribers of changes in their bills that result from federal regulatory action.

34. Although much attention has been focused on local telephone bills, the issues raised by this proceeding are equally applicable to all bills for telecommunications services that are furnished to consumers, including bills for local service, interexchange service, and commercial mobile radio service (CMRS). We wish to initiate a dialogue with the states, consumer advocacy

groups, and the industry on how to help consumers to understand more readily the services they are receiving and from whom, to make comparisons to determine the best value for themselves, and to determine if they are victims of fraud.

II. Discussion

35. In developing the proposals detailed below, we have looked to other regulatory contexts regarding the content of bills and other disclosure documents sent to consumers. Of particular relevance is the Telephone Disclosure and Dispute Resolution Act (TDDRA), which added Section 228 to the Communications Act of 1934 (Act) requiring the Commission and the Federal Trade Commission (FTC) to adopt rules both to promote the legitimate development of pay-per-call services and to shield telephone subscribers from fraudulent and deceptive practices. Among other things, the Commission's rules require carriers to show, in a portion of the bill separate from ordinary telephone charges, the amount of pay-per-call charges, the type of services for which the consumer is being charged, and the date, time, and duration of pay-per-call calls.

36. We have also looked to required disclosures in the area of credit transactions. The Truth in Lending Act (TILA) and its implementing regulations impose minimum disclosure requirements for credit card bills in order to ''assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and . . . to protect the consumer against inaccurate and unfair credit billing and credit card practices.'' We seek comment generally on whether and to what extent consumers should have similar protections when charges are billed through telephone bills rather than through other means.

37. We have also looked to recent efforts initiated by the industry to address the problem of unclear or unauthorized charges on consumers' bills. At the request of the Commission, a group of LEC providers of billing and collection services recently developed a set of voluntary guidelines that represent best practices to combat cramming. These guidelines primarily address the relationship between LECs and the service providers for whom they provide billing services. It is not the intent of this NPRM to interfere with, nor duplicate, practices addressed by the LEC guidelines. Rather, the focus of this proceeding is on the relationship between the carriers and their end user customers, and, in particular, on improving the clarity of telephone bill formats.

38. This body of ''truth-in-billing'' concepts yields the fundamental principle that consumers should be treated fairly. Fairness in billing mandates that bills be both intelligible and legitimate. To advance this principle of fairness in billing, we consider three guidelines. First, bills should be clearly organized and highlight any new charges or changes to consumers' services. Second, bills should contain full and non-misleading descriptions of all charges that appear therein and clear identification of the service provider responsible for each charge. Third, a bill should contain clear and conspicuous disclosure of any information that the consumer may need to make inquiries about the charges on the bill.

39. The importance of providing an accurate and understandable telephone bill, however, must be balanced against the costs incurred to provide that information. We seek comment generally on the extent to which any carriers already have in place practices similar to, or that have the same effect as the proposals in this NPRM. Commenters should also assess the burdens that would be imposed by the proposals in this NPRM and suggest less burdensome practices that would achieve the same goals. We also seek comment on the extent to which the proposals detailed below might be unduly burdensome to small or rural carriers, and on specific proposals that may be necessary to accommodate the needs of such carriers.

A. Legal Authority

40. Our examination of the issues described above requires us to consider both a billing carrier's relationship with its end user customer, and a billing carrier's relationship with the other entities for whom it provides billing and collection services. With respect to the first type of relationship, the Commission has recognized that a carrier's billing and collection for communications service that it offers is subject to regulation as a common carrier service under Title II of the Act. With respect to the second type of relationship, the Commission has found that although a carrier's provision of billing and collection services for an unaffiliated carrier is not subject to Title II, such third party billing services may be subject to the Commission's ancillary jurisdiction pursuant to Title I of the Act.

41. The Commission's focus in this proceeding is on the relationship between carriers and their end user customers, and in particular on the provision of necessary information, in a clear and understandable manner, in a telephone bill. We believe that we have jurisdiction to begin this proceeding to address what has become a problem of national proportions. Carriers have the obligation to have charges, practices, and classifications that are just and reasonable, pursuant to section 201(b). We believe that the telephone bill is an integral part of the relationship between a carrier and its customer. The manner in which charges are identified and articulated on the bills is essential to the consumer's understanding of the services that have been rendered, such that a carrier's provision of misleading or deceptive billing information may be an unjust and unreasonable practice in violation of section 201(b) of the Act. We seek comment on whether the Commission has jurisdiction to adopt each of the proposals in this NPRM and ask commenters to address the jurisdictional basis of any additional proposals raised on the record of this proceeding.

42. We seek comment particularly on how our jurisdiction should complement that of the states and other agencies. We recognize that many states and their public utility commissions have in place or are considering requirements designed to protect their consumers from abuses associated with questionable billing practices. Furthermore, other agencies such as the Federal Trade Commission may have overlapping or concurrent jurisdiction with regard to these issues. We intend to work closely with such entities in order to ensure that consumers are protected in all billing contexts. The proposals that we set forth in this NPRM are a starting point for what we hope will be an open exchange with the states, federal agencies, consumer advocacy groups, and industry members on how best to provide consumers with information necessary to allow them to obtain the benefits of an increasingly competitive telecommunications marketplace.

43. We are also cognizant of the First Amendment considerations that must inform our efforts to ensure that customers are truthfully informed of the significance of entries on their bills. The Supreme Court has held that, consistent with the First Amendment, the government may require a commercial message to ''appear in such a form, or include such additional information, warnings, and disclaimers, as are necessary to prevent its being deceptive.'' On the other hand, restrictions on speech that ban truthful,

non-misleading commercial speech about a lawful product cannot withstand scrutiny under the First Amendment.

B. Organization of the Bill

44. Telephone bills should be organized to be readable and to present important information clearly and conspicuously. One manner in which telephone bills may be better organized is to present separate categories of services (such as charges for local, long distance, and miscellaneous services) in clearly separate sections within the telephone phone bill, and, if possible, on separate pages. We alternatively seek comment on whether bills should be organized by provider with a description of the services furnished by each provider, since distinctions between categories of service may blur over time when providers begin to offer multiple services (e.g., local exchange companies offering interstate interexchange service). We seek comment on these proposals and on any other proposals that organize information in a clear fashion.

45. It may also be helpful for bills to include a single page or section summarizing the current status of the customer's services, including applicable information regarding: (1) The consumer's presubscribed interstate toll carrier; (2) the consumer's presubscribed intrastate toll carrier, if such carrier is not the same as the consumer's presubscribed interstate toll carrier; (3) the consumer's presubscribed local exchange carrier; (4) any other service providers, including those providing telecommunications and non-telecommunications related services, for whom charges are being billed; (5) whether carrier or preferred carrier (PC) freezes or other blocking mechanisms have been implemented for any presubscribed telecommunications services. We seek comment on this proposal and on any other information that would appropriately be included in the summary of the current status of the consumer's services.

46. We seek comment on the benefits of having each telephone bill include, near the front of the bill, a separate page or section that highlights any changes in the consumer's service status information or new charges since the consumer's last bill. This ''Status Changes'' page could include applicable information on: (1) Changes in presubscribed carriers; (2) any new service providers for whom charges are being billed for the first time or whose charges did not appear on the last telephone bill; (3) changes in any carrier or PC freeze status or blocking mechanism status; (4) explanations of any new types of line item charges appearing on the bill for the first time. We seek comment on whether this proposal would help consumers defend themselves against cramming, slamming, and other types of fraud. We also seek comment on any other proposals that would serve to highlight to consumers any changes that have occurred on their telephone bills.

C. Full and Non-Misleading Descriptions

47. Carriers should provide consumers with full and non-misleading descriptions of all charges contained in their telephone bills, as well as clear identification of the service providers associated with those charges. Vague or inaccurate descriptions of charges make it difficult for consumers to determine exactly what they are paying for and whether they received the services that correspond to such charges. In addition, we find that in many of the calls and complaints the Commission receives, consumers have been unable to determine from reading their bills the names of service providers or the nature of the services being billed to them. Furthermore, the Commission has received numerous consumer complaints and inquiries concerning the practice of some carriers of implementing new charges that reflect—or are at least related to—federally-mandated changes to the structure of IXC costs of obtaining access services from LECs and of supporting universal service mechanisms. Some of these carriers also have apparently identified such charges as being required by the Commission, even though the Commission has not mandated such specific recovery of access and universal service costs.

1. Descriptions of Services and Identification of Providers

48. Both NARUC and the National Consumers League have proposed that each charge on a consumer's telephone bill be accompanied by a brief, clear, plain language description of the services rendered. We seek comment on whether such itemization would help consumers determine the precise nature of the services for which they are being billed. We also seek comment on the types of information that would assist consumers in understanding the charges on the bill.

49. We propose that the name of the service provider be clearly and conspicuously identified in association with that entity's charges. We propose that the name of the service provider itself must be included, and that listing the name of the billing aggregator or clearinghouse alone will not be sufficient, even if the aggregator or clearinghouse has full legal responsibility for the charges. We also propose that, in the case of an entity reselling the service of a facilities-based carrier, the name of the reseller must appear on the telephone bill. We seek comment on whether these proposals would help consumers determine the actual identity of the carrier that is providing service and also enable them to detect quickly if they have been slammed by another carrier. We also seek comment on whether these proposals would decrease consumer frustration by enabling the consumer to identify the correct carrier in the first instance, rather than being told by one entity after another that it is not the consumer's service provider.

50. We seek comment on whether telephone bills should differentiate between ''deniable'' and ''non-deniable'' charges. Deniable charges are those charges that, if unpaid, could result in the termination of local exchange or long distance telephone service. Non-deniable charges are those charges for which basic communications services would not be terminated for non-payment. Based on our experience with consumer complaints, we believe that many consumers pay charges that they did not authorize solely because they erroneously perceive a risk of having their service disconnected. We seek comment on methods for differentiating between deniable and non-deniable charges, such as including a prominent disclosure at the top of the page or section stating that non-payment of certain charges would not result in the termination of the customer's local exchange or long distance service. We note that the pay-per-call rules require bills to contain a statement that carriers may not disconnect local or long distance service for non-payment of charges for information services.

2. Descriptions of Charges Resulting from Federal Regulatory Action

51. We have also seen consumer concern and confusion with respect to line item charges that are related to the implementation of universal service support mechanisms and to access charges. Pursuant to the 1996 Act, the Commission undertook a fundamental overhaul of the manner in which long distance carriers pay for access to the networks of local carriers and for supporting the universal availability of telecommunications services at just, reasonable, and affordable rates. Following this restructuring, some long distance carriers began including on

their customers' bills line item charges purportedly intended to recover the costs incurred in obtaining access and in meeting their universal service obligations. While the Commission did not dictate the manner in which long distance carriers must recover these costs, both the Commission and the states have received numerous complaints and inquiries from consumers suggesting that many consumers are confused about the nature of these charges. These charges are often inaccurately identified, and the descriptions for some charges even imply that such charges have been imposed directly on consumers by federal law. Moreover, the amount of these charges for a particular customer may not correspond to the actual costs to the carrier of universal service support and access charges attributable to that customer.

52. We seek comment on the extent to which carriers that pass on to their customers all or part of the costs of their universal service contributions or access charge obligations are also providing complete, accurate, and understandable information regarding the basis for these new charges and their amounts. This inquiry applies to all providers that include universal service contributions as a separate line item on customer bills.

53. Commenters should address whether the Commission should prescribe ''safe harbor'' language that carriers, or some subset of carriers, could use to ensure that they are meeting their obligations to provide truthful and accurate information to subscribers with respect to the recovery of universal service, access, and similar charges, and how such language could be distributed most effectively. Commenters are asked to propose specific safe harbor language for inclusion in bills of service providers that choose to include charges for recovering universal service contributions as separate line items on their bills.

54. To the extent we decide to adopt safe harbor language for carriers that include a line item for universal service charges, we seek comment on the types of information that such language should include to ensure that consumers understand fully the nature and purpose of such line item charges. We seek comment on whether any safe harbor language should include a description of the scope and purpose of universal service support mechanisms. These programs help keep local telephone service affordable in rural and high-cost areas of the United States, support low-income consumers, and also provide certain discounted services to schools, libraries, and rural health care providers. With respect to long distance carriers, we note that since the 1996 Act, the annual costs incurred by the long distance telephone companies as a result of government-mandated obligations have been lowered by over two billion dollars, even as support for universal service has been maintained and expanded. We thus seek comment on whether long distance carriers that include a separate line item for the recovery of universal service contributions should be required to explain the net reduction in their costs of providing long distance service since enactment of the 1996 Act.

55. We also seek comment on what language might be appropriate in the case of long distance carriers that include separate line items for the recovery of access charges. The impact from access charge changes on a consumer's total bill may vary depending on that consumer's usage and how his or her carrier has decided to revise its rates to reflect these changes. Commenters should propose specific additional safe harbor language as appropriate.

56. We also seek comment on the frequency of publication of safe harbor language. For example, should a carrier using the safe harbor language approach print such language in each monthly telephone bill? Or should carriers send safe harbor language on a one-time basis, annually, or using some other interval? Furthermore, if the safe harbor approach is inappropriate, we ask commenters to suggest alternative approaches.

57. We seek to determine whether it is misleading or unreasonable, under Section 201(b) of the Act, for a carrier to bill a consumer for an amount identified as attributable to a particular cost while charging more than the actual cost incurred. We note that in a competitive market, consumers may react to price increases by exploring their options with alternative companies. Consumers may be less likely to compare among service providers if they are led to believe that certain rates are fixed by the government, not the carrier or the market. This highlights the need for truthful billing by carriers with respect to their assessments and descriptions of universal service charges. We seek comment on whether it would be helpful to consumers if carriers were required to explain in customer bills their reasons for assessing a flat fee or percentage charge that exceeds the costs the carrier incurs. Should carriers attributing line items to new government action be required to disclose exact cost reductions, such as a reduction in access charge costs, or other related benefits arising from government action? Also, should carriers who assess a presubscribed interexchange carrier charge (PICC) be required to show whether the corresponding reduction in the per-minute rate was actually passed on to that individual consumer? Should carriers include the exact cost of PICC and universal service obligations incurred as a result of serving that customer? We also seek comment on the benefits to consumers of identifying PICC and universal services charges by a standard name throughout the industry.

58. Finally, we seek comment as to whether these proposals with regard to line item charges for universal service and access charges would be too regulatory and burdensome to carriers or possibly confusing to consumers.

D. Provision of Consumer Inquiry/Complaint Information

59. Each telephone bill should contain all the necessary information to enable a consumer to take action on his or her own behalf to dispute the charges contained in the bill. We find that, particularly with slamming and cramming, consumers often experience considerable difficulty in contacting the entity whose charges appear on the telephone bill. This results in delayed resolution and oftentimes in the consumer's inability to correct even straightforward billing problems without the intervention of other parties such as the LEC, the state public service commission, or the Commission.

60. The LECs, NARUC, and the National Consumers League have made proposals that would require each telephone bill to include, in addition to the name of each service provider, a business address and toll-free telephone number for the receipt of consumer inquiries and complaints. We seek comment on whether these requirements would enable consumers to initiate action to resolve any billing questions or inquiries. We also seek comment on how to ensure that carriers provide consumers with correct information when consumers call with complaints or inquiries, and on any other proposals to ensure that consumers receive all information necessary to resolve billing disputes.

III. Procedural Matters

A. Ex Parte Presentations

61. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex

parte rules. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.

B. Deadlines and Instructions for Filing Comments

62. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments 30 days after **Federal Register** publication, and reply comments on or before 45 days after **Federal Register** publication. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

63. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form <your e-mail address.'' A sample form and directions will be sent in reply.

64. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M St. NW, Room 222, Washington, DC 20554.

65. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Anita Cheng, Federal Communications Commission, Common Carrier Bureau, 2025 M Street, NW., Sixth Floor, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–170); type of pleading (comment or reply comment); date of submission; and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037.

66. Written comments by the public on the proposed information collections are due on or before November 13, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before December 14, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

IV. Conclusion

67. The problem of inaccurate, deceptive, or unclear charges and information on telephone bills is a growing concern for consumers, the states, the Commission, Congress, and all other entities that deal with consumer protection. The telecommunications market of today requires a telephone bill that reflects the profusion of services that are available from a multitude of providers. We initiate this proceeding to evaluate how telephone bills can provide necessary information in a manner that allows consumers to take full advantage of the benefits of this robust competition while also empowering them to protect themselves from unscrupulous providers. We seek comment on guidelines and proposals that will provide consumers with the necessary information to protect themselves from fraudulent or deceptive practices and to make comparisons to determine the best value for themselves.

V. Ordering Clauses

68. Accordingly, it is ordered, pursuant to sections 1, 4(i) and (j), 201–209, 254, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 254, and 403 that this Notice of Proposed Rulemaking is hereby adopted and comments are requested as described above.

69. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification and Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications Common Carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–27351 Filed 10–13–98; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 63, No. 198

Wednesday, October 14, 1998

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

Agricultural Marketing Service

[TM–98–00–6]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: October 27, 1998, at 9:00 p.m. to 5:00 p.m.; October 28, 1998, from 9:00 a.m. to 5:00 p.m.; and October 29, 1998, from 9:00 a.m. to 5:00 p.m.

PLACE: U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Room 3501 South Building, Washington, D.C. 20250. Phone: (202) 690–3655.

FOR FURTHER INFORMATION CONTACT: Keith Jones, Program Manager, Room 2945 South Building, U.S. Department of Agriculture, AMS, Transportation and Marketing, National Organic Program, P.O. Box 96456, Washington, D.C. 20090–6456. Phone (202)720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. Section 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of OFPA. The NOSB met for the first time in Washington, D.C., in March 1992 and currently has six committees working on various aspects of the program. The committees are: Crops Standards; Processing, Labeling and Packaging; Livestock Standards; Accreditation; Materials; and International Issues. In August 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture and since that time has submitted 30 addenda to the recommendations and reviewed more than 170 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held in July 1998, in Washington, DC. The Department of Agriculture (USDA) published its proposed rule in the **Federal Register** on December 16, 1997 (62 FR 65849). An extension of the comment period on the proposed rule was published in the **Federal Register** on February 9, 1998 (63 FR 6498–6499). The comment period was extended until April 30, 1998.

Purpose and Agenda

The principal purpose of this meeting is to provide an opportunity for the NOSB and the Agency to discuss issues raised during the comment period on the proposed rule, as well options under consideration concerning those issues. The Board will also receive committee reports from its standing and ad hoc committees. A detailed agenda for this meeting will be available on October 19, 1998. Copies of the final agenda can be requested from Ms. Karen Thomas, Room 2510, South Building, U.S. Department of Agriculture, AMS, Transportation and Marketing, National Organic Program, P.O. Box 96456, Washington, D.C. 20090–6456, by phone at (202) 690–3655 or by accessing the NOP website at *http://www.ams.usda.gov/nop*.

Type of Meeting

All meetings will be open to the public. The NOSB has scheduled time for public input on October 27, 1998, from 8:00 a.m. until 10:00 a.m. and on October 29, 1998 from 1:30 p.m. until 5:00 p.m. Individuals and organizations wishing to make an oral presentation at the meeting should forward the request to Ms. Thomas at the above address or by FAX to (202) 205–7808 by October 16, 1998. While persons wishing to make a presentation may sign up at the door, advance registration will ensure an opportunity to speak during the allotted time period and will help the NOSB to better manage the meeting and accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to orally present their views. All persons making an oral presentation are requested to provide their comments in writing, if possible. Written submissions may supplement the oral presentation with additional material. Attendees who do not wish to make an oral presentation are invited to submit written comments to the NOSB at the meeting. All persons submitting written comments should provide 20 copies.

Dated: October 8, 1998.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 98–27580 Filed 10–8–98; 4:40 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–108–1]

Availability of a Draft Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that a draft environmental assessment has been prepared by the Animal and Plant Health Inspection Service (APHIS) relative to the management of conflicts with humans and the management of damage caused by nonmigratory Canada geese in the Commonwealth of Virginia. The draft environmental assessment has been prepared to analyze the environmental impact of APHIS activities to manage the conflicts and damage. APHIS is seeking public comments on this draft environmental assessment.

DATES: Consideration will be given only to comments received on or before November 13, 1998.

ADDRESSES: Copies of the environmental assessment are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–

2817 to facilitate entry into the reading room.

Comments on the draft environmental assessment should be mailed or faxed to Mr. Martin Lowney, Director, USDA/APHIS/Wildlife Services, P.O. Box 130, Mosely, VA 23120. Fax: (804) 739–7738.

FOR FURTHER INFORMATION CONTACT: Mr. Martin Mendoza, Jr., Director, Operational Support Staff, APHIS, Wildlife Services, 4700 River Road, Unit 87, Riverdale, MD 20737–1234, (301) 734–7921. For copies of the environmental assessment, write to Mr. Martin Mendoza, Jr., at the address listed above.

SUPPLEMENTARY INFORMATION: APHIS, Wildlife Services, cooperates with Federal agencies, State and local governments, and private individuals to research and implement the best methods of managing wildlife to protect human health and safety and prevent damage to agriculture, property, and natural resources.

In this document, APHIS is advising the public of the availability of, and is seeking public comment on, a draft environmental assessment relative to the management by Wildlife Services of conflicts and damage caused by nonmigratory Canada geese in the Commonwealth of Virginia.

The habitat preference, breeding and feeding behavior, and adaptability of nonmigratory Canada geese can involve conflicts with humans and affect human health and safety in a number of ways, including the following: by contaminating surface water and ground cover with fecal matter, causing damage to aircraft and other means of transportation as a result of collisions, and causing injury to approaching humans, especially children, through aggressive action. The draft environmental assessment examines the environmental impacts of Wildlife Services activities to manage conflicts and damage caused by nonmigratory Canada geese in Virginia.

We are making the draft environmental assessment available for public inspection and comment before issuing our final environmental assessment.

Authority: 7 U.S.C. 426–426c.

Done in Washington, DC, this 7th day of October, 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–27529 Filed 10–13–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Wolfmann Projects, Willamette National Forest, Lane County, Oregon

AGENCY: Forest Service, USDA.

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

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) on a proposal to harvest trees, build roads, and conduct prescribed burns within the Blue River drainage of the Blue River Ranger District approximately 55 miles east of Springfield, Oregon. Approximately 800 acres will be harvested and approximately 1 mile of road will be constructed. Prescribed fire will be used to treat approximately 180 acres. The proposal results from an extensive landscape design and watershed analysis conducted in the Blue River watershed located entirely within the Central Cascades Adaptive Management Area (AMA). The Blue River Landscape and Monitoring strategy provides the framework for management of the area and is being implemented through the Blue River Landscape Administrative Study. The dominant theme of the study uses an interpreted range of ''natural'' variability of disturbance processes to guide landscape and watershed objectives, designs, and prescriptions. The need for the proposed action is to meet Willamette National Forest goals, objectives and commitments outlined in the Land and Resource Management Plan (Forest Plan). The proposed action includes testing an alternative approach to achieve the Northwest Forest Plan objectives consistent with the AMA emphasis; producing timber to support the local and national economy; and using fire as a management tool to introduce mortality, reduce fuels, and stimulate herb and shrub growth variability.

DATES: Comments concerning the scope of the analysis should be received in writing on or before November 25, 1998.

ADDRESSES: Submit written comments concerning this project to Lynn Burditt, District Ranger, Blue River Ranger District, P.O. Box 199, Blue River, Oregon 97413.

FOR FURTHER INFORMATION CONTACT: Please direct questions about the proposed action and environmental impact statement to Karen Geary, Integrated Resources Assistant, phone 541–822–3317.

SUPPLEMENTARY INFORMATION: The Blue River Landscape Management and Monitoring strategy was developed as an alternative approach to achieving the basic objectives underlying the Northwest Forest Plan. The purpose of the strategy is to develop and test a landscape management approach that approximates aspects of historical disturbance regimes within the Blue River watershed which is approximately 57,000 acres. The primary goal is to sustain native habitat, species, and ecological processes within historical ranges while providing a sustained flow of wood fiber. The central concept of this project is that we will be able to achieve these goals by approximating aspects of historical disturbance regimes through forest management practices. Timber harvest and prescribed fire will be planned to approximate historical fires regimes to the degree feasible while still meeting the underlying objectives of the Northwest Forest Plan. While this concept is largely untested, various projects are exploring this approach in a variety of settings across North America.

The Wolfmann Project is the second timber harvest proposal resulting from the strategy. It is the first proposal to use prescribed fire as a management tool in unharvested areas.

The strategy contains four major components:

1. Special area reserves allocated in the Willamette National Forest Plan, as amended by the Northwest Forest Plan, were delineated. The reserve boundaries and general management prescriptions described in the Forest Plan were adopted for these areas.

2. Landscape areas—The remainder of the planning area was subdivided into zones of similar ecological conditions and disturbance regimes (landscape areas). Vegetation management prescriptions were developed for each zone based on an interpreted range of historical conditions. For each landscape area, timber harvest and fire prescriptions were developed based upon the underlying fire regime, as interpreted from tree ring records. Timber harvest frequency, and rotation age (100–260 years) were based upon historical fire intensity, and the spatial patterns of timber harvest were based upon the spatial patterns of historical fires.

3. Aquatic reserves were then established to ensure that the full range of objectives in the Northwest Forest Plan would be met. Achievement of the Aquatic Conservation Strategy Objectives (ROD 1994) was given particular attention. These reserves were based, in part, on the type and intensity of upslope management in the local landscape area, and were designed to reflect general patterns of disturbance

processes. These reserves generally take the form of entire small subdrainages. They are strategically located to encompass areas of high aquatic habitat diversity, source areas for organic and inorganic material to streams, and to include habitat around the most productive pairs of spotted owls. In addition, corridor reserves were established on all fish-bearing streams. This network of reserves is considerably different from the network provided on Matrix lands in the Northwest Forest Plan.

4. Watershed restoration—this component of the project is intended to reestablish a resilient, interconnected aquatic network that is able to maintain aquatic habitats and processes with landscape disturbance processes operating at historical frequencies and intensities.

The landscape management strategy was evaluated to ascertain whether the approach would meet each of the nine Aquatic Conservation Strategy Objectives in the Northwest Forest Plan. Results of the evaluation concluded that these objectives would be met. In addition, an evaluation of northern spotted owl habitat concluded that the owls would find larger patches and less fragmented habitat under this management strategy than would be found managing under the interim guidelines for Matrix lands and Riparian Reserves in the Northwest Forest Plan.

The Wolfmann Project includes regeneration harvest in five ''blocks'' for a total of approximately 200 acres. Regeneration harvest means a new stand of trees will be started. The blocks are within Landscape Area 3 and will have a prescription that results between 15% and 50% of the canopy being retained following harvest. The blocks selected for consideration were identified through a long term scheduling exercise that identifies potential harvest for 200 years. The project also includes commercial thinning harvest on approximately 600 acres in 21 blocks. The stands which will be thinned range in age from 60 to 90 years old. Prescribed fire is proposed in three blocks for a total of approximately 180 acres. The 29 blocks are located in T. 14 S., R. 5 E sections 25 through 36 and in T. 15 S., R. 5 E sections 1, 2, 4, 5, 11 smf 12. This area is approximately 15 to 20 miles north of the town of Blue River, Oregon. The projects are located entirely within the Blue River watershed. The regeneration harvest portion has been called ''Mann Regen'' and the commercial thinning has been called ''Bear Thin'' in *The Forest Focus* (Willamette National Forest Schedule of Proposed Actions (SOPA)).

Detailed ground review and alternative development will concentrate on these 29 blocks. Decisions will include identification of the timing and location of timber harvest and prescribed fire, silvicultural prescriptions, levels of green and dead tree retention, and the spatial patterns of retention trees. Actions connected to this proposal include construction of roads, reconstruction of roads, construction of landings for harvest units, prescribed burning to treat slash, tree planting to reforest the site, and mitigation measures as deemed necessary.

The analysis will consider a range of alternatives to the proposed action, including a no-action alternative. The Forest Service is seeking information and comments from Federal, State and local agencies, as well as, other individuals or organizations who may be interested in, or affected by, the proposed action. Information that would be especially useful would be identification of issues, exploration of additional alternatives based on the issues, and identifying potential environmental effects of the proposed action and alternatives to the proposal. Public involvement will include periodic mailings to interested persons, as the project progresses; public meetings will be held in Blue River, Oregon during October and November 1998. Information on time and locations will be announced at a later date.

Preliminary scoping identified potential issues related to slope stability, logging system economics, and spotted owl habitat.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in January 1999. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**. Copies of the draft EIS will be distributed to interested and affected agencies, organizations, tribes, and members of the public for their review and comment. It is very important that those interested in the management of the Willamette National Forest participate at that time.

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

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

The final EIS is scheduled to be completed in March 1999. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Lynn Burditt, Blue River District Ranger, Willamette National Forest, is the responsible official. As the responsible official she will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations 36 CFR Part 215.

Dated: October 6, 1998.

Lynn Burditt,

Blue River District Ranger, Willamette National Forest.

[FR Doc. 98–27486 Filed 10–13–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Grain Inspection Advisory Committee.

Date: November 3–4, 1998.

Place: Hotel Washington, Pennsylvania Avenue at 15th Street, NW, Washington, DC.

Time: 8:00 am–5:00 pm on November 3; and 8:00 am–11:30 am on November 4, 1998.

Purpose: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda includes a review and discussion of the projected impact of biotechnology on grain markets, outlook for grain exports, GIPSA's financial status, reauthorization, geographic restrictions on designated agencies, and program updates.

Public participation will be limited to written statements, unless permission is received from the Committee Chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or submit written statements before or after the meeting, should contact the Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 3601, Washington, DC 20250–3601, telephone (202) 720–0219 or FAX (202) 205–9237.

The meeting will be open to the public. Persons with disabilities who require alternative means of communication of program information or related accommodation should contact Marianne Plaus, telephone (202) 690–3460 or FAX (202) 205–9237.

Dated: October 6, 1998.

James R. Baker,

Administrator.

[FR Doc. 98–27467 Filed 10–13–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Proposed Changes to Section 4 of the Iowa State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Iowa NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Iowa that changes must be made in the NRCS State Technical Guide specifically in practice standards #327, Conservation Cover; #330, Contour Farming; #332, Contour Buffer Strips; #412, Grassed Waterway; #585, Stripcropping, Contour; and #638, Water and Sediment Control Basin, to account for improved technology. This practice can be used in systems that treat highly erodible land.

DATES: Comments will be reviewed on or before November 13, 1998.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, State Conservationist, Natural Resources Conservation Service, Federal Building, 210 Walnut Street, Suite 693, Des Moines, Iowa 50309; at 515/284–4260; fax 515/284–4394.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dennis J. Pate,

Acting State Conservationist.

[FR Doc. 98–27516 Filed 10–13–98; 8:45 am]

BILLING CODE 3410–16–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: October 20, 1997; 8:30 a.m.

PLACE: RFE/RL, Inc., Conference Room, Fifth floor, Vinohradska 1, Prague, Czech Republic.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the US. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information, the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c) (2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Brenda Massey or John Lindburg at (202) 401–3736.

Dated: October 9, 1998.

David W. Burke,

Chairman.

[FR Doc. 98–27670 Filed 10–9–98; 12:55 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–602]

Industrial Phosphoric Acid From Belgium; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review of industrial phosphoric acid from Belgium.

SUMMARY: On May 11, 1998, The Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping order on industrial phosphoric acid from Belgium. This review covers imports of industrial phosphoric acid from one producer, Societe Chimique Prayon-Rupel S.A. (''Prayon'') and the period August 1, 1996, through July 31, 1997.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have revised the results from those presented in preliminary results of review.

EFFECTIVE DATE: October 14, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner, AD/CVD Enforcement Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4195, and 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (''the Department's'') regulations refer to the regulations codified at 19 CFR Part 351, 62 FR 27296 (May 19, 1997).

Background

On August 20,1 987, the Department published in the **Federal Register** (52 FR 31439) the antidumping duty order on industrial phosphoric acid (''IPA'') from Belgium. On August 4, 1997, the Department published in the **Federal Register** (62 FR 41925) a notice of opportunity to request an administrative review of this antidumping duty order. On August 29, 1997, in accordance with 19 CFR 351.213(b), Prayon, the petitioner FMC Corporation (''FMC''), and Albright & Wilson Americas Inc. (''Wilson''), a domestic producer of the subject merchandise, requested that the Department conduct an administrative review of Prayon's exports of subject merchandise to the United States. We published the notice of initiation of this review on September 25, 1997 (62 FR 50292). On May 11, 1998, the Department published the preliminary results of review (63 FR 25830). The Department has now completed this review in accordance with section 751 of the Act.

Scope of the Review

The products covered by this review include shipments of IPA from Belgium. This merchandise is currently classifiable under the Harmonized Tariff Schedule (''HTS'') item numbers 2809.2000 and 4163.0000. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of the Comment Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from respondent and petitioner.

Comment 1: Sale comparisons. According to petitioner, the Department erroneously compared Prayon's U.S. sales made in one channel of distribution with the home market sales made in three channels of distribution. For the U.S. channel, Prayon sold only through its related sales agent to end-users. In Belgium, Prayon made sales through three channels: (1) Direct to end-users; (2) through its related sales agent to end-users; and (3) through its related sales agent to distributors. Petitioner maintains there are selling, quantity and price differences between sales made in the second channel and sales made in the first and third channels. As a result of these differences, petitioner requests that the Department exclude from its antidumping calculation sales made through the first and third channels in the home market. Petitioner argues that the level of trade (''LOT'') provision of the regulations requires comparing sales transactions which are as nearly identical as possible, such that the Department must match only sales made to end-users through its related sales agent in Belgium with sales made to end-users through its related sales agent in the United States.

Prayon argues there is only one channel of distribution in the home market. Prayon maintains that the selling functions performed for all of its home market sales are the same, whether or not its related sales agent is involved, and whether or not the purchaser is an end-user or a distributor. Moreover, since the commission paid to the related sales agents was disregarded in the dumping calculation, there are no significant differences between sales to end-users made by Prayon and sales made by Prayon through its related sales agents. For these sales to end-users in the home market, there are not two different distribution channels but only identical selling functions performed by two different offices in the home market. Moreover, these home market end-user sales are identical in all respects to the sales to end-users in the United States. These functions include communications with customers, taking orders, directing shipments and receiving payment. Finally, Prayon asserts that the Department in previous cases has not used channels of distribution as an appropriate basis for grouping sales for comparison purposes.

DOC position: We disagree with petitioner. Before evaluating and excluding any sales transactions to alleged home market customer groups, the Department first matches Prayon's U.S. sales to Prayon's home market sales. Only after Commerce has determined the most physically similar model match for a U.S. sale does the Department determine whether or not that sale has been matched to a home market sale at the same LOT. *See* Import Administration Policy Bulletin Number 92/1 July 29, 1992) (''Matching at Levels of Trade''). If not, the U.S. sale may be matched to a home market sale of that most similar model at a different LOT. In this case, however, all home market sales are at the same LOT.

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value (''NV'') based on sales in the comparison market at the same LOT as the export price (''EP'') or constructed export price (''CEP'') transaction. The NV LOT is that of the starting price of the comparison sale in the foreign market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997). All of the U.S. sales in this review are EP sales. See Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review, 63 FR 25830 (May 11, 1998). To determine whether NV sale are at a different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between producer and the unaffiliated customer.

Customers categories such as distributors, retailers, or end-users are commonly used by petitioners respondents to describe different LOTs, but without substantiation, they are insufficient to establish that a claimed LOT is valid. An analysis of the chain of distribution and of the selling functions substantiates or invalidates the claimed LOTs.

The marketing process in both markets begins with goods being sold by the producer and extends to the sale to the final user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales occur somewhere along this chain. In the United States, the respondent's sales are generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and the United States, including selling functions, class of customer, and the extent and level of selling expenses for each claimed LOT. Unless the sales being compared are at different stages in the marketing process, the Department will not find that a difference in LOT exists, even if selling functions are different.

If the claimed LOTs are different, the selling functions performed in selling to each level should also be different. Therefore, unless we find that there are different selling functions for sales to the U.S. and HM sales, we will not determine that there are separate LOTs. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOTs. Differences in LOTs are characterized by purchasers at different stages of marketing or their equivalent.

Because the existence of different channels of distribution suggested that differences in LOT might possibly be present in this case, the Department analyzed the selling functions associated with Prayon's U.S. sales with Prayon's home market sales through the three channels of distribution described above. As Prayon has noted, all four of these groups of sales involve substantially the same selling functions. Specifically, for all of these sales Prayon communicates with customers, takes orders, directs shipments and receives payment and we found no differences in selling functions. The Department has stated in the preamble to its LOT regulation that, in order to find a level of trade difference ''each more remote level must be characterized by an additional layer of selling activities, amounting in the aggregate to a *substantially different selling function*.'' 62 FR 27296, 27371 (May 19, 1997) (emphasis added).

Because there are no substantially different selling functions associated with the home market sales through any of the home market channels of distribution, we determined that there are no LOT differences between Prayon's U.S. sales and any of its home market sales, regardless of the differences in channel of distribution. Because none of Prayon's home market sales are at an LOT that is different from that of the U.S. states, there is no reason to eliminate any of Prayon's home market sales from the matching pool or from the model-specific price averaging groups based on an LOT rationale. Further, it is not our practice to limit price-averaging groups based solely on channels of distribution. See Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey, 61 FR 30309 (June 14, 1996) (''channels are not an appropriate basis for creating product average groups * * *. The SAA does not contemplate the use of channels of distribution as a basis for creating an averaging group''). Therefore, we have compared U.S. sale prices, properly adjusted, to a model-specific average of all of Prayon's home market sales.

Comment 2: Credit expenses. Petitioner claims that the Department should have used the same methodology it used for home market credit expense to calculate U.S. credit expenses. In the preliminary results, the Department determined that the discount transactions for home market credit expenses between Prayon and its affiliated coordination center were not made at arm's length. As a result, the Department deducted from the price to the first unaffiliated customer in the home market an imputed credit expense, rather than using the home market credit expense reported by Prayon. According to petitioner, the discount transactions for the U.S. credit expense between Prayon and its affiliates, Quadra and Prayon Services and Finance, also were not made at arm's length. Therefore, the Department should reject these reported credit expense values and calculate an imputed U.S. credit expense. For the purposes of the final results, the imputed credit expense must be incorporated in the antidumping margin calculation. Petitioner also argues that Prayon erroneously reported its credit expense on these U.S. transactions in Belgian francs, and that the Department must calculate the imputed credit expense using the interest rate of the currency in which Prayon incurred credit expense on U.S. sales, *i.e.*, U.S. dollars.

Prayon argues that the Department should use the actual credit cost incurred by Prayon and reported in Prayon's questionnaire response. Although Prayon's actual cost is the cost incurred in factoring invoices for U.S. sales with a related company, the related company operates as a ''coordination center'' under Belgian law and is legally required to charge an arms's length interest rate. This rate is based on the prevailing Belgian interbank rate plus a premium to reflect a commercial loan. If, however, the Department disregards Prayon's actual credit expense and uses an imputed expense, then a Belgian franc-denominated rate should be used in the calculation.

DOC position: We agree with petitioner. In the preliminary results, we determined that Prayon's home market credit expense paid to its affiliates was not incurred on an arm's length basis. Therefore, we calculated an imputed home market credit value using our standard credit calculation, *i.e.*, (date of payment less date of shipment/365)* monthly home market short term rate interest rate* gross price. We also determined that Prayon's U.S. credit expense paid to its affiliates was not incurred at arm's length and intended to calculate an imputed U.S. credit value using the standard credit calculation. For these Final Results, we have made this change.

In our calculation, we have used the prevailing U.S. dollar prime rate in effect during the period of review See Federal Reserve Bulletin ''Prime Rate Charged By Banks,'' June 28, 1998, p.A 22, Number 1.33. For this instant review, the application of the prime rate is consistent with the Department's policy of calculating an imputed credit expense using the interest rate of the currency of sale. As we stated in a recent Import Administration Policy Bulletin, ''for the purposes of calculating imputed credit expenses, we will use a short-term interest rate tied to the currency in which the sales are denominated. We will base this interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction.'' See Import Administration Policy Bulletin Number 98.2 at 3 (February 23, 1998). Further, our use of the prime rate in the calculation of an imputed credit expense for this review adheres to the Department's standard policy as outlined in the Bulletin cited above: ''(1) The surrogate rate should be reasonable; (2) it should be readily obtainable and predictable; and (3) it should be a short-term interest rate actually realized by borrowers in the course of the usual commercial behavior in the United States.'' The U.S. dollar prime rate meets this standard.

We disagree that any imputed credit expense should be calculated using Belgian francs. In our Section C questionnaire, we explicitly stated that it is our practice to calculate imputed credit expense in U.S. dollars when the U.S. sales are denominated in dollars. We stated that, if Prayon did not borrow in U.S. dollars, then it should use a U.S. published commercial bank prime rate short-term lending rate in reporting credit expense. Therefore, we have calculated the imputed U.S. credit expense in U.S. dollars.

Finally, we find that Prayon's assertion that its affiliate, Prayon Services, is required, under Belgian law, to charge an arm's length interest rate to an affiliated company provides insufficient indication that these credit transactions are in fact made at arm's length. Since the arm's length standard established by Belgian law is not sufficiently similar to the practice established by the Department, we cannot rely on Prayon's compliance with the law as evidence that the rate

charged by Prayon Services to Prayon is at arm's length. See Industrial Phosphoric Acid from Belgium; Final Results of Antidumping Administrative Review, 61 FR 20227 (May 6, 1996).

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on rates certified by the Federal Reserve Bank in effect on the dates of the U.S. sales. See Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996).

Final Results of the Review

As a result of our review, we determine that the following margin exists for the period August 1, 1996 through July 31, 1997:

Manufacturer/exporter	Margin (percent)
Prayon	4.35

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between normal value and export price may vary from the percentage stated above. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the same sales. The rate will be assessed uniformly on all entries of that particular company made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of amended final results of review for all shipments of IPA from Belgium entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a) of the Act: (1) For the companies named above, the cash deposit rate will be the rate listed above (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results which covered that manufacturer or exporter; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results which covered that manufacturer; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 14.67 percent, the ''all others'' rate established in the LFTV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only 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 351.306 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 7, 1998.

Robert S. LaRussa,

Assistant Secretary, Import Administration.

[FR Doc. 98–27568 Filed 10–13–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Roller Chain, Other Than Bicycle, From Japan: Postponement of Preliminary Results of Antidumping Duty Administrative Review (A–588–028)

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

ACTION: Extension of time limits for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending the time limits of the preliminary results of the antidumping duty administrative review of the antidumping finding on roller chain, other than bicycle, from Japan, covering the period April 1, 1997, through March 31, 1998, since it is not practicable to complete the review within the time limits mandated by Section 751(a)(3)(A) of the Tariff Act of 1930 (the Act), as amended.

EFFECTIVE DATE: October 14, 1998.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Cameron Werker, Antidumping Duty and Countervailing Duty Enforcement, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 and 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Background

On May 22, 1998 (63 FR 29370, May 29, 1998) the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on roller chain, other than bicycle, from Japan, covering the period April 1, 1997, through March 31, 1998. In our notice of initiation, we stated that we intended to issue the final results of this review no later than April 30, 1999. On August 6, 1998, Kaga Industries Co. Ltd., Sugiyama Chain, and Izumi Chain Manufacturing Co. Ltd., respectively, submitted requests for postponement of the preliminary results on roller chain, other than bicycle from Japan, due to the complexity of issues presented by the review, including model match issues stemming from the 1996–1997 administrative review and the limited resources of both respondents and the Department.

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to 365 days and 180 days, respectively.

We determine that it is not practicable to complete the preliminary results of this review within the original time frame because of the large number of respondents and the complexity of the legal and methodological issues in this review (see Decision Memorandum from Holly Kuga, Acting Deputy Assistant Secretary to Robert LaRussa, Assistant Secretary).

Accordingly, the deadline for issuing the preliminary results of this review is now due no later than April 29, 1999. The deadline for issuing the final results of this review will be no later than 120 days from the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: October 7, 1998.

Holly Kuga,

Acting Deputy Assistant Secretary for Group II.

[FR Doc. 98–27569 Filed 10–13–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100798A]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Highly Migratory Species (HMS) Advisory Panel (AP) and the Billfish AP.

DATES: The HMS AP meeting will begin at 8:00 a.m. on Tuesday, October 27, 1998, and conclude by 3:30 p.m. The Billfish AP will begin at 8:00 a.m. on Wednesday, October 28, 1998 and conclude by 3:30 p.m.

ADDRESSES: The meeting will be held at the Crowne Plaza New Orleans, 333 Poydras Street, New Orleans, LA 70130; telephone: 504–525–9444.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The HMS AP will review a recently prepared fishery management plan (FMP) for highly migratory species occurring in the Atlantic Ocean and Gulf of Mexico by NMFS. The HMS FMP addresses the current commercial and recreational fisheries for tuna, swordfish, and sharks. It includes, among other provisions: overfishing definitions, biomass targets, and rebuilding schedules; essential fish habitat; and other management measures, e.g. season and area closures, quota reductions, gear restrictions, and prohibited species.

The Billfish AP will review NMFS' amendment to the Billfish FMP, which includes Atlantic blue and white marlin, Western Atlantic sailfish, and longbill spearfish. These species are also considered as HMS species, but they are managed under a separate FMP. The Billfish FMP amendment also includes provisions for overfishing definitions, biomass targets, and rebuilding schedules; essential fish habitat; and other management measures, including: gear restrictions, minimum size limit increases, bag limit modifications, and retention prohibitions.

All HMS are under the direct management of NMFS, and some species are cooperatively managed with other countries through agreements under the International Commission for the Conservation of Atlantic Tunas (ICCAT). The Council's HMS AP and Billfish AP are charged with reviewing the provisions of these FMPs and amendments and providing recommendations to the Council, which in turn may provide recommendations to NMFS.

Although other issues not on the agenda may come before the APs for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 20, 1998.

Dated: October 7, 1998.

Richard W. Surdi,

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

[FR Doc. 98–27418 Filed 10–13–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; Notice of Open Meeting

ACTION: Notice is hereby given of a meeting of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters, created pursuant to Executive Order 13038.

SUMMARY: The President established the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters (PIAC) to advise the Vice President on the public interest obligations of digital broadcasters. The Committee will study and recommend which public interest obligations should accompany broadcasters' receipt of digital television licenses. The President designated the National Telecommunications and Information Administration as secretariat for the Committee.

Authority: Executive Order 13038, signed by President Clinton on March 11, 1997.

DATES: The meeting will be held on Monday, October 26, 1998 from 9:30 a.m. to 5:30 p.m. and on Tuesday, October 27, 1998 from 9:30 a.m. to 12:30 p.m.

ADDRESSES: The meeting will take place in Washington D.C. The location of the meeting will be announced in another **Federal Register** notice to be issued shortly. Updates about the location of the meeting will also be available on the Advisory Committee's homepage at www.ntia.doc.gov/pubintadvcom/pubint.htm or you may call Karen Edwards at 202–482–8056. The meeting will also be broadcast over the Internet. The broadcast can be accessed via the Advisory Committee's homepage at www.ntia.doc.gov/pubintadvcom/pubint.htm.

FOR FURTHER INFORMATION CONTACT: Karen Edwards, Designated Federal Officer and Telecommunications Policy Specialist, at the National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4720, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Telephone: 202–482–8056; Fax: 202–482–8058; E-mail: piac@ntia.doc.gov.

Media Inquiries: Please contact Karen Kirchgasser, the Office of Public Affairs, 202–482–7002.

Agenda

Monday, October 26

Opening remarks
Committee deliberations
Public Comment
Adjourn

Tuesday, October 27

Reconvene
Committee deliberations
Public Comment
Closing remarks

This agenda is subject to change. For an updated, more detailed agenda, please check the Advisory Committee's homepage at www.ntia.doc.gov/pubintadvcom/pubint.htm.

Public Participation

The meeting will be open to the public, with limited seating available on a first-come, first-served basis. This meeting is physically accessible to people with disabilities. Any member of the public requiring special services, such as sign language interpretation or other ancillary aids, should contact Karen Edwards at least five (5) working days prior to the meeting at 202–482–8056 or at piac@ntia.doc.gov.

Members of the public may submit written comments concerning the Committee's affairs at any time before or after the meeting. The Secretariat's guidelines for public comment are described below and are available on the Advisory Committee homepage (www.ntia.doc.gov/pubintadvcom/pubint.htm) or by calling 202–482–8056.

Guidelines for Public Comment

The Advisory Committee on Public Interest Obligations of Digital Television Broadcasters welcomes public comments. *Oral Comment:* In general, opportunities for oral comment will usually be limited to no more than five (5) minutes per speaker and no more than thirty (30) minutes total at each meeting. *Written Comment:* Written comments must be submitted to the Advisory Committee Secretariat at the address listed below. Comments can be submitted either by letter addressed to the Committee (please place ''Public Comment'' on the bottom left of the envelope and submit at least thirty-five (35) copies) or by electronic mail to piac@ntia.doc.gov (please use ''Public Comment'' as the subject line). Written comments received within three (3) workings days of a meeting and comments received shortly after a meeting will be compiled and sent as briefing material to Committee members prior to the next scheduled meeting.

Obtaining Meeting Minutes

Within thirty (30) days following the meeting, copies of the minutes of the meeting may be obtained over the Internet at www.ntia.doc.gov/pubintadvcom/pubint.htm, by phone request at 202–482–8056, by email request at piac@ntia.doc.gov or by written request to Karen Edwards; Advisory Committee on Public Interest Obligations of Digital Television Broadcasters; National Telecommunications and Information Administration; U.S. Department of Commerce, Room 4720; 14th Street and Constitution Avenue N.W., Washington, DC 20230.

This notice of open meeting will be published thirteen days prior to the meeting date because of uncertainty created by the unavailability of suitable meeting space to accommodate the Committee and members of the public. This unavailability is caused by the unprecedented number of business and cultural events taking place in Washington around the meeting dates. Postponing the meeting is not possible because the next meeting date where the majority of Committee members could attend would leave the Committee insufficient time to prepare and submit its report.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 98–27576 Filed 10–13–98; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Performance Review Board

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Announcement of membership of the Patent and Trademark Office Performance Review Board.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

ADDRESSES: Comments should be addressed to Director, Office of Human Resources, Patent and Trademark Office, One Crystal Park, Suite 707, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Alethea Long-Green at the above address or telephone (703) 305–8062.

SUPPLEMENTARY INFORMATION: The membership of the Patent and Trademark Office Performance Review Board is as follows:.

Gloria Gutiérrez, Chairman,
Acting Deputy Associate Commissioner for Administration and Quality Services, Patent and Trademark Office, Washington, DC 20231,
Term—expires September 30, 1999.

Mary C. Lee,
Deputy Director, Patent Examining Group, Patent and Trademark Office, Washington, DC 20231
Term—expires September 30, 1999

Jin F. Ng,
Director, Patent Examining Group, Patent and Trademark Office, Washington, DC 20231
Term—expires September 30, 2000

Barbara S. Fredericks
Assistant General Counsel for Administration, Department of Commerce, Washington, DC 20230
Term—expires September 30, 1999

Robert M. Anderson
Deputy Assistant Commissioner for Trademarks, Patent and Trademark Office, Washington, DC 20231
Term—expires September 30, 1999

Gerald R. Lucas
Director, Eastern Administrative Support Center, Department of Commerce, Norfolk, VA 23510
Term—expires September 30, 1999

Robert F. Kugelman
Director of Administration, Bureau of Export Administration, Department of Commerce, Washington, DC 20230
Term—expires September 30, 1999

E. Melodee Stith
Director, Office for Equal Opportunity, Department of the Interior, Washington, DC 20240
Term—expires September 30, 1999

Dated: October 6, 1998.

Bruce A. Lehman,

Assistance Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 98–27412 Filed 10–13–98; 8:45 am]

BILLING CODE 3510–16–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 99–C0001]

Schneitter Fireworks and Importing Co., Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substance Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e)–(h). Published below is a provisionally-accepted Settlement Agreement with Schneitter Fireworks and Importing Co.,

Inc., a corporation, containing a civil penalty of $60,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by October 29, 1998.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 99–C0001, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: October 7, 1998.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

In the matter of Schneitter Fireworks and Importing Co., Inc., a corporation.

[CPSC Docket No. 99–C0001]

1. Schneitter Fireworks and Importing Co., Inc. (hereinafter, ''Schneitter''), a corporation, enters into this Settlement Agreement and Order (hereinafter, ''Settlement Agreement'' or ''Agreement'') with the staff on the Consumer Product Safety Commission, and agrees to the Order described herein. The purpose of the Settlement Agreement is to settle the staff's allegations that Schneitter knowingly violated sections 4(a) and (c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1263(a) and (c).

I. The Parties

2. The ''staff'' is the staff of the Consumer Product Safety Commission (hereinafter, ''Commission''), an independent regulatory commission of the United States government established pursuant to section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2053.

3. Schneitter is a corporation organized and existing under the laws of the State of Missouri since 1967. Schneitter's principal place of business is located at N.E. Highway I–29 and 71 Highway, Saint Joseph, MO 64501. Schneitter is an importer and wholesaler of fireworks.

II. Allegations of the Staff

4. On 15 occasions between June 5, 1991, and April 9, 1997, Schneitter introduced or caused to be introduced into interstate commerce; or received in interstate commerce 33 different kinds of fireworks (4,926,072 retail units) identified and described below that failed to comply with the Commission's Fireworks Regulations at 16 CFR Part 1507 and 16 CFR 1500.14(b)(7) and 1500.17(a)(3):

Collection date	Sample No.	Product	Violation
06/20/91	M–830–0642	Cherry Blossom	Pyrotechnic Leak.
06/20/91	M–830–0643	Triple Whistling Rocket	Fuse Burn Time, Stick Rigidity.
06/20/91	M–830–0644	Assorted Rocket	Side Ignition, Fuse Burn Time.
06/20/91	M–830–0645	Sound of Music	Side Ignition, Fuse Burn Time.
06/20/91	M–830–0646	Crackling Blue Assorted Rocket	Fuse Burn Time, Fuse Attachment.
06/20/91	M–830–0647	Phoenix Playgun	Fuse Burn Time.
06/05/91	M–830–7055	Whistling Jupiter Missile	Fuse Burn Time, Fuse Attachment.
04/16/92	P–830–6545	Shot Saturn With Crackers	Fuse Burn Time.
06/18/92	P–830–6558	Honey Flowers	Fuse Attachment.
05/24/93	R–830–6847	General Custer's Last Stand	Fuse Attachment, Excess Pyro. Comp.
05/24/93	R–830–6848	Three stage Missile Base	Side Ignition, Fuse Burn Time.
05/24/93	R–830–6849	19 Shot Small Festival Balls	Pyro. Leak.
01/24/94	S–830–6008	Small Festival Balls	Burnout/Blowout.
01/24/94	S–830–6009	Kaleidoscope	Fuse Burn Time.
03/01/94	S–830–6020	Small Festival Ball	Fuse Burn Time, Pyro. Leak.
03/01/94	S–830–6021	Whistling Moon Traveller	Fuse Burn Time, Stick Rigidity.
04/21/94	S–830–6033	Nebula 19 Shot	Side Ignition, Fuse Burn Time.
04/21/94	S–830–6034	Nebula 9 Shot	Fuse Burn Time.
05/10/94	S–830–6042	25 Shot Thunder	Fuse Burn Time, Burnout/Blowout, Excess Pyro. Comp.
05/10/94	S–830–6043	Nuclear Bomb	Fuse Attachment, Burnout/Blowout.
11/22/94	T–830–6111	Whistling Bottle Rocket	Fuse Burn Time.
11/22/94	T–830–6112	Crackling Golden Palms	Burnout/Blowout.
04/03/95	T–830–6120	Cosmic Destroyer	Burnout/Blowout.
05/16/95	T–830–6015	Moon Travel	Stick Rigidity.
05/16/95	T–830–6018	Moon Travel	Stick Rigidity.
05/16/95	T–830–6019	Kaleidoscope	Side Ignition, Fuse Burn Time.
04/11/96	96–830–4125	Red Ball Rocket	Excess Pyro. Comp, Label.
05/16/96	96–830–4090	Shot News Transmitter	Fuse Burn Time, Side Ignition.
05/16/96	96–830–4091	Kaleidoscope	Fuse Burn Time.
05/16/96	96–830–4093	Moon Travellers	Fuse Burn Time, Stick Rigidity.
05/16/96	96–830–4094	Small Festival Balls	Fuse Burn Time, Label.
04/09/97	97–830–3866	Colour Smoke Ball	Fuse Burn Time, Label.
04/09/97	97–830–3870	Super Stallion	Excess Pyro. Comp, Label.

5. Each of the fireworks identified in paragraph 4 above is a ''banned hazardous substance'' pursuant to section 2(q)(1)(B) of the FHSA, 15 U.S.C. § 1261(q)(1)(B) 16 CFR Part 1507, and 16 CFR 1500.17(a)(3).

6. Each of the firework devices identified in paragraph 4 that failed to comply with the labeling requirements are ''misbranded hazardous substances'' pursuant to section 3(b) of the FHSA, 15 U.S.C. 1262(b) and 16 CFR 1500.14(b)(7).

7. Schneitter knowingly introduced or caused to be introduced into interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the banned and misbranded hazardous fireworks identified in paragraph 4 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c).

III. Response of Schneitter

8. Schneitter denies the allegations of the staff set forth in paragraph 4 through 7 above.

9. Schneitter's products comply with all federal statutes and regulations (including those cited above) and are specifically manufactured to comply with such laws.

10. Schneitter uses the American Fireworks Standard Laboratory (AFSL), an independent testing laboratory, to test its fireworks products for compliance with the FHSA and the Commission's Fireworks Regulations. For those fireworks products not tested by the AFSL, Schneitter employees conduct testing pursuant to the American Pyrotechnic Association's (APA) testing program for compliance with the FHSA and the Commission's Fireworks Regulations.

11. Schneitter vehemently denies it knowingly introduced or caused the introduction in interstate commerce; or received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the banned and misbranded hazardous fireworks identified in paragraph 4 above, in violation of section 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c).

12. Schneitter is only entering into this Settlement Agreement because of the tremendous legal cost of contesting a fine action against the Commission in Court as well as the negative publicity that could be associated with a long drawn out trial.

IV. Agreement of the Parties

13. The Consumer Product Safety Commission has jurisdiction over Schneitter and the subject matter of this Settlement Agreement under the following acts: Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

14. This Settlement Agreement and Order is entered into for the purposes of settlement only and does not constitute a determination by the Commission or an admission by Scheneitter that Scheneitter knowingly violated the FHSA and the Commission's Fireworks Regulations.

15. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Scheneitter knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions (3) to a determination by the Commission as to whether Schneitter failed to comply with the FHSA as aforesaid, (4) to a statement of findings of fact and conclusion of law, and (5) to any claims under the Equal Access of Justice Act.

16. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a Complaint had issued, and the Commission may publicize the terms of the Settlement Agreement and Order.

17. In settlement of the staff's allegations, Schneitter agrees to pay a civil penalty of $60,000.00 as set forth in the incorporated Order.

18. Upon the full payment of the civil penalty as set forth in the Final Order, the Commission fully releases, acquits, and forever discharges Schneitter and its officers, directors, and/or employees from all claims for civil penalties, demands for civil penalties, liabilities for civil penalties, actions for civil penalties, or causes of actions for civil penalties for all violations from June 5, 1991 through July 22, 1998 for which the Commission has issued letters of advice to Schneitter.

19. Based on current data, the Commission staff believes that fireworks imported under the American Fireworks Standards Laboratory (AFSL) testing and certification program are more likely to comply with the Commission's Fireworks Regulations than non-AFSL fireworks are. Accordingly, the Commission will not pursue FHSA violations against Schneitter for those fireworks products tested and certified by the AFSL as complying with the Commission's Fireworks Regulations, as the AFSL program is currently structured and administered. However, the Commission staff will continue to monitor the AFSL program. If the Commission staff determines that the AFSL program does not adequately assure compliance with the fireworks regulations it will notify Schneitter in writing. After providing such written notice to Schneitter, the Commission staff will have the enforcement discretion to pursue violations of the FHSA and the Commission's Fireworks Regulations against Schneitter for AFSL tested fireworks products received and/or imported by Schneitter after such notification date. The Commission staff's determination on the adequacy of the AFSL testing and certification program is neither reviewable nor subject to challenge by Schneitter nor provides a basis for Schneitter to challenge this Agreement.

20. Upon provisional acceptance of this Settlement Agreement by the Commission, the Commission will place the Settlement Agreement and the Provisional Order on the public record, and publish it in the **Federal Register** in accordance with the procedures set forth in 16 CFR 118.20(e)–(h). If the Commission does not receive any written requests not to accept the Settlement Agreement within 15 days, the Settlement Agreement shall be deemed finally accepted and the Final Order issued on the 16th day.

21. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

22. The provisions of this Settlement Agreement and Order shall apply to Schneitter and each of its successors and assigns.

23. Upon final acceptance of this Agreement, the Commission shall issue the attached Final Order.

Respondent Schneitter Fireworks and Importing Company, Inc.

Dated: August 19, 1998.

H.E. Schneitter, Jr.,

President, Schneitter Fireworks and Importing Company, Inc., N.E. Highways I–29 and 71, Box 547, St. Joseph, MO 64502.

Dated: August 20, 1998.

Robert B. Hopkins,

Counsel For Respondent Schneitter Fireworks, and Importing Company, Inc., Ober, Kaler, Grimes & Shriver, 120 East Baltimore Street, Baltimore, MD 21202–1643.

Commission Staff

Alan H. Schoem,

Assistant Executive Director, Consumer Product Safety Commission, Office of Compliance, Washington, D.C. 20207–001.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: August 31, 1998.

Dennis C. Kacoyanis,

Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent Schneitter Fireworks and Importing Company, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the

Commission having jurisdiction over the subject matter and Schneitter Fireworks and Importing Company, Inc.; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement Order, Schneitter Fireworks and Importing Company, Inc. shall pay to the Commission a civil penalty in the amount of SIXTY THOUSAND AND 00/100 DOLLARS ($60,000.00) in three (3) payments each. The first payment of TWENTY THOUSAND AND 00/100 DOLLARS ($20,000.00) shall be due within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting the Settlement Agreement (hereinafter, the ''anniversary date''). The second payment of TWENTY THOUSAND AND 00/100 DOLLARS ($20,000.00) shall be made within one (1) year of the anniversary date. The third payment of TWENTY THOUSAND AND 00/100 DOLLARS ($20,000.00) shall be made within two (2) years of the anniversary date. Upon the failure by Schneitter Fireworks and Importing Co., Inc. to make a payment or upon Schneitter Fireworks and Importing Co., Inc. making a late payment (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (c).

Provisionally accepted and Provisional Order issued on the 7th day of October, 1998.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–27410 Filed 10–13–98; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents; Meeting

ACTION: Notice.

SUMMARY: The Board will conduct a two-day public meeting to discuss overview strategy, to solicit recommendations from veterans, veterans service organizations, and other concerned groups, and to obtain information from the Office of the Special Assistant for Gulf War Illnesses and other Federal agencies regarding the causes of Gulf War Illnesses.

DATES: November 19–20, 1998.

ADDRESSES: Senate Hart Office Building, Room SH–216, 2nd Street and Constitution Avenue, NE, Washington, DC 20510.

FOR FURTHER INFORMATION: Contact Mr. Roger Kaplan, Deputy Executive Director, Special Oversight Board, 1401 Wilson Blvd, Suite 401, Arlington, VA 22209, phone (703) 696–9470, fax (703) 696–4062, or via Email at *Gulfsyn@osd.pentagon.mil*. Requests for oral comments must be sent in writing to Mr. Kaplan and be received no later than noon Eastern Time on Friday November 6, 1998. Written comments must be received no later than Thursday November 12, 1998. Copies of the draft meeting agenda can be obtained by contacting Ms. Becky Love at (703) 696–9464 or at the above fax number or above Email.

SUPPLEMENTARY INFORMATION: Seating in Room SH–216 is limited, and spaces will be reserved only for scheduled speakers. The remaining seating is available on a first-come, first-served basis. No teleconference lines will be available. The Special Oversight Board expects that public statements presented at its meetings will deal only with recommendations on how the Board can best oversee Department of Defense investigations of Gulf War chemical and biological incidents. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments may be mailed to Board members if at least 20 copies are received in the Special Oversight Board Staff Office no later than November 5, 1998. Comments received during November 6–12 will be provided to Board members upon their arrival in Washington. Written comments received after November 12 will be mailed to Board members after the adjournment of the November 1998 meeting.

Dated: October 6, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–27409 Filed 10–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Inland Waterways Users Board

AGENCY: Corps of Engineers, DoD.

ACTION: Notice of Open Meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law (92–463) announcement is made of the next meeting of the Inland Waterways Users Board. The meeting will be held on November 4, 1998, in New Orleans, Louisiana, at the U.S. Army Corps of Engineers District Office Building, 7400 Leake Avenue, New Orleans, Louisiana, (Tel. 504–862–2288). Registration will begin at 12:30 PM and the meeting is scheduled to adjourn at 6:00 PM. The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, Washington, DC 20314–1000.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–27530 Filed 10–13–98; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Proposal to Issue and Modify Nationwide Permits

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent and request for comments.

SUMMARY: To further ensure that the proposed nationwide permits (NWPs) published in the July 1, 1998, **Federal Register** would only authorize activities that have minimal adverse environmental effects on the aquatic environment, the Corps is proposing additional changes to those proposed NWPs. For example, the Corps is announcing its decision to withdraw the proposed NWP B for master planned development and proposing the addition of a restriction on the use of certain NWP's in the 100 year Floodplain. We are proposing to exclude NWPs in designated critical resource waters and in impaired waters. In addition, the Corps has revised its

schedule for developing the NWPs to provide for additional public comment. This will result in a delay in the schedule for issuing the new and revised NWPs. Consequently, the Corps is also announcing its decision to delay the expiration of NWP 26, so that it will not expire before the proposed new and revised NWPs are issued. The revised schedule provides for the new and revised NWPs to be issued and for NWP 26 to expire on September 15, 1999.

DATES: Comments on these proposed changes to the proposed nationwide permits must be received by November 30, 1998.

ADDRESSES: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson or Mr. Sam Collinson, CECW–OR, at (202) 761–0199 or http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.

SUPPLEMENTARY INFORMATION:

Background

On July 1,1998, the Army Corps of Engineers provided notice (FR Vol. 63, No. 126, p. 36040) of proposed changes to its Nationwide General Permit Program. The public comment period on the Corps proposal closed on August 31, 1998. That notice responded to the Corps 1996 commitment that it would phase out Nationwide permit 26 (NWP 26), which authorized discharges into headwaters and isolated wetlands, and replace it with a set of ''activity based'' NWPs. This decision is consistent with the Corps goal of providing necessary fairness and flexibility in the Regulatory Program while improving environmental protection. In its July 1, 1998 notice, the Corps proposed to replace NWP 26 by issuing six new NWPs and to modify six existing NWPs to become effective when NWP 26 expired.

One of the new NWPs initially proposed by the Corps was NWP B, which was designed to authorize discharges in waters of the United States associated with construction of Master Planned Developments. The proposed permit would apply to the construction of residential, commercial, and industrial developments that include plans for the complete long-term restoration and protection of aquatic resources. The Corps objective in proposing NWP B was to encourage comprehensive planning of developments that completely integrate restoration, enhancement and long term protection of the aquatic environment. As proposed, NWP B would authorize discharges associated with the construction or expansion of master planned developments affecting up to ten acres of non-tidal waters, excluding non-tidal wetlands contiguous to tidal wetlands.

The July notice also announced the initiation of a process to develop regional conditions for the new NWPs. Consistent with the requirements of the Clean Water Act to effectively protect the Nation's water resources, the Corps designed this process to identify additional regional limitations and restrictions on the use of the new NWPs to ensure that adverse effects on the aquatic environment authorized by the replacement NWPs are minimal. Regional conditions, such as limits on the use of the new NWPs to protect environmentally sensitive waters or restrictions on the timing of permitted actions to avoid impacts to spawning fish or migrating waterfowl, are being developed by Corps Districts in coordination with other federal and state agencies and the public. The process to develop regional conditions is currently underway and is to be completed before the new and modified NWPs are made final.

Another major emphasis for the Corps is to ensure that the public is provided an effective opportunity to participate fully in the process to develop replacement permits for NWP 26, including the opportunity for involvement in the regional conditioning process. The original schedule provided for two National notices in the **Federal Register**, including the July 1, 1998, notice seeking public comment on the Corps proposal, and a scheduled December, 1998, notice to provide a response to public comments and to announce the Corps final package of new and modified NWPs to take effect in March, 1999. In addition, Corps Districts are also publishing public notices on a District-wide basis to facilitate public participation in the regional conditioning process. The Corps has conducted public hearings and public meetings nationwide to provide for additional public input and to answer questions regarding the proposal.

Supplement to the July 1, 1998 Nationwide Permit Proposal

Since the Corps published its July 1, 1998, notice and request for public comments on the proposal to issue new NWPs and modify existing NWPs to replace the expiring NWP 26, the Corps has decided to make several alterations to that original proposal and to seek comments on proposed new conditions limiting the applicability of the replacement permits in critical resource waters and in impaired waters. In addition, the Corps has determined that the public should be provided an additional opportunity for participation in the process of developing replacement permits, and is providing the revised schedule in an appendix at the end of this document.

1. Withdraw Proposal to Issue Nationwide Permit B

After careful consideration of the initial public and agency comments, and our original goals and objectives in proposing NWP B for discharges associated with Master Planned Developments, the Corps has decided to withdraw this proposed nationwide permit. There are a number of factors relevant to this decision. The Corps is concerned, at this time, that without additional analysis regarding appropriate terms and conditions for this proposed NWP, that the 10-acre limit may be too high. While we continue to support the goal of encouraging development that is planned and designed for the long-term protection of the Nation's valuable aquatic resources, discussions to date with Corps field staff and public comments indicate that there is substantial confusion regarding NWP B. The Corps may, after further evaluation, consider reproposing, at a future date, a NWP that is more completely developed and conditioned.

2. Exclusion of Floodplains From the Replacement NWPs

The Corps is proposing to modify the applicability of the replacement NWPs by excluding their use in authorizing permanent above grade wetland fills in waters of the United States located within the 100-year floodplain as defined by the Federal Emergency Management Agency (FEMA) and identified on FEMA's Flood Insurance Rate Maps.

A fundamental aspect of the Corps mission is to protect public health and safety by reducing the loss of life and property caused by flooding, to safeguard sources of drinking water supplies, and to protect and restore the natural functions of the Nation's floodplains. The Corps Challenge 21 Initiative as well as Executive Order 11988 on Floodplains recognize the critical need to ensure that Federal agency actions emphasize efforts to reduce the potential for the loss of life and property by flooding and to increase opportunities for the restoration of historically altered floodplains.

FEMA has brought to the Corps attention the serious implications of further reductions of flood storage capacity within the 100-year floodplain.

The potential risks to life and property, as well as the economic implications for homeowners, businesses, and state and local governments, clearly indicate the importance of limiting the use of NWPs for permanent above grade wetland fills in the 100-year floodplain.

Consistent with the shared goals and responsibilities that the Corps and FEMA have for reducing flood damages, the Corps believes that most activities in the100-year floodplain should not be authorized by NWPs. This includes commercial and residential developments, and mining and stormwater detention pond activities that result in permanent above grade wetland fills. It is our belief that such activities do result in permanent above grade fills and will be subject to this limitation. The Corps recognizes, however, that other activities, such as boat ramps, mooring buoys and stream restoration projects must be by definition within the 100-year floodplain and generally will have little impact on flooding. Such activities will continue to be subject to authorization by NWP. The Corps is requesting public comment on this proposal, including recommendations on the applicability of this restriction on existing and proposed NWPs.

3. Exclusion for Designated Critical Resource Waters

The Clinton Administration's recently developed Clean Water Action Plan provides a blueprint for protecting the Nation's vital water resources and achieving the statutory goals that Congress has set forth in the Clean Water Act. The Corps is a full partner in implementing the Clean Water Action Plan, which fulfills the mandates of the Clean Water Act through a series of steps to reduce public health threats, improve the stewardship of natural resources, and strengthen polluted runoff controls. To ensure consistency of NWPs with this initiative and with the specific Clean Water Act requirement that activities permitted through NWPs have minimal adverse environmental effects, it is important to ensure that activities approved under the Nationwide Permit Program avoid, to the maximum practicable extent, potential adverse environmental effects on waters that are recognized as critical resource waters. Such waters may include, for example, Outstanding Natural Resource Waters, National Wild and Scenic Rivers, and State Ecological Reserves.

Accordingly, the Corps is proposing to exclude the use of NWPs in certain State or Federally designated critical resource waters and their adjacent wetlands. The Corps is requesting public comments on this proposal and specifically solicits the public's input on which designated waters should be subject to the exclusion. Further, comments are requested on which, if any, NWPs should not be subject to this exclusion. For example, certain activities authorized by NWP, such as mooring buoys, may have no discernable effect on the designated critical resource waters. The public will have an opportunity, through the final **Federal Register** notice, to comment on any proposed exceptions and those waters proposed for exclusion.

4. Exclusion for Impaired Waters

A critical impetus for the development of the Administration's Clean Water Action Plan was the recognition that despite the efforts of 25 years of progress under the Clean Water Act, 40 percent of the Nation's surveyed waters do not meet the goals Congress set forth in the Act. The Plan promotes initiatives by the States to identify its impaired waters, and to develop, in coordination with Federal partners, including the Corps, unified assessments and response plans to restore the health of these waters.

In many cases, the impaired status of certain open waters like lakes, rivers and streams, is directly related to historic losses of wetlands in a particular watershed. Similarly, the impairment or loss of numerous drinking water aquifers is attributable to the loss of freshwater storage provided by wetlands. In these cases, the Corps believes that use of some of the NWPs may undermine efforts to restore impaired waters and aquifers to a healthy condition, particularly where the impairment can be related to historical loss of waters, including wetlands, from filling those waters in a watershed.

The Corps is proposing to limit the use of NWPs in wetlands identified with waters and aquifers that have been identified by the States as impaired. The Corps is requesting suggestions on the criteria for determining or identifying impaired waters. For example, waters identified as impaired through the Clean Water Act section 303(d) process may provide one such basis for exclusion. The Corps is requesting public comments on this proposal, particularly with regard to how such impaired waters or aquifers should be identified for purposes of this restriction on the use of the new NWPs. The Corps is also seeking comments on criteria the Corps would use to limit use of NWPs in certain impaired waters, including how this proposal could more effectively respond to State prerogatives such as the section 401 water quality certification process. In addition, comments are requested on which, if any, NWPs should not be subject to this limitation. For example, NWP 27 may be used to restore impaired streams and wetlands.

5. Additional Opportunity for Public Participation

The Corps recognizes the critical role of the public in the development of the replacement NWPs and seeks to ensure that public involvement is effectively promoted throughout the development process. After the Corps has reviewed the comments on the proposed new and revised NWPs published in the July 1, 1998, notice, reviewed the comments on the proposed changes published in this notice, and upon completion of the draft regional conditions, the Corps will publish the final NWPs in the **Federal Register**. Based on these draft final NWPs, the states will have 60 days to make their Clean Water Act Section 401 Water Quality Certification and State Coastal Zone decisions, including state regional conditions.

The Corps believes it is important to provide the public with an opportunity to review and comment on a complete NWP package that includes: the final set of NWPs and national conditions, the final regional conditions, and the additional State conditions. Therefore, the Corps has decided to publish an additional **Federal Register** notice seeking public comment on the final version of the replacement NWPs, including the final Corps and state regional conditions. There will be a 45-day comment period, after which the Corps will publish the final NWPs, including any changes as a result of consideration of comments received on that **Federal Register** notice. Should the Corps make any changes that would materially affect the state 401 or CZM actions, the state would be provided an additional opportunity to modify its action.

The decision to add an additional **Federal Register** notice providing for additional public comment will extend the process to complete and implement the new and revised NWPs. Our goal remains to move this entire process forward in a timely manner so that final improvements to the NWP Program can be implemented as soon as possible. Further, the Corps remains committed to replacing NWP 26. It is, however, important that we continue the use of NWP 26 until the replacement permits are issued and in effect. To that end and based on our review of comments received in response to the proposed

extension of NWP 26 beyond December 13, 1998, as published in the July 1, 1998, **Federal Register**, we have decided to extend NWP 26 to September 15, 1999. Our decision document for this decision, including our response to the public comments, is available in the Office of the Chief of Engineers at the address above and on the Corps homepage at the Internet address provided above.

Dated: October 7, 1998.

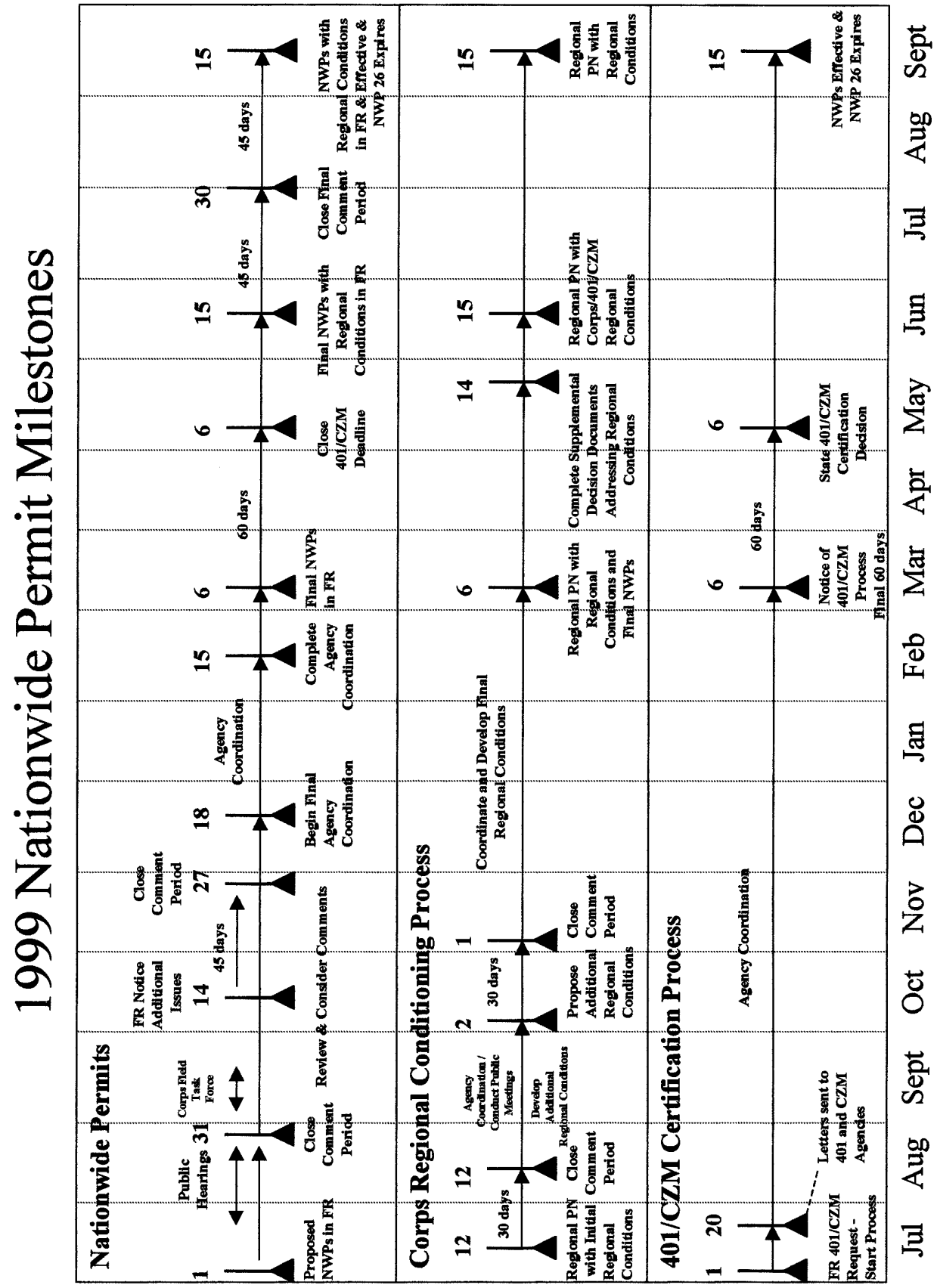
Approved:

Russell L. Fuhrman,

Major General, U.S. Army, Director of Civil Works.

Appendix—1999 Nationwide Permit Milestones

BILLING CODE 3710–92–P



[FR Doc. 98–27407 Filed 10–13–98; 8:45 am]

BILLING CODE 3710–92–C

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8:30 a.m. to 4:00 p.m., October 26, 1998.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

8:30 a.m. Meeting—Board of Regents

(1) Approval of Minutes—August 3, 1998
(2) Faculty Matters
(3) Departmental Reports
(4) Financial Report
(5) Report—President, USUHS
(6) Report—Dean, School of Medicine
(7) Report—Dean, Graduate School of Nursing
(8) Comments—Chairman, Board of Regents
(9) New Business

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary of the Board of Regents, (301) 295–3116.

Dated: October 8, 1998.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–27649 Filed 10–9–98; 11:40 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Uniformed Services University of the Health Sciences

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 9:30 a.m. to 4:00 p.m., Sunday, October 25, 1998.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under ''Government in the Sunshine Act'' (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED:

9:30 a.m. Meeting—Board of Regents

9:30—Year 2000 Computer Issues
10:30—Strategic Planning
2:30—Group I & Group II Meeting
3:30—Executive Committee

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary of the Board of Regents, (301) 295–3116.

Dated: October 8, 1998.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–27650 Filed 10–9–98; 11:40 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Revision of the Need Analysis Methodology for the 1999–2000 Award Year; Correction

AGENCY: Department of Education.

ACTION: Notice of revision of the Need Analysis Methodology for the 1999–2000 Award Year—Correction.

On June 1, 1998, the Assistant Secretary for Postsecondary Education published in the **Federal Register** (63 FR 29894–29897) a notice of revision of the need analysis methodology for the 1999–2000 award year. This notice corrects the June 1 document as follows:

On page 29895, item 3 is corrected as follows—

(1) In the table titled ''Independent Students With Dependents Other Than a Spouse—continued'', line 12, column 3, 26,600 is corrected to read 25,600.

(2) In the table titled ''Independent Students with Dependents Other Than a Spouse—continued'', line 23, column 3, 33,200 is corrected to read 33,100.

(3) In the table titled ''Independent Students with Dependents Other Than a Spouse—continued'', column 1 is corrected by inserting the number 58 between lines 57 and 59.

(4) In the table titled ''Independent Students with Dependents Other Than a Spouse—continued'', column 2 is corrected by inserting the number 60,700 between 58,900 and 62,500.

(5) In the table titled ''Independent Students with Dependents Other Than a Spouse—continued'', column 3 is corrected by inserting the number 36,500 between 35,700 and 37,600.

FOR FURTHER INFORMATION CONTACT: Ms. Edith Bell, Program Specialist, General Provisions Branch, Policy Development Division, U.S. Department of Education, 600 Independence Ave., SW (Room 3053, Rob–3), Washington, D.C. 20202, telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time Monday through Friday. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this paragraph.

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(CFDA Nos.: 84.063 Federal Pell Grant; 84.038 Federal Perkins Loan; 84.033 Federal Work-Study; 84.007 Federal Supplemental Educational Opportunity Grant; 84.032 Federal Family Education Loan; and 84.268 William D. Ford Federal Direct Loan Programs).

Dated: September 11, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–26505 Filed 10–13–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice—Computer Matching Between the Department of Education and the Department of Veterans Affairs.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Pub. L. 100–503, and the Office of Management and Budget (OMB) Final Guidelines on the Conduct of Matching Programs, notice is hereby given of the computer matching program between the Department of Education (ED) (the recipient agency) and the Department of Veterans Affairs (VA) (the source agency).

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, OMB Final Guidelines on the Conduct of Matching Programs (see 54 FR 25818, June 19,

1989), and OMB Circular A–130, the following information is provided:

1. Names of Participating Agencies

The Department of Education and the Department of Veterans Affairs.

2. Purpose of the Match

The purpose of the match is to verify the status of applicants for financial assistance under Title IV of the Higher Education Act of 1965, as amended (HEA) who claim to be veterans.

The Secretary of Education is authorized by the HEA to administer the Title IV programs and to enforce the terms and conditions of the HEA. The Secretary has the authority to treat veterans as independent applicants, and those who claim veteran status do not have to provide parental income and asset information to apply for Title IV, HEA program assistance.

Section 480(c) of the HEA defines the term ''veteran'' to mean any individual who (A) has engaged in the active duty in the United States Army, Navy, Air Force, Marines, or Coast Guard; and (B) was released under a condition other than dishonorable. Section 480(d)(3) of the HEA enables an applicant who claims veteran status (as defined in subsection (c)(1)) to meet the definition of an independent student for purposes of Title IV, HEA program assistance eligibility.

3. Authority for Conducting the Matching Program

Section 480(c) and (d)(3) of the HEA; Title 38, U.S.C., section 210(c), as amended by section 501(a) and (b).

4. Categories of Records and Individuals Covered by the Match

ED will provide the Social Security Number and other identifying information of each applicant who indicates that he or she is a veteran. This information will be extracted from the Federal Student Aid Application File system of records (18–40–0014). The ED data will be matched against the Veterans and Beneficiaries Identification and Records Location Subsystem—VA (38VA23).

5. Effective Dates of the Matching Program

The matching program will become effective on January 1, 1999, or 40 days after a copy of the computer matching agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and OMB, unless OMB objects to some or all of the agreement, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 522a(o)(2)(D) have been met.

6. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program or obtain additional information about the program including a copy of the computer matching agreement between ED and VA should contact Sr. Bernardine Hayes, Program Specialist, Policy Development Division, U.S. Department of Education, 600 Independence Avenue, SW (Room 3045, ROB–3), Washington, DC 20202–5447. Telephone (202) 708–8242. Written comments should be submitted to Sr. Hayes at this address. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Anyone may view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

Dated: October 6, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–27519 Filed 10–13–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Publication Activities

AGENCY: Energy Information Administration, DOE.

ACTION: Solicitation of comments on proposed termination of an electronic publication bulletin board service known as ''EPUB''.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments from the public on its proposal to terminate EPUB, effective December 31, 1998. All data files that are currently maintained on EPUB are also available on the Internet website ''http://www.eia.doe.gov.''

DATES: Comments may be submitted in writing on or before November 13, 1998.

ADDRESSES: Send comments to Jacob Bournazian, EI–42, Energy Information Administration, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585–0650, (202) 586–1256, e-mail Jacob.Bournazian@eia.doe.gov, and fax (202) 586–4913.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Jacob Bournazian at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93–275) and the Department of Energy Organization Act (Pub. L. No. 95–91), the EIA is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs. In disseminating data,

EIA maintains an electronic publication bulletin board system known as EPUB. Since 1990, the general public has accessed selected energy data from EPUB, free of charge, 24 hours a day.

II. Current Actions

The EIA proposes to discontinue the electronic publication bulletin board system known as EPUB, effective December 31, 1998. This publication system is a menu-driven bulletin board type service for the general public to electronically access selected EIA data. All of the data files that are currently maintained on EPUB are also available to the general public through the Internet on the EIA website ''http://www.eia.doe.gov.'' The general public has significantly increased its use of the EIA home page on the Internet to access EIA data. As a result, the use of EPUB has declined over the last 5 years. In order to reduce duplication and costs, EIA proposes to eliminate EPUB in favor of Internet.

III. Request for Comments

Current and prospective users of the EPUB, and other interested parties, are invited to comment on the actions discussed in item II. EIA will carefully consider all comments regarding the use of the EPUB and alternative ways for users to electronically access EIA data.

Issued in Washington, D.C. on October 7, 1998.

Lynda T. Carlson,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–27520 Filed 10–13–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is given of a meeting of the Biological and Environmental Research Advisory Committee.

DATES: Thursday, November 5, 1998, 8:30 a.m. to 5:30 p.m.; and Friday, November 6, 1998, 8:30 a.m. to 12:00 p.m.

ADDRESSES: American Geophysical Union, 2000 Florida Avenue, N.W., Washington, D.C. 20009.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen (301–903–9817; david.thomassen@oer.doe.gov), and Ms. Shirley Derflinger (301–903–0044; shirley.derflinger@oer.doe.gov), Designated Federal Officers, Biological and Environmental Research Advisory Committee, U.S. Department of Energy, Office of Energy Research, Office of Biological and Environmental Research, ER–70, 19901 Germantown Road, Germantown, Maryland 20874–1290.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice on a continuing basis to the Director of Energy Research of the Department of Energy on the many complex scientific and technical issues that arise in the development and implementation of the biological and environmental research program.

Tentative Agenda: Thursday, November 5, 1998, and Friday, November 6, 1998

- Welcoming Remarks
- Opening of Meeting
- Remarks from Director, Office of Energy Research
- Update on Office of Biological and Environmental Research Activities
- Review of Subcommittee Activities
- New Business
- Public Comment (10-minute rule)

Public Participation: The day and a half meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact David Thomassen or Shirley Derflinger at the address or telephone numbers listed above. Requests to make oral statements must be received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on October 8, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–27521 Filed 10–13–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–51–000]

Algonquin Gas Transmission Company; Notice of Tariff Filing

October 7, 1998.

Take notice that on October 2, 1998, Algonquin Gas Transmission Company (Algonquin) submitted for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to become effective November 2, 1998:

First Revised Sheet No. 658A
First Revised Sheet No. 658B
Fourth Revised Sheet No. 659
Third Revised Sheet No. 660
Third Revised Sheet No. 662
Second Revised Sheet No. 715

Algonquin asserts that the above listed tariff sheets are being filed to comply with Order No. 587–H, Final Rule Adopting Standards for Intra-day Nominations and Order Establishing Implementation Date (Order No. 587–H) issued on July 15, 1998, in Docket No. RM96–1–008.

Algonquin states that the above listed tariff sheets reflect Version 1.3 standards promulgated by the Gas Industry Standards Board (GISB) which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin 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, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,,

Secretary.

[FR Doc. 98–27424 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–61–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 7, 1998.

Take notice that, on October 2, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, tariff sheets to be effective November 2, 1998.

ANR states that the purpose of this filing is to comply with Order No. 587–H. That order, inter alia, required that pipelines modify their tariffs to incorporate certain Gas Industry Standard Board standards regarding intra-day nominations.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27446 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–64–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

October 7, 1998.

Take notice that on October 2, 1998, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective November 2, 1998.

Canyon states that these tariff sheets were filed in compliance with the Commission's Order No. 587–H issued July 15, 1998 in Docket No. RM96–1–008.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective November 2, 1998, pursuant to Order No. 587–H.

Canyon states that copies of the filing are being mailed to Canyon's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27449 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–54–000]

Carnegie Interstate Pipeline Company; Notice of Tariff Filing

October 7, 1998.

Take notice that on October 2, 1998, Carnegie Interstate Pipeline Company (CIPCO), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective November 2, 1998:

Second Revised Sheet No. 102
First Revised Sheet No. 102A
Second Revised Sheet No. 103
Sixth Revised Sheet No. 146

CIPCO states that this filing is being made in compliance with Commission Order No. 587–H, issued by the Commission on July 15, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27427 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–22–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 7, 1998.

Take notice that on October 1, 1998, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Seventeenth Revised Sheet No. 31
Forty First Revised Sheet No. 32
Forty First Revised Sheet No. 33
Fifteenth Revised Sheet No. 34
Eighteenth Revised Sheet No. 35

CNG requests an effective date of November 1, 1998, for its proposed tariff sheets.

CNG states that the purpose of this filing is to update CNG's effective Transportation Cost Rate Adjustment (TCRA), through the annual adjustment mechanism described in Section 15 of the General Terms and Conditions of CNG's Tariff and to update CNG's effective Electric Power Cost Adjustment (EPCA) as described in Section 17 of the General Terms and Conditions of CNG's Tariff.

CNG's surcharge incorporates the balance in its Unrecovered Fuel Cost Reimbursement Subaccount, as set forth in Section 16.5 of the General Terms, as well as the balance in its Unrecovered EPC Reimbursement Subaccount, pursuant to Section 17.5 of the General Terms.

CNG requests the following waivers in the filing:

(1) Include the projected undercollection level of $8.7 million in its current TCRA consistent with the base rate treatment of the Section 16.4.C costs;

(2) Consistent with the recovery of the Section 16.4.C amount through the reservation component of CNG's rates and consistent with the Commission-authorized treatment of CNG's filing in Docket No. TM98–2–22, CNG requests a waiver of Section 16.5 of the General Terms to include these increased costs ($13.2 million) in the reservation surcharge portion of its TCRA;

(3) Consistent with the Commission-authorized treatment of CNG's filing in Docket No. TM98–2–22, a waiver of Section 16.5 of the General Terms and Conditions in order to recover underrecovered electric fuel costs ($0.9 million) on an as-billed basis and;

(4) A waiver of Section 16.5 of the General Terms and Conditions in order to attribute extraordinary underrecovered upstream transportation fuel costs ($11.8 million) to the reservation component of its transportation rates.

CNG states that copies of its letter of transmittal and enclosures are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Pubic Reference Room.

David P. Boergers.

Secretary,

[FR Doc. 98–27456 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–400–001]

Crossroads Pipeline Company; Notice of Compliance Filing

October 7, 1998.

Take notice that on October 1, 1998, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 39, Fourth Revised Sheet No. 76, and Second Revised Sheet No. 76.1, to be effective August 1, 1998.

Crossroads states that the purpose of this filing is to correct certain errors in the tariff sheet designations contained in the tariff sheets submitted for filing by Crossroads on September 14, 1998, to comply with the Commission's Order No 587–G, Standards for Business Practices of Interstate Natural Gas Pipelines, issued on April 16, 1998 in Docket No. RM96–1–007.

Crossroads states that copies of the filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27440 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–50–000]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

October 7, 1998.

Take notice that on October 2, 1998, Dauphin Island Gathering Partners (DIGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed below to become effective November 2, 1998:

First Revised Sheet No. 144
First Revised Sheet No. 145
First Revised Sheet No. 146
Original Sheet No. 146A
First Revised Sheet No. 149
First Revised Sheet No. 150
Original Sheet No. 150A
Original Sheet No. 150B
Second Revised Sheet No. 226

DIGP states that the modifications to the above listed tariff sheets are proposed to comply with the requirements of Order 587–H, issued by the FERC on July 15, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27423 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–63–000]

Destin Pipeline Company, L.L.C.; Notice of Petition for Limited Extension of Time

October 7, 1998.

Take notice that on October 2, 1998, Destin Pipeline Company, L.L.C. tendered for filing a petition for a limited extension of time of Order No. 587–H to implement additional intra-day nomination cycles on its system fifteen days after the date that the SoNet Premier computer system is implemented for all of the pipeline companies utilizing that system.

Destin states that a copy of the Notice of Petition for Limited Extension of

Time has been posted on Destin's electronic bulletin board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 14, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27448 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–59–000]

East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 7, 1998.

Take notice that on October 2, 1998, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, with an effective date of November 2, 1998.

East Tennessee states that the revised tariff sheets are being filed in compliance with Order No. 587–H, issued July 15, 1998, in which the Commission incorporated by reference, in Section 284.10(b)(1)(i) of the Commission's regulations, the standards relating to intra-day nominations promulgated March 12, 1998 by the Gas Industry Standards Board (GISB). Standards For Business Practices of Interstate Natural Gas Pipelines, Order No. 587–H, III FERC Stats. and Regs. (Preambles) ¶31,063 (1998).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27444 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–023]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 7, 1998.

Take notice that on October 1, 1998, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets with an effective date of October 1, 1998:

Nineteenth Revised Sheet No. 30
Eleventh Revised Sheet No. 31

El Paso states that the above tariff sheets are being filed to implement three negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulations of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27435 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–024]

El Paso Natural Gas Company; Notice of Compliance Filing

October 7, 1998.

Take notice that on October 2, 1998, El Paso Natural Gas Company (El Paso) tendered for filing a Letter Agreement between El Paso and Dynegy Marketing and Trade, formerly Natural Gas Clearinghouse.

El Paso states that the Letter Agreement is being filed to comply with the Commission's order issued September 17, 1998 at Docket Nos. RP97–287–010 *et al.*, and Docket No. RP97–287–019 and is proposed to become effective on June 11, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27436 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–29–000]

Florida Gas Transmission Company; Notice of Request for Waiver

October 7, 1998.

Take notice that on October 1, 1998, Florida Gas Transmission Company (FGT) tendered for filing a request for waiver of the November 2, 1998

implementation date for Interruptible Bumping and the GISB Intraday Standards for approximately three months, until February 1, 1999.

FGT states that copies of the filing have been served upon all customers and affected state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 14, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27441 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–66–000]

High Island Offshore System; Notice of Proposed Changes in FERC Gas Tariff

October 7, 1998.

Take notice that on October 2, 1998, High Island Offshore System (HIOS), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective November 2, 1998:

Second Revised Sheet No. 57A
Original Sheet No. 57B
Original Sheet No. 57C
Fourth Revised Sheet No. 58
Second Revised Sheet No. 58A
Seventh Revised Sheet No. 110
Sub Third Revised Sheet No. 110A
Sub Fourth Revised Sheet No. 110B
Sub Second Revised Sheet No. 110C

HIOS asserts that the purpose of this filing is to comply with the Commission's July 15, 1998, letter order in the captioned proceeding regarding Order No. 587–H. Pipelines must comply with the adoption of Version 1.2 of the GISB standards (284.10(b)) and the standards regarding the posting of information on websites and retention of electronic information (284.10(c)(3)(ii) through (v)).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27451 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–65–000]

Kern River Gas Transmission Company; Notice of Tariff Filing

October 7, 1998.

Take notice that on October 2, 1998, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective November 2, 1998.

Twelfth Revised Sheet No. 5
Tenth Revised Sheet No. 6
Second Revised Sheet No. 14
Third Revised Sheet No. 55
Fourth Revised Sheet No. 71
Fourth Revised Sheet No. 72
Third Revised Sheet No. 72–A
Fourth Revised Sheet No. 73
Second Revised Sheet No. 90
Seventh Revised Sheet No. 93
First Revised Sheet No. 93–A
Fifth Revised Sheet No. 94
Third Revised Sheet No. 94–A
Original Sheet No. 94–B
Original Sheet No. 94–C
Fourth Revised Sheet No. 95
Original Sheet No. 95–A
Second Revised Sheet No. 96
Second Revised Sheet No. 97
Sixth Revised Sheet No. 500–A
Third Revised Sheet No. 506
Second Revised Sheet No. 509
Sixth Revised Sheet No. 600–A
Third Revised Sheet No. 607
Sixth Revised Sheet No. 700–A
Second Revised Sheet No. 709
First Revised Sheet No. 713
Third Revised Sheet No. 815
Third Revised Sheet No. 891

Kern River states that the purpose of this filing is to submit tariff sheets, in compliance with Order No. 587–H, which implement the standards relating to intra-day nominations promulgated by the Gas Industry Standards Board and the intra-day nomination regulations adopted in Order No. 587–G.

Kern River also states that a copy of this filing has been served upon its 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 sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27450 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–785–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

October 7, 1998.

Take notice that on September 15, 1998, and supplemented on September 23, 1998, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–785–000, a request pursuant to Section 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR Sections 157.205 and 157.216), for authorization to abandon lateral line facilities by sale to Entex, Inc. (Entex), a local distribution company, under Koch Gateway's blanket certificate

issued in Docket No. CP82–430, pursuant to Section 7(C) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Koch Gateway proposes to abandon by sale in place lateral line facilities located in Rankin, Scott, Neshoba, and Newton counties, Mississippi. It is further stated that Entex would operate these facilities as natural gas distribution pipelines. Koch Gateway further states that the abandonment includes approximately 69 miles of 8-inch pipeline and 16 miles of 6-inch pipeline, and a 330 horsepower compression designated as Index 307 and 6.7 miles of 4-inch pipeline designated as Index 301–3 and Index 301–23. It is further stated with the exception of the Town of Walnut Grove, Entex is the only customer served by the facilities. Koch Gateway further states that Walnut Grove has agreed not to oppose the abandonment and that Koch Gateway would continue to provide service on behalf of Walnut Grove to the new interconnect between Koch Gateway and Entex. It is stated that the new interconnect would be installed pursuant to Section 2.55(a) of the Commission's Regulations.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–27433 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–62–000]

Midcoast Interstate Transmission, Inc.; Notice of Tariff Filing

October 7, 1998.

Take notice that on October 2, 1998, Midcoast Interstate Transmission, Inc. (Midcoast) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective November 2, 1998:

Fourth Revised Sheet No. 79
Second Revised Sheet No. 79A
Second Revised Sheet No. 79B
Fourth Revised Sheet No. 80

Midcoast asserts that the purpose of this filing is to comply with the Commission's Order No. 587–H, Standards for Business Practices of Interstate Natural Gas Pipelines issued on July 15, 1998 in Docket No. RM96–1–008. Midcoast states that because its current tariff allows for intra-day nominations to be effective on any hour of the day, except for 9 a.m., it is already providing more intra-day nomination opportunities than those required by Order 587–H. Therefore, Midcoast states that its tariff filing does not restrict shippers to the three intra-day nominations as stated in Order 587–H, but does specify that a 10 a.m. nomination to be effective at 5 p.m. and a 6 p.m. nomination to be effective at 9 a.m. the next day will be allowed to bump interruptible shippers.

Midcoast requested that the Commission grant such waivers as it deems necessary to accept this filing and to make it effective on November 2, 1998.

Midcoast states that copies of the filing were served on each of its firm customers, interruptible customers and all affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27447 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–53–000]

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

October 7, 1998.

Take notice that on October 2, 1998, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, with an effective date of November 2, 1998.

Midwestern states that the revised tariff sheets are being filed in compliance with Order No. 587–H, issued July 15, 1998, in which the Commission incorporated by reference, in Section 284.10(b)(1)(i) of the Commission's regulations, the standards relating to intra-day nominations promulgated March 12, 1998 by the Gas Industry Standards Board (GISB). Standards For Business Practices of Interstate Natural Gas Pipelines, Order No. 587–H, III FERC Stats. and Regs. (Preambles) ¶ 31,063 (1998).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27426 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–67–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 7, 1998.

Take notice that on October 2, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, revised tariff sheets listed on Appendix A to the filing. These tariff sheets are proposed to be effective on November 1, 1998.

MRT states that the purpose of this filing is to comply with the Commission's Order No. 587–H.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27452 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–69–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 7, 1998.

Take notice that on October 2, 1998, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with a proposed effective date of November 1, 1998.

National Fuel states that the purpose of the instant filing is to revise certain of its forms of service agreements to reduce the number of individual agreements that may need to be filed with the Commission. Specifically, National Fuel proposes to: include the identification and type of discount agreements that may be entered into; specify standard notice and evergreen periods under firm contracts; eliminate a contingency for shipper regulatory approvals that has not been needed in practice; and revise the assignment provisions so that they are bilateral in all cases.

National Fuel states that it is serving copies of this filing with its firm customers and interested state commissions. Copies are also being served on all interruptible customers as of the date of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27454 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–55–000]

Natural Gas Pipeline Company of America; Notice of Tariff Filing

October 7, 1998.

Take notice that on October 2, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective November 2, 1998.

Natural states that these tariff sheets were filed in compliance with the Commission' Order No. 587–H issued July 15, 1998 in Docket No. RM96–1–008.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective November 2, 1998, pursuant to Order No. 587–H.

Natural states that copies of the filing are being mailed to Natural's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27428 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–68–000]

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

October 7, 1998.

Take notice that on October 2, 1998, NorAm Gas Transmission Company (NGI) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, revised tariff sheets listed on Appendix A to this filing. These tariff sheets are proposed to be effective on November 1, 1998.

NGT states that the purpose of this filing is to comply with the Commission's Order No. 587–H.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27453 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–31–000]

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

October 7, 1998.

Take notice that on October 2, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 1998:

Fourteenth Revised Sheet No. 5
Fourteenth Revised Sheet No. 6

Furthermore, in the event that the Commission does not approve NGT's Electric Power Costs (EPC) Tracker filing in Docket No. RP98–259–000, filed June 26, 1998, to be effective November 1, 1998, NGT also filed alternate sheets that exclude the EPC Tracker detail, also to be effective November 1, 1998:

Alternate Fourteenth Revised Sheet No. 5
Alternate Fourteenth Revised Sheet No. 6

NGT states that the purpose of this filing is to adjust NGTs fuel percentages pursuant to Section 21 of its General Terms and Conditions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27457 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Pacific Gas & Electric Company; Notice Postponing Public Meeting to Discuss Streamflow Needs for the Proposed Relicensing of the Rock Creek-Cresta Hydroelectric Project

October 7, 1998.

Take notice that the public meeting to discuss streamflow needs for the proposed relicensing of the Rock Creek-Cresta Hydroelectric Project (FERC Project No. 1962) scheduled on October 20–21, 1998, from 10:00 a.m. to 4:00 p.m. at the U.S. Fish and Wildlife Service offices, 3310 El Camino, Sacramento, California has been postponed. Notice of the new meeting dates and location will be issued in the near future.

For further information contact: John Smith at (202) 219–2460.

David P. Boergers,

Secretary.

[FR Doc. 98–27455 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–1–000]

Paiute Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 7, 1998.

Take notice that on October 1, 1998, Paiute Pipeline Company (Paiute) tendered for filing to be a part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Eighth Revised Sheet No. 161. Paiute requests that the tendered tariff sheet be accepted for filing to become effective November 1, 1998.

Paiute indicates that the purpose of this filing is to comply with the Commission's order issued June 1, 1995 in Docket Nos. RP95–55–001 and RP95–269–000, by which the Commission approved an offer of settlement filed by Paiute. Paiute states that pursuant to the settlement, the monthly billing determinants pertaining to Paiute's firm transportation service under Rate Schedule FT–1 are to be revised periodically as of certain specified dates, including November 1, 1998. Paiute states that the tendered tariff sheet reflects the monthly billing determinants for each of Paiute's firm transportation shippers that are to be effective November 1, 1998 under the terms of the settlement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27437 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–46–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

October 7, 1998.

Take notice that on October 2, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following revised tariff sheets, with a proposed effective date of November 2, 1998:

Second Revised Sheet No. 81A.01
Original Sheet No. 81A.01a
Original Sheet No. 81A.01b
Original Sheet No. 81A.01c
Original Sheet No. 81A.01d
Second Revised Sheet No. 81A.02
Third Revised Sheet No. 81A.04
Fourth Revised Sheet No. 81A.05
Fourth Revised Sheet No. 81A.06
Third Revised Sheet No. 84A
Fifth Revised Sheet No. 144

PG&E GT–NW states that these tariff sheets are filed in compliance with Order No. 587–H.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27443 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–38–000; RP99–42–000; and RP99–43–000]

Southern Natural Gas Company; South Georgia Natural Gas Company; Sea Robin Pipeline Company; Notice of Petition for Limited Extension of Time

October 7, 1998.

Take notice that on October 1, 1998, Southern Natural Gas Company, (Southern), South Georgia Natural Gas Company (South Georgia) and Sea Robin Pipeline Company (Sea Robin) tendered for filing a petition for a limited extension of time of Order No. 587–H to implement additional intra-day nomination cycles on their systems fifteen days after the date the SoNet Premier computer system is implemented for all of the above pipeline companies.

Southern, South Georgia, and Sea Robin state that a copy of the filing has been posted on Southern's electronic bulletin board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before October 14, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27442 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–56–000]

Stringray Pipeline Company; Notice of Tariff Filing

October 7, 1998.

Take notice that on October 2, 1998, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective November 2, 1998.

Stringray states that these tariff sheets were filed in compliance with the Commission's Order No. 587–H issued July 15, 1998 in Docket No. RM96–1–008.

Stingray requested waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective November 2, 1998, pursuant to Order No. 587–H.

Stingray states that copies of the filing are being mailed to Stingray's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27429 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–58–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

October 7, 1998.

Take notice that on October 2, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of FERC Gas Tariff, Fifth Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing, with an effective date of November 2, 1998.

Tennessee states that the revised tariff sheets are being filed in compliance with Order No. 587–H, issued July 15, 1998, in which the Commission incorporated by reference, in Section 284.10(b)(1)(i) of the Commission's regulations, the standards relating to intra-day nominations promulgated March 12, 1998 by the Gas Industry Standards Board (GISB). Standards For Business Practices of Interstate Natural Gas Pipelines, Order No. 587–H, III FERC Stats. and Regs. (Preambles) ¶31,063 (1998).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27431 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–52–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 7, 1998.

Take notice that on October 2, 1998, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets to become effective November 2, 1998:

Third Revised Sheet No. 487
Fourth Revised Sheet No. 487A
Original Sheet No. 487B
Original Sheet No. 487C
Original Sheet No. 487D
Original Sheet No. 487E
Fourth Revised Sheet No. 488
Third Revised Sheet No. 488A
Fourth Revised Sheet No. 489
Second Revised Sheet No. 490
Second Revised Sheet No. 491
Second Revised Sheet No. 491A
First Revised Sheet No. 492
Fifth Revised Sheet No. 681

Texas Eastern asserts that the above listed tariff sheets are being filed to comply with Order No. 587–H, Final Rule Adopting Standards for Intra-day Nominations and Order Establishing Implementation Date (Order No. 587–H) issued on July 15, 1998, in Docket No. RM96–1–008.

Texas Eastern states that the above listed tariff sheets reflect Version 1.3 standards promulgated by the Gas Industry Standards Board (GISB) which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern 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 20406, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27425 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–60–000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 7, 1998.

Take notice that on October 2, 1998, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets listed in Appendix A to its filing, to be effective November 2, 1998.

Trailblazer states that these tariff sheets were filed in compliance with the Commission's (Order No. 587–H issued July 15, 1998 in Docket No. RM96–1–008.

Trailblazer requests a waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective November 2, 1998, pursuant to Order No. 587–H.

Trailblazer states that copies of the filing are being mailed to Trailblazer's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27445 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–5–000]

TransColorado Gas Transmission Company; Notice of Application

October 7, 1998.

Take notice that on October 2, 1998, TransColorado Gas Transmission Company (TransColorado), 12055 West 2nd Place, Lakewood, Colorado 80228 filed in Docket No. CP99–5–000, an application pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing it to construct and operate the Greasewood mainline extension on the northern end of the TransColorado system in Rio Blanco, County, Colorado, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

TransColorado proposes to construct and operate the Greasewood Extension, consisting of approximately 5.3 miles of 22-inch diameter pipeline, extending from the northern terminus of the authorized TransColorado Phase II project located at Big Hole to a header facility located at Greasewood. TransColorado states that it was originally intended that the Big Hole interconnection with Questar Pipeline Company's Questar) Main Line No. 68 would be the northern terminus of the system. However, since the original terminus was certificated, additional gas supply sources have developed at a market hub known as Greasewood. The Greasewood Hub is located approximately 5.3 miles northeast of Big Hole. TransColorado states that at the Greasewood Hub, its system can be interconnected with Questar, Northwest Pipeline Company, Colorado Interstate Gas Company, Barrett Resources Corporation, and Wildhorse Energy Partners, LLC.

TransColorado states that virtually all of the proposed route for the extension will be constructed on property managed by the Bureau of Land Management. TransColorado states that the Greasewood Extension is designed to transport up to 156,700 Mcf per day (Mcfd) and that the extension will be integrated into its interstate pipeline transmission system.

TransColorado states that the header system is designed to receive natural gas from supply sources in the Greasewood vicinity and consists of metering and flow-control equipment and appurtenances. TransColorado also states that pig launching and receiving

facilities will be installed at the Greasewood header facility as well as a 40-foot by 19-foot meter building and a 12-foot by 10-foot control building. TransColorado states that the estimated cost of the project is $4,254,000.

TransColorado states that the proposed extension will greatly enhance the likelihood for success for the TransColorado project by providing the opportunity for TransColorado to connect to multiple additional supply sources at a single location. The existing authorized northern terminus connects only with Questar. TransColorado believes the extension will assist it subscribing the remaining capacity on the pipeline system and provide greatly expanded flexibility to producers, marketers, and shippers. The proposed extension will not increase overall system capacity. The market support for the project will be the same as the market support for the existing authorized system. TransColorado has submitted precedent agreements covering firm transportation of 210,000 Dekatherms per day. TransColorado states that each of these contracts will be modified to reflect the proposed Greasewood terminus as a receipt point.

TransColorado requests an order authorizing the project no later than November 1, 1998, so that the proposed facilities may be constructed and placed in service on December 15, 1998, the target in-service date for Phase II of the TransColorado project, which is now under construction.

TransColorado states that it intends to file an NGA Section 4 rate case on or about October 30, 1998, that includes the costs associated with the proposed 5.3 mile Greasewood Extension Project.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before October 14, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest 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 Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor 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 every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TransColorado to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–27434 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–241–001]

Tuscarora Gas Transmission Company; Notice of Compliance Filing

October 7, 1998.

Take notice that on October 1, 1998, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective December 1, 1998:

Third Revised Sheet No. 4
Third Revised Sheet No. 5

Tuscarora asserts that the purpose of this filing is to comply with the Commission's September 21 Order in Docket No. RP98–240–000. In its September 21 Order the Commission directed that Tuscarora submit tariff sheets reflecting its justification of the current rates.

Tuscarora states that copies of this filing were mailed to each person on the official service list in this proceeding and to customers of Tuscarora and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27439 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–57–000]

U–T Offshore System; Notice of Proposed Changes in FERC Gas Tariff

October 7, 1998.

Take notice that on October 2, 1998, U–T Offshore System (U–TOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the

following tariff sheets, to become effective November 2, 1998.

Fourth Revised Sheet No. 46
Second Revised Sheet No. 46A
Original Sheet No. 46B
Original Sheet No. 46C
Second Revised Sheet No. 47
Sub Nineth Revised Sheet No. 73
Sub Fourth Revised Sheet No. 73A
Sub Third Revised Sheet No. 73B

U–TOS asserts that the purpose of this filing is to comply with the Commission's July 15, 1998, letter order in the captioned proceeding regarding Order No. 587–G. Pipelines must comply with the adoption of Version 1.2 of the GISB standards (284.10(b)) and the standards regarding the posting of information on websites and retention of electronic information (284.10(c)(3)(ii) through (v)).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27430 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–25–005]

West Texas Gas, Inc.; Notice of Compliance Filing

October 7, 1998.

Take notice that on October 2, 1998, West Texas Gas, Inc. (WTG) tendered for filing revised tariff sheets implementing a May 18, 1998 Settlement approved by the Commission's September 17, 1998 letter order in this proceeding. In accordance with the Settlement and the Commission's order, the revised tariff sheets are to be effective May 1, 1998.

First Revised Volume No. 1

First Revised Sheet No. 1
Substitute Second Revised Sheet No. 2
Substitute Twenty-Sixth Revised Sheet No. 4
Substitute Second Revised Sheet No. 5
First Revised Sheet No. 6
Substitute Second Revised Sheet No. 7
First Revised Sheet No. 8
First Revised Sheet No. 10
First Revised Sheet No. 11
First Revised Sheet No. 12
Original Sheet No. 12A
First Revised Sheet No. 14
Second Revised Sheet No. 22
Substitute Third Revised Sheet No. 23
Original Sheet No. 23A
Original Sheet No. 23B
Substitute Third Revised Sheet No. 24
Substitute Third Revised Sheet No. 25
Substitute Third Revised Sheet No. 26
First Revised Sheet No. 33

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–27438 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–761–000]

Viking Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed 1999 Expansion Project and Request for Comments on Environmental Issues

October 7, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Viking Gas Transmission Company's 1999 Expansion Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a Viking Gas Transmission Company (Viking) representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. Viking would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Viking could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 2.[2]

Summary of the Proposed Project

Viking proposes to construct the 1999 Expansion Project to provide firm winter capacity to serve new loads at various delivery points and to increase system reliability and flexibility for existing Viking shippers. Viking seeks authority to construct and operate:

1. Five loops of 24-inch-diameter pipeline totaling 45.0 miles as follows:

a. Hallock Loop—about 8.2 miles long, extending from milepost (MP) 2202 – 1+0.0[3] to MP 2202 – 1+8.2 in Kittson and Marshall Counties, Minnesota;

b. Angus Loop—about 8.3 miles long, extending from MP 2204 – 1+11.8 to MP 2204 – 1+20.1 in Polk County, Minnesota;

c. Ada Loop—about 10.1 miles long, extending from MP 2208 – 1+0.0 to MP 2208 – 1+10.1 in Clay County, Minnesota;

d. Frazee Loop—about 7.4 miles long, extending from MP 2210 – 1+0.0 to MP 2210 – 1+7.4 in Otter Tail County, Minnesota; and

e. Staples Loop—about 11.0 miles long,[4] extending from MP 2213 – 1+9.9 to MP 2213 – 1+21.0 in Morrison County, Minnesota;

2. Minor permanent aboveground ancillary facilities:

[1] Viking Gas Transmission Company's application was filed with the Commission under Section 7 of the Natural Gas act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] Viking's mileposting resets to 0.0 at each mainline valve. Therefore, each pipeline section between Viking's mainline valves is mileposted independently. For example: MP 2202 – 1-8.2 denotes a physical location 8.2 miles downstream of mainline valve number 2201 – 1.

[4] The numerical discrepancy is due to rounding.

a. The installation of four mainline valves with crossover assemblies at MPs 2204 − 1+20.1, 2208 − 1+0.0, 2210 − 1+0.0, and 2213 − 1+21.0 in Polk, Clay, Otter Tail, and Morrison Counties, respectively, Minnesota;

b. The construction of four crossover valve assemblies at MPs 2202 − 1+8.2, 2208 − 1+10.1, 2210 − 1+7.4, and 2213 − 1+9.9 in Marshall, Clay, Otter Tail, and Morrison Counties, respectively, Minnesota;

c. The removal of one existing cross-over valve site at MP 2204 − 1+11.8 in Polk County, Minnesota;

d. The installation of two pipeline drip assemblies at MP 2204 − 1+11.9 in Polk County and 2213 − 1+11.9 in Morrison County, Minnesota;

e. The construction of taps for emergency tie-overs at three existing meter stations at MPs 2208 − 1+4.6, 2213 − 1+14.9, and 2213 − 1+20.8 in Clay and Morrison Counties, Minnesota; and

f. The construction of the new Perham Meter station at MP 2210 − 1+0.0 in Otter Tail County, Minnesota.

The locations of the project facilities are show in appendix 1.[2] If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

Viking proposes to use a right-of-way width of 90 feet for construction, with provisions for temporary extra work areas as necessary for waterbody, highway, and railroad crossings. The proposed loops would be installed about 20 feet west or southwest of Kining's existing pipeline. the construction right-of-way would extend 90 feet from the existing Viking pipeline which is centered in the existing 75-foot-wide right-of-way. Therefore, about 52.5 feet of the construction right-of-way would be temporary workspace. All of the proposed pipeline and aboveground facilities would be located within Viking's existing permanent right-of-way. The proposed City of Perham Meter Station would be constructed within the existing fence line of Viking's Frazee Compressor Station. No new permanent right-of-way will be required for the project.

Construction of the proposed facilities, including the use of temporary extra work areas, would disturb a total of about 513 acres of land. About 206 acres of these lands are existing permanent right-of-way. The remaining 307 acres of land disturbed for the project would be allowed to revert to their former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Currently Identified Environmental Issues

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under the general headings listed below. We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Viking. This preliminary list of issues may be changed based on your comments and our analysis.

- Soils.

—Topsoil preservation
—Erosion control and right-of-way restoration
—Potential saline soil along Hallock Loop

- Water Resources.

—Potential dewatering of saline water from trench
—Project proximity to known wellhead protection area
—Crossing perennial waterbodies and drainage ditches

- Vegetation and Wildlife

—Effect of facility construction and operation on wildlife and fisheries habitat, including state-listed threatened animal and plant species and their habitats
—Impact on forested wetlands
—Effects on leased and owned Federal waterfowl production areas and state wildlife management areas

- Cultural Resources.

—Effect on historic and prehistoric sites
—Native American and tribal concerns

- Land Use.

—Impact on crop production
—Crossing of Federal and state land
—Consistency with local land use plans
—Revegetation of specialized areas
—Crossing irrigation systems on the Frazee Loop
—Visual effect of aboveground facilities

- Air Quality and Noise.

—Effect on local air quality and noise environment

- Public Safety

—Assessment of hazards associated with natural gas pipelines

- Cumulative Impact

—Assessment of the combined effect of the proposed project with other projects which have been or may be proposed in the same region and similar time frame

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the following public participation section.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

• Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1.

• Reference Docket No. CP98–761–000; and

• *Mail your comments so that they will be received in Washington, DC on or before November 9, 1998.*

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. *You do not need intervenor status to have your environmental comments considered.*

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

David P. Boergers,

Secretary.

[FR Doc. 98–27432 Filed 10–13–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6176–3]

Agency Information Collection Activities: Continuing Collection; Comment Request; Used Oil Management Standards Recordkeeping and Reporting Requirements

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 the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Used Oil Management Standards Recordkeeping and Reporting Requirements, EPA ICR Number 1286, OMB Control Number 2050–0124, expires 3/31/1999. 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 December 14, 1998.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–UOIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–98–UOIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. This document and the supporting document that details the Used Oil ICR are also available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT:

RCRA Hotline

For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

Used Oil ICR Details

For more detailed information on specific aspects of the used oil information collect requests, contact Tom Rinehart by mail at Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, by phone at (703) 308–4309, or by Internet e-mail at rinehart.tom@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Internet Availability

Today's document and the supporting document that details the Used Oil ICR are available on the Internet. Follow these instructions to access this information electronically:

WWW URL: http://www.epa.gov/epaoswer/hazwaste/usedoil/index.htm
FTP: ftp.epa.gov
Login: anonymous
Password: your Internet e-mail address
Path: /pub/epaoswer

Note: The official record for this action will be kept in paper form and maintained at the address in the **ADDRESSES** section above.

Used Oil ICR Renewal

Affected entities: Entities potentially affected by this action are those which handle or manage used oil including used oil transporters, transfer facilities, processors, re-refiners, and off-specification burners.

Title: Used Oil Management Standards Recordkeeping and Reporting Requirements (OMB Control No. 2050–0124; EPA ICR No. 1286) expiring 03/31/1999.

Abstract: EPA is seeking public comment on the Used Oil Management Standards Recordkeeping and Reporting Requirements ICR (Used Oil ICR) prior to submitting it to OMB for renewal. The Used Oil Management Standards, which include information collection requests, were developed in accordance with section 3014 of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), which directs EPA to ''promulgate regulations * * * as may be necessary to protect public health and the environment from the hazards associated with recycled oil'' and, at the same time, to not discourage used oil recycling. In 1985 and 1992, EPA

established mandatory regulations that govern the management of used oil (see 40 CFR part 279). To document and ensure proper handling of used oil, these regulations establish notification, testing, tracking and recordkeeping requirements for used oil transporters, processors, re-refiners, marketers, and burners. They also set standards for the prevention and cleanup of releases to the environment during storage and transit, and for the safe closure of storage units and processing and re-refining facilities to mitigate future releases and damages. EPA believes these requirements minimize potential hazards to human health and the environment from the potential mismanagement of used oil by used oil handlers, while providing for the safe recycling of used oil. Information from these information collection requirements is used to ensure compliance with the Used Oil Management Standards.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

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 total information collection burden to the regulated community for complying with part 279 is approximately 363,485 hours per year, which represents an annual cost of $9,123,907. Table 1 summarizes the total cost and burden for each category of used oil handlers. The ICR burden and cost for each category of used oil handler is detailed in the following sections and the ICR supporting document available free of cost from the RCRA Information Center.

TABLE 1.—ESTIMATED BURDEN AND COST FOR ALL RESPONDENTS REGULATED BY 40 CFR PART 279

All respondents	Hours and costs per respondent			Total hours and costs		
Information collection activity	Respondent hours/year	Labor cost/ year	Material cost	Total enti- ties	Total hours/ year	Total cost/year
Used Oil Transporters and Transfer Facilities	884.20	$20,542.89	$24,827	383	161,729.08	$5,093,575
Used Oil Processors/Re-refiners	529.92	11,865.96	0.00	249	131,949.56	2,416,412
Burners of Off-Specification Used Oil	16.49	503.45	0.00	100	1,473.33	50,345
Used Oil Marketers	159.69	3,629.08	0.00	441	68,332.95	1,563,500
EPA	1.40	37.40	0.00	2	2.80	75
Total				732	363,484.92	9,123,907

Generators, Collection Centers, and Aggregation Points

The Used Oil Management Standards of 40 CFR part 279 do not impose any information collection activity requirements that are covered by the Paperwork Reduction Act on used oil generators, collection centers, and aggregation points.

Transporters and Transfer Facilities

Transporter and transfer facility requirements for used oil are set forth in part 279, Subpart E. Under these requirements, used oil transporters and transfer facilities must determine the total halogen content of the used oil that they handle. They also must keep records of each used oil shipment accepted for transport and/or delivered to another used oil transporter, a processor/re-refining facility, a used oil burner, a fuel marketer, or other used oil recycling facility. These records must be maintained for at least three years. EPA believes these recordkeeping requirements are necessary to ensure that used oil is properly managed. Documenting all parties who handled the used oil also discourages adulteration of used oil by any used oil handler.

EPA estimates that there are 383 independent used oil transporters and transfer facilities currently in operation. The total estimated information collection burden to each transporter and transfer facility is 884 hours per year, which represents an annual cost of approximately $20,543. This results in a total annual burden for all transporters and transfer facilities of 161,729 hours, at a total cost of $5,093,575.

The Agency assumes that used oil transporters will read the used oil management regulations as they pertain to used oil transportation and transfer facilities once each year. EPA estimates that the annual burden for a used oil transporter to read the regulations is four hours, at an annual cost of $107. The annual burden to 383 transporters due to reading the regulations is 1,341 hours, at a cost of $40,994.

EPA estimates that one-eighth of the 383 used oil transporters and transfer facilities, or 48 did not previously test the halogen content of the used oil. This estimate is based on a National Oil Recyclers Association survey. The requirement does not impose an incremental burden or cost on most used oil transporters because such determinations were already a widely conducted industry practice in response to the used oil fuel specification established in 1985. A transporter typically makes halogen content determinations 4,633 times per year at a materials cost of $5.36 per test. EPA estimates the total annual materials cost per transporter to be $24,827, which totals $1,191,696 for 48 transporters. The total annual burden hours per transporter is 463 hours, at a cost of $11,839. This translates to an annual burden of 22,240 hours, at a cost of $568,272 for the 48 transporters and transfer facilities. The combined cost (labor plus materials) is $1,759,962.

Transporter and transfer facilities must keep records of used oil shipments delivered to processors or other customers. EPA estimates that an

average of 530 shipments are delivered each year by a transporter. The Agency believes that while many of the tracking requirements (e.g., name and address of recipient, quantity shipped, date) are part of customary business practice, some incremental burden results from the regulations. EPA estimates the incremental tracking requirement associated with these shipments results in an annual respondent burden of 42 hours per year, which represents an annual cost of $848. The annual burden associated with these tracking requirements for all transporters and transfer facilities is 16,163 hours, at a cost of $324,669.

Every transporter and transfer facility must also keep records of each shipment of used oil accepted at each facility. EPA estimates that an average of 4,000 shipments are accepted each year by each transporter. The incremental tracking requirement for such shipments results in an annual burden of 319 hours per year, at an annual cost of $6,398. Therefore, the annual burden for all transporters and transfer facilities is 121,986 hours, at a total cost of $2,450,331.

Transporters and transfer facilities must maintain the records of their halogen testing and tracking activities for up to three years. Maintaining these records imposes a an annual burden of 57 hours, at a cost of $1,351.00, for each transporter or transfer facility. The annual burden for all transporters and transfer facilities due to maintaining records is 21,703 hours, at a cost of $517,619.

Processors and Re-Refiners

Processor and re-refiner requirements for used oil are set forth in 40 CFR Part 279, Subpart F. Owners/operators of used oil processing and re-refining facilities are required to undertake prevention and preparedness activities at their facilities. These requirements ensure that used oil processing and re-refining facilities are maintained to minimize the threat of a sudden or non-sudden release, fire, explosion or similar emergency and ensure that facilities are prepared to undertake appropriate actions if an emergency situation occurs.

Used oil processing and re-refining facilities that store or process used oil in aboveground or underground tanks must also determine at the time of closure whether all contaminated soils can be practicably removed or decontaminated as required. If the owner/operator cannot make the determination, the owner/operator must close the tank system and perform post-closure care. Based on existing Superfund data and RCRA enforcement information available for the solid waste management units used for used oil storage or management, EPA believes that these closure requirements are critical to minimizing the potential creation of future Superfund sites.

Used oil processors and re-refiners are also required to develop a written used oil analysis plan and retain a copy of the plan at the facility. The plan must include information concerning methods, location and frequency for analysis of used oil. This requirement ensures that processors and re-refiners use adequate sampling and testing methodologies.

Used oil processors and re-refiners are required to keep a record for each used oil shipment that is accepted for processing or re-refining or delivered to another used oil processor and re-refiner, to a used oil burner, or a disposal facility. All records must be maintained for at least three years. EPA believes these recordkeeping requirements are necessary to ensure that used oil is properly managed. Documenting all parties who handled the used oil also discourages adulteration of used oil by any used oil handler.

Used oil processors and re-refiners are also required to submit a biennial report to EPA. EPA requires this information to identify industry trends.

EPA estimates that there are between 211 and 286 used oil processors/re-refiners currently in operation. For the purposes of these burden and cost estimates, EPA chose the midpoint of this range (249) as its estimate for the number of processors/re-refiners. The total estimated annual information collection burden for a processor/re-refiner is 530 hours, which represents an annual cost of $11,866. This results in a total annual burden for all used oil processors/re-refiners of 131,950 hours, at a cost of $2,416,412.

The Agency assumes that used oil processors/re-refiners will read the regulations once each year. EPA estimates the annual burden for a used oil processor/re-refiner to read the regulations is 14 hours, which represents an annual cost of $414. The total annual burden imposed upon all processors/re-refiners related to reading the regulations is 3,362 hours, at a cost of $103,055.

EPA believes that only new processors/re-refiners need to develop contingency and emergency plans, because existing processors/re-refiners should have already prepared such plans. With the trend toward consolidation, rather than expansion, among industry participants, EPA expects no incremental burden from this requirement. However, all the estimated 249 processors and re-refiners will revise their contingency plan once annually. EPA estimates the annual burden for a processor/re-refiner to revise a contingency plan is seven hours, at a cost of $188. The annual burden to the estimated 249 processor/re-refiners, related to the contingency plan requirement, is 1,619 hours, at a cost of $46,930. Additionally, EPA estimates that 1 percent of used oil processors/re-refiners will experience an emergency each year. Therefore, a total of two processors/re-refiners would be subject to emergency procedural requirements and subsequent revisions of emergency plans. It is estimated that the emergency plan revision process and procedural requirements subject each processor/re-refiner to a burden of 22 hours, at an annual cost of $619. EPA estimates that these requirements affect two facilities each year, so the annual burden for all processor/re-refiners is 45 hours at a cost of $1,238.

Only new processors/re-refiners need to develop analysis plans, since existing processors/re-refiners should already have developed analysis plans. With the trend toward consolidation, rather than expansion, among industry participants, EPA expects no incremental burden from this requirement. However, all the estimated 249 processors/re-refiners are affected by the requirement to maintaining written analysis plans. EPA estimates that the burden to each processor/re-refiner associated with this requirement is six hours, at a cost of $154. The annual burden associated with this requirement to the estimated 249 processors/re-refiners is 1,413 hours, at a cost of $38,254.

Processors/re-refiners must keep records of each shipment of used oil delivered to customers. EPA estimates that an average of 530 shipments are delivered by a processor/re-refiner each year. EPA believes that many of the tracking requirements (e.g., name and address of recipient, quantity shipped, date) are customary business practice. The regulations, however, do impose some incremental burden. EPA estimates the incremental burden associated with tracking these shipments results in an annual burden to a processor/re-refiner of 48 hours per year, which represents an annual cost of $987. The annual burden for all processors/re-refiners due to this requirement is 11,828 hours at a cost of $245,769.

Processors/re-refiners also keep records of each shipment of used oil accepted at each facility. EPA estimates that 4,000 shipments are accepted each

year at each facility. EPA estimates that the incremental tracking requirement associated with these shipments results in an annual burden each to processor/re-refiner of 359 hours, which represents an annual cost of $7,449. The annual burden to the estimated 249 processors/re-refiners due to this requirement is 89,267 hours, at a cost of $1,856,861.

Processors/re-refiners submit a biennial report that contains company specific information. EPA estimates that this requirement imposes an annual burden of five hours to each processor/re-refiner, with an annual cost of $120 per facility. The annual burden associated with the biennial reporting requirement to the estimated 249 processor and re-refiners is 1,251 hours at a cost of $29,980.

Processors/re-refiners must maintain records of the contingency and emergency procedures, analysis plan, and tracking activities for up to three years. EPA estimates that 80 percent of processors/re-refiners retain records as part of their current operating practices in response to the burning regulations promulgated in 1985. The total burden to the remaining 20 percent of the estimated 249 processors/re-refiners, or 50 processors/re-refiners, associated with these record retention requirements is 3,532 hours annually, at a cost of $96,325.

Off-Specification Burners

On November 29, 1985, EPA promulgated notification, analysis and recordkeeping requirements for off-specification used oil burners. These standards are now codified under part 279, subpart G. Burners are required to keep a record for each used oil shipment that is accepted for burning. Before a burner can accept off-specification used oil fuel from a used oil marketer, he must provide to the used oil marketer a one-time written and signed notice certifying that the burner has notified EPA of his location, provided a general description of his used oil management activities, and that used oil will only be burned in an industrial furnace or boiler identified in 40 CFR 279.61. The certification must be maintained for three years from the date the burner last receives a shipment of off-specification used oil from that used oil marketer. EPA believes these recordkeeping requirements are necessary to ensure that used oil is properly managed. Documenting all parties who handled the used oil also discourages adulteration of used oil by any used oil handler. These requirements also ensure that off-specification used oil is burned only in approved units.

EPA estimates that there are approximately 100 used oil burners that burn off-specification used oil for energy recovery. The estimated information collection burden to each burner is 16.5 hours, at an annual cost of $503. The total annual burden to the estimated 100 used oil burners is 1,473 hours, at a cost of $50,345.

EPA accounts for the fact that used oil will read the regulations once annually. EPA estimates that the annual burden for a burner to read the regulations is 13 hours, at an annual cost of $387. The annual burden for all burners to read the regulations is 1,300 hours, at a cost of $38,675.

Used oil burners are required to keep records of each off-specification used oil shipment accepted at their facilities. EPA estimates that a used oil burner accepts an average of 18 shipments each year. EPA estimates the tracking requirements associated with accepting off-specification used oil shipments results in an annual burden of 1.7 hours per year for each burner, at an annual cost of $49. The annual burden to the estimated 100 used oil burners due to this requirement is 173 hours, at a cost of $4,886.

A used oil burner must notify each generator, transporter, and processor/re-refiner that ships off-specification used oil to its facility that it is approved for that purpose. EPA estimates that this requirement imposes an annual burden of six minutes per year to a used oil burner, at an annual cost of $4. The total annual burden to the estimated 100 used oil burners due to this requirement is 10 hours, at a cost of $388.

Burners must maintain the records of the tracking and notice activities for up to three years. EPA estimates that the requirement to maintain records imposes an annual burden of 1.7 hours to a used oil burner, at a cost of $64. The total annual burden to the estimated 100 used oil burners due to the requirement to maintain records is 166 hours, at a cost of $6,396.

Marketers

On November 29, 1985, EPA promulgated notification, analysis and recordkeeping requirements for marketers of used oil. These standards are now codified under 40 CFR part 279, subpart H. Marketers that demonstrate that used oil meets the specifications of 40 CFR 279.11 are required to keep copies of analyses or other information documenting that the used oil fuel meets the specifications. These copies must be kept for at least three years. Marketers who direct a shipment of off-specification used oil to a burner are required to keep a record of each used oil shipment. Before a marketer sends a first shipment of off-specification used oil fuel to a burner, he must obtain from the burner a one-time written and signed notice certifying that the burner has notified EPA of his location and has provided a general description of his used oil management activities, and that the burner will burn the used oil only in an industrial furnace or boiler identified in 40 CFR 279.61. The certification must be maintained for three years from the date the marketer last sends a shipment of off-specification used oil to the burner. This provides assurances that the off-specification oil is burned in facilities with appropriate emission controls. EPA believes these recordkeeping requirements are necessary to ensure that used oil is properly managed. Documenting all parties who handled the used oil also discourages adulteration of used oil by any used oil handler.

EPA estimates that there are 192 used oil transporter-marketers and 249 processor-marketers for a total of 441 marketers. These estimates are based on the assumptions that half of the estimated 383 transporters are also marketers and that all of the estimated 249 processors/re-refiners are also marketers. EPA estimates the total annual burden for each used oil marketer to be 160 hours, at an annual cost of $3,629. The total annual burden to the estimated 441 used oil marketers is 68,333 hours, at a cost of $1,563,500.

Processors that are marketers must have an analysis plan outlining when, how, and by whom the used oil will be tested as to whether is meets the used oil fuel specification. This requirement imposes a burden of 155 hours per facility, with an annual cost of $3,462. The annual burden for all 249 processor-marketers is 38,583 hours and $861,945.

Every transporter that is a marketer also obtains copies of analyses documenting that the used oil fuel meets the specifications, or it must perform the analysis itself. EPA estimates that this determination requirement results in the same hourly and economic burden per transporter as the processors. The annual burden for the 192 transporter-marketers due to this requirement is 29,750 hours, at a cost of $664,632.

Processor-marketers must obtain a notice verifying that the burner facility to which they deliver the off-specification used oil is approved for that purpose. EPA estimates that this requirement imposes an annual burden for each marketer of five hours per year, at an annual cost of $84. The total

annual burden to the estimated 249 processor-marketers associated with the notices requirement is 1,180 hours, at a cost of $20,848.

Transporter-marketers must also obtain a certification from the burner to which they deliver their off-specification used oil. EPA estimates that this requirement imposes the same burden on a transporter-marketer as on a processor-marketer. The total annual burden to the estimated 192 transporter-marketers associated with this requirement is 910 hours, at a cost of $16,076.

States

Under 40 CFR part 279, a State may petition EPA to allow the use of used oil as a dust suppressant. The State must show that it has a program in place to prevent the use of used oil/hazardous waste mixtures or used oil exhibiting a characteristic other than ignitability as a dust suppressant. In addition, such programs must minimize the impacts of road oiling on the environment. Since the rules have been in place, no states have petitioned to use used oil as a dust suppressant. Therefore, EPA estimates that there is no burden imposed upon States.

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

Dated: October 6, 1998.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 98–27525 Filed 10–13–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00251; FRL–6037–9]

Pollution Prevention Grants and Announcement of Financial Assistance Programs Eligible for Review; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA expects to have approximately $5 million available in fiscal year 1999 grant/cooperative agreement funds under the Pollution Prevention Incentives for States (PPIS) grant program. The grant dollars are targeted at state and tribal programs that address the reduction or elimination of pollution across all environmental media: Air, land, and water. Grants/cooperative agreements will be awarded under the authority of the Pollution Prevention Act of 1990.

FOR FURTHER INFORMATION CONTACT: Your EPA Regional Pollution Prevention Coordinator. The EPA Regional Pollution Prevention Coordinator for each regional office is listed under Unit X. of this document.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Electronic copies of this document are available on the EPA Home Page at ''**Federal Register**—Environmental Document'' (http://www.epa.gov/fedrgstr) and on the EPA P2 Home Page (http://www.epa.gov/p2).

II. Background

More than $50 million has been awarded to over 100 state and tribal organizations under EPA's multimedia pollution prevention grant program, since its inception in 1989. During the past 10 years, PPIS funds have enabled state programs to implement a wide range of pollution prevention activities including nearly 8,000 pollution prevention assessments, 1,200 workshops, and the development of over 500 pollution prevention case studies. PPIS grants also provide economic benefits to small businesses by funding state technical assistance programs focused on helping the businesses develop more efficient production technologies and operate more cost effectively. The goal of the PPIS grant program is to assist businesses and industries in identifying better environmental strategies and solutions for complying with Federal and state environmental regulations. PPIS grants are designed to effect the compatibility of businesses environmental and economic decisionmaking, and improving competitiveness without increasing environmental impacts. Successes include decreases in facility emissions and discharges which lead to less stringent regulatory and permitting requirements, increases in production rates that correlate to decreasing environmental costs, elevated investments in new and better technologies, and savings that directly impact the overall profitability of a business. The majority of the PPIS grants fund state-based projects in the areas of technical assistance and training, education and outreach, regulatory integration, data collection and research, demonstration projects, and recognition programs.

In November 1990, the Pollution Prevention Act of 1990 (the Act) (Pub. L. 101–508) was enacted, establishing as national policy that pollution should be prevented or reduced at the source whenever feasible.

1. Section 6603 of the Act defines source reduction as any practice that:

i. Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal.

ii. Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

EPA further defines pollution prevention as the use of other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources, or protection of natural resources by conservation.

2. Section 6605 of the Act authorizes EPA to make matching grants to states to promote the use of source reduction techniques by businesses. In evaluating grant applications, the Act directs EPA to consider whether the proposed state program will:

i. Make technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide onsite technical advice and to assist in the development of source reduction plans.

ii. Target assistance to businesses for which lack of information is an impediment to source reduction.

iii. Provide training in source reduction techniques.

III. Availability of FY 99 Funds

EPA expects to have approximately $5 million in grant/cooperative agreement funds available for FY 1999 pollution prevention activities. The Agency has delegated grant making authority to the EPA regional offices. EPA regional offices are responsible for the solicitation of interest and the screening of proposals.

All applicants must address the national program criteria listed under Unit VI.2.ii. of this document. In addition, applicants may be required to meet supplemental EPA regional criteria. Interested applicants should contact their EPA Regional Pollution Prevention Coordinator, listed under Unit X. of this document for more information.

IV. Catalogue of Federal Domestic Assistance

The number assigned to the PPIS program in the Catalogue of Federal

Domestic Assistance is 66.708 (formerly 66.900).

V. Matching Requirements

Organizations receiving pollution prevention grant funds are required to match Federal funds by at least 50%. For example, the Federal government will provide half of the total allowable cost of the project, and the state will provide the other half. State contributions may include dollars, in-kind goods and services, and/or third party contributions.

VI. Eligibility

1. *Applicants.* In accordance with the Act, eligible applicants for purposes of funding under this grant program include the 50 states, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a state including state universities, and all federally recognized Native American Tribes. For convenience, the term ''State'' in this notice refers to all eligible applicants. Local governments, private universities, private nonprofit entities, private businesses, and individuals are not eligible. State applicants are encouraged to establish partnerships with business and other environmental assistance providers to seemlessly deliver pollution prevention assistance. Successful applicants will be those that make the most efficient use of Federal/state government funding. In many cases, this has been accomplished through partnerships.

2. *Activities and criteria*—i. *General.* The purpose of the PPIS grant program is to support the establishment and expansion of state and tribal multimedia pollution prevention programs. EPA specifically seeks to build state pollution prevention capabilities or to test, at the state level, innovative pollution prevention approaches and methodologies. Funds awarded under the PPIS grant program must be used to support pollution prevention programs that address the transfer and reduction of potentially harmful pollutants across all environmental media: Air, water, and land. Programs should reflect comprehensive and coordinated pollution prevention planning and implementation efforts state-wide. States that include PPIS funding as part of their overall State Performance Partnership Agreement (PPA)/ Performance Partnership Grant (PPG) program satisfy this eligibility criteria.

ii. *1999 national program criteria.* This section describes the national program criteria EPA will use to evaluate proposals under the PPIS grant program. In addition to the national program criteria, there may be regionally specific criteria that the proposing activities are required to address. For more information on the EPA regional requirements, applicants should contact their EPA Regional Pollution Prevention Coordinator, listed under Unit X. of this document. As well as ensuring that the proposed activities meet EPA's definition of pollution prevention, the applicant's proposal must include one or more of these activities:

iii. *Promote partnering among environmental and business assistance providers.* Starting in 1994, EPA required PPIS grant applicants to identify other environmental assistance providers in their states and to work with these organizations to educate businesses on pollution prevention. EPA would like to encourage more cooperation among state pollution prevention programs, the National Institute of Standards and Technology (NIST) programs, Small Business Development Centers (SBDCs), Small Business Assistance Programs (SBAPs), Office of Enforcement and Compliance Assistance (OECA) Compliance Assistance Centers, the large number of university cooperative extension programs and other business and environmental assistance programs at the state level, as well as other well established nonregulatory programs. Through the PPIS grant funds, EPA is striving to support this development of a coordinated network of state environmental service providers that seek to leverage the expertise of the various environmental assistance organizations and show an ability to work jointly in an effort to promote pollution prevention in the state. EPA wants to help foster a cooperative network of environmental assistance providers as cooperation among state business and environmental assistance providers is paramount in light of shrinking Federal programs. EPA would like to ensure that state pollution prevention programs and other assistance providers establish cooperative working relationships which make best use of their respective areas of expertise and most effectively serve their clients. Applicants should identify the partnering organization(s) and demonstrate or document the relationship. This can be done, for example, through a letter of agreement, a joint statement, or principles of agreement signed by both parties or multiple parties. If the partnership involves providing Federal funds to ineligible entities, the grantees shall abide by state procurement regulations, as required by state law.

iv. *Advance state environmental goals.* EPA believes it is important for the sustainability of state pollution prevention programs to complement the goals and strategies of the PPAs, and PPGs under the National Environmental Performance Partnership System (NEPPS) or for those states not participating in the PPAs and PPGs, to show that the pollution prevention work they are undertaking complements and supports the state's environmental strategic plans. If the state-environmental program lacks a single comprehensive environmental strategy, applications must show a correlation between the proposed activity and the environmental goals or objectives of the state's environmental program. EPA believes pollution prevention programs will continue to be valuable to the state-environmental agency's top management if they can demonstrate how their actions will help advance state goals. EPA would like to ensure that pollution prevention is integrated at the state level by providing a service which supports the state's strategic plan. The application should demonstrate how pollution prevention activities will advance state-environmental goals as stated in either PPAs, PPGs, or other state environmental strategic planning documents.

v. *Promote accomplishments within the state's environmental programs.* EPA realizes the importance of documenting the program effectiveness and communicating those results to the affected media office. To create this link between the regulatory program and the activities of the pollution prevention program, EPA has added this application criterion to ensure that the environmental programs in the state are aware of the contributions of the pollution prevention program within their sectors, programs, and geographic areas. By creating this positive feedback mechanism to the state's regulatory program, the grantee can market their accomplishments and consequently help promote the sustainability of the pollution prevention program. EPA, through the PPIS grants, is working to encourage better awareness by the state regulatory and media programs of how pollution prevention and the state pollution prevention programs are helping the regulatory programs address increasingly complex environmental management problems. Applications must include what activities the pollution prevention program will undertake to ensure communication and feedback to the regulatory and other

environmental programs showing how pollution prevention is helping to advance multimedia environmental protection.

3. *Identifiable measures of success.* For each of the activities identified in the application, the applicant must identify how and what criteria they are using to track the effectiveness of the activity. Measures of success should be either measures of environmental improvement, or should be directly linked to such measures. For example, success could be identified by demonstrating a direct link between the project's activities and in quantifiable reductions in pollution generated or in the natural resources used.

4. *Program management.* Awards for FY 1999 funds will be managed through the EPA regional offices. Applicants should contact their EPA Regional Pollution Prevention Coordinator, listed under Unit X. of this document, to obtain specific deadlines for submitting proposals. National funding decisions will be made by April 1999.

VII. Information Clearinghouse

The Pollution Prevention Act requires EPA to establish a source reduction clearinghouse to ''collect and compile information reported by States receiving grants under Section 6605 on the operation and success of State source reduction programs.'' The Pollution Prevention Information Clearinghouse (PPIC) was created with the idea that through technology transfer, education and public awareness, it is possible to reduce or eliminate industrial pollutants. The PPIC is a free, nonregulatory service offering reference and referral, document distribution, and a comprehensive library service. The PPIC's special collection comprises state and Federal publications, pollution prevention manuals, training materials, conference proceedings, case studies, newsletters, and videos. For more information on this collection, please visit their web site at http://www.epa.gov/opptintr/library/libppic.htm.

A priority that EPA considers important to strengthen state P2 activities and aid the formation of partnerships with other business assistance providers is the Pollution Prevention Resource Exchange (P2Rx). To promote the establishment of regional centers that facilitate and serve state needs in coordinating training and information development, EPA has allocated a portion of its state grant funds to develop and sustain these regional pollution prevention centers. EPA believes that the P2Rx network which connects and coordinates regional pollution prevention information centers can benefit both states programs and their clients by improving the quality and availability of pollution prevention technical information, sharing information, minimizing duplication of efforts in developing materials for training and technical assistance providers, providing for the development of quality peer reviewed P2 information, and expanding their understanding of how other states are addressing the needs of business assistance providers.

To facilitate the transfer of information generated by pollution prevention grant dollars, all work products (i.e., including but not limited to flyers, fact sheets, pamphlets, handbooks, model curricula, assessment and audit tools, videos, event brochures etc.) produced with Federal PPIS funds will be added to the EPA Library collection (and subsequently to the PPIC and P2Rx). The PPIC will catalogue these products and can serve as a conduit to get the information products to the P2Rx regional centers. Please contact the EPA Regional Pollution Prevention Coordinator, listed under Unit X. of this document, or contact Christopher Kent (telephone: (202) 260–3480; e-mail: kent.christopher@epa.gov) for more information concerning delivery of work products.

VIII. Proposal Narrative Format

To clearly document the activities listed in the grant proposal, the narrative portion of the application should include a summary of proposed activities using the following format:

1. A description of the proposed work and a timeline of activities.
2. A list of tasks that will be carried out.
3. A list of the resulting deliverables that will be produced.

IX. Progress Report

Progress reports are due to the EPA project officer every April and October after the project period is over 1 month old. A final report is due within 90 days of the end of the grant period.

In addition to the EPA project officer's regionally specific required number of copies of deliverables, please forward one copy of each of the semi-annual progress reports and the final reports (and deliverables) to the Pollution Prevention Division in Washington DC. Please address the documents to: PPIS Grant Products, Pollution Prevention Division (7409), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

The narrative in the progress reports should refer back to the stated objectives and timeline of the original grant application. Beneath each objective, the objective's current status should be reported. Any substantive diversion from a stated objective, or any deviation from the proposed timeline should be explained. Only the activities required under the grant, which meet EPA's definition of pollution prevention, should be reported.

At a minimum, the progress reports should also include the following:

1. A short summary of the accomplishments for the reporting period.
2. Progress on completing individual project tasks.
3. The planned and actual schedules for task completion.
4. Projected accomplishments for the next reporting period.
5. Data on financial expenditures by budget category.

Any printed deliverables required under the grant should be enclosed with the first report following the date the deliverable was due to be produced.

A final report will be required upon completion of the grant.

X. Regional Pollution Prevention Coordinators

Region I: (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) Kira Jacobs, JFK Federal Bldg. / SPP, Boston, MA 02203, (617) 565–3841, e-mail: jacobs.kira@epa.gov

Region II: (New Jersey, New York, Puerto Rico, Virgin Islands) Evans Stamataky, (2-OPM-PPI), 290 Broadway, 25th Floor, New York, NY 10007, (212) 637–3742, e-mail: stamataky.evans@epa.gov

Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia) Jeff Burke, (3RA20), 1650 Arch St., Philadelphia PA 19103–2029, (215) 814–2761, e-mail: burke.jeff@epa.gov

Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee) Bernie Hayes, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303, (404) 562–9430, e-mail: hayes.bernie@epa.gov

Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin) Phil Kaplan, (DRP-8J), 77 West Jackson Blvd., Chicago, IL 60604–3590, (312) 353–4669, e-mail: kaplan.phil@epa.gov

Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, Texas) Eli Martinez, (6EN-XP), 1445 Ross Ave., 12th Floor, Suite 1200, Dallas, TX 75202, (214) 665–2119, e-mail: martinez.eli@epa.gov

Region VII: (Iowa, Kansas, Missouri, Nebraska) Marc Matthews, (ARTD/TSPP), 726 Minnesota Ave. Kansas City, KS 66101, (913) 551–7517, e-mail: matthews.marc@epa.gov

Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming) Linda Walters, (8P2–P2), 999 18th St., Suite 500, Denver, CO 80202–2405, (303) 312–6385, e-mail: walters.linda@epa.gov

Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, Guam) Bill Wilson, (WST–1–1), 75 Hawthorne Ave., San Francisco, CA 94105, (415) 744–2192, e-mail: wilson.bill@epa.gov

Region X: (Alaska, Idaho, Oregon, Washington) Carolyn Gangmark, 01–085, 1200 Sixth Ave., Seattle, WA 98101, (206) 553–4072, e-mail: gangmark.carolyn@epa.gov

List of Subjects

Environmental protection, Grant administration, Grants—environmental protection

Dated: October 6, 1998.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98–27572 Filed 10–13–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6176–2]

Science Advisory Board; Notification of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Executive Committee will conduct a public meeting on Wednesday and Thursday, October 28–29, 1998. The meeting will convene each day at 8:30 a.m., in the Administrator's Conference Room, 1103 West Tower of the U.S. Environmental Protection Agency Headquarters Building at 401 M Street, SW, Washington, DC 20460 and adjourn no later than 5:30 p.m. The meeting is open to the public, however, seating is limited and available on a first-come basis.

At this meeting, the Executive Committee will receive updates from its committees and subcommittees concerning their recent and planned activities. As part of these updates, some committees will present draft reports for Executive Committee review and approval. Anticipated drafts include the following:

1. Executive Committee's Subcommittee Review of the Agency's ''D–CORMIX Model''
2. Drinking Water Committee Commentary on Criteria for ''Affordability'' in SDWA Decisions
3. Environmental Health Committee Review of the Agency's ''Acute Reference Exposure Methods''
4. Radiation Advisory Committee Review of ''Health Risks From Low-Level Exposure to Radionuclides, Federal Guidance Report No. 13—Part 1, Interim Version''

Other items on the agenda tentatively include, but are not limited to, the following:

1. Discussions with Mr. Peter Robertson, Acting Deputy Administrator, and other Agency leaders
2. Discussion with Dr. Laura Ogden, State of Florida, on the use of science and social science in decisionmaking
3. Discussion of interactions with other advisory groups at the local, state, and international level
4. Discussion of liaison contacts with Agency offices, following the July meeting of the Executive Committee
5. Discussion of SAB involvement in newer Agency activities, such as regulatory negotiation.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Officer for the Executive Committee, Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, phone (202) 260–4126; fax (202) 260–9232; or via Email at: barnes.don@epa.gov. Copies of the draft meeting agenda and the draft reports will be available on the SAB Website (www.epa.gov/sab) by October 21. Alternatively, these materials can be obtained from Ms. Priscilla Tillery-Gadson at the above phone and fax numbers or via Email: tillery.priscilla@epa.gov.

Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: October 1, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–27571 Filed 10–13–98; 8:45 am]

BILLING CODE 6550–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34149; FRL–6034–5]

Certain Chemicals; Availability of Reregistration Eligibility Decision Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 60 day public comment period of the Reregistration Eligibility Decision (RED) documents for the active ingredients listed below. The REDs for the chemicals listed below are the Agency's formal regulatory assessments of the health and environmental data base of the subject chemicals and present the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on these decisions must be submitted by December 14, 1998.

ADDRESSES: Three copies of comments identified with the docket control number ''OPP–34149'' and the case number (noted below), should be submitted to: By mail: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION'' of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments, which does not include any information claimed as CBI will be available for

public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED documents listed below should be directed to the appropriate Chemical Review Managers:

Chemical Name	Case No.	Chemical Review Manager	Telephone No.	e-mail Address
Acetic Acid & Salts	4001	L. Ryan	703–308–8067	Ryan.l@epamail.epa.gov
Butralin	2075	T. Luminello	703–308–3075	Luminello.t@epamail.epa.gov
Diphenylamine	2210	B. Chambliss	703–308–8174	Chambliss.b@epamail.epa.gov
Inorganic Nitrates	4052	C. Childress	703–308–8076	Childress.c@epamail.epa.gov
Mercaptobenzothiazole	2380	C. Childress	703–308–8076	Childress.c@epamail.epa.gov
P-Chloro-M-cresol	3046	T. Luminello	703–308–3075	Luminello.t@epamail.epa.gov
Propionic Acid	4078	L. Ryan	703–308–8067	Ryan.l@epamail.epa.gov
Terbacil	0039	E. Mitchell	703–308–8583	Mitchell.e@epamail.epa.gov
Thiobencarb	2665	D. Deziel	703–308–8080	Deziel.d@epamail.epa.gov
Vendex	0245	S. Jennings	703–308–8021	Jennings.s@epamail.epa.gov

To request a copy of any of the above listed RED documents, or a RED Fact Sheet, contact the OPP Pesticide Docket, Public Information and Records Integrity Branch, in Rm. 119 at the address given above or call (703) 305–5805.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and various support documents are available from the EPA home page at the Federal Register-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

The Agency has issued Reregistration Eligibility Decision (RED) documents for the pesticidal active ingredients listed above. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of each of the chemicals listed above is substantially complete.

Please note that some of these REDs were finalized and signed prior to August 3, 1996. On that date, the Food Quality Protection Act of 1996 (''FQPA'') became effective, amending portions of both the pesticide law (FIFRA) and the food and drug law (FFDCA). Therefore, the REDs which were signed prior to FQPA do not address any issues raised by FQPA, and any tolerance assessment procedures required under FQPA. These tolerances will be reassessed by the Agency under the standards set forth in FQPA in the future in accordance with a schedule for reassessing all tolerances, or as a new tolerance or action is proposed.

All registrants of products containing one or more of the above listed active ingredients have been sent the appropriate RED documents and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing these REDs as final documents with a 60–day comment period. Although the 60 day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency. If any comment significantly affects a RED, EPA will amend the RED by publishing the amendment in the **Federal Register**.

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at (703) 308–7224, and also can be reached on the Internet via EPA's website at: http//www.epa.gov/oppsrrd1/REDs/.

The official record for this notice, as well as the public version, has been established for this notice under docket control number ''OPP–34149'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPP–34149). Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: September 28, 1998.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 98–27398 Filed 10–13–98; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1250–DR]

Alabama; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1250–DR), dated September 30, 1998, and related determinations.

EFFECTIVE DATE: September 30, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 30, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Alabama resulting from Hurricane Georges on September 25, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Alabama.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Sharon Stoffel of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared major disaster:

Mobile, Baldwin, Washington, Clarke, Monroe, Escambia, Covington, Crenshaw, Geneva, and Coffee Counties for Individual Assistance.

All counties within the State of Alabama are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–27544 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3133–EM]

Alabama; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Alabama (FEMA–3133–DR), dated September 28, 1998, and related determinations.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 28, 1998, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Alabama, resulting from Hurricane Georges on September 28, 1998, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such an emergency exists in the State of Alabama.

You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to identify, mobilize, and provide at your discretion, equipment and resources necessary to alleviate the impacts of the disaster. I have further authorized direct Federal assistance and emergency protective measures (Category B) for the first 72 hours at 100 percent Federal funding, if deemed necessary, and debris removal (Category A) at 75 percent Federal funding. The time period for this direct Federal assistance and emergency protective measures at 100 percent Federal funding may be extended by FEMA, if warranted.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Sharon Stoffel of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alabama to have been affected adversely by this declared emergency:

FEMA is authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe. Specifically, FEMA is authorized to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the disaster.

Direct Federal assistance and emergency protective measures (Category B) for the first 72 hours at 100 percent Federal funding and debris removal (Category A) at 75 percent Federal funding will be provided for: Mobile, Baldwin, Washington, Clarke, Monroe and Escambia Counties.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–27548 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3133–EM]

Alabama; Amendment No 1. to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Alabama, (FEMA–3133–EM), dated September 28, 1998, and related determinations.

EFFECTIVE DATE: September 29, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Alabama, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 28, 1998:

Direct Federal assistance and emergency protective measures (Category B) beginning September 29, 1998, and ending October 2, 1998, at 100 percent Federal funding and debris removal (Category A) at 75 percent Federal funding for the following counties: Covington, Crenshaw, Geneva, and Coffee Counties.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–27552 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1249–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1249–DR), dated September 28, 1998, and related determinations.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 28, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from Hurricane Georges on September 25, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act'').

I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul Fay of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

Monroe County for Individual Assistance and Public Assistance.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–27542 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1249–DR]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1249–DR), dated September 28, 1998, and related determinations.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 28, 1998:

Bay, Escambia, Gadsden, Holmes, Okaloosa, Santa Rosa, Suwannee, Walton, and Washington Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–27543 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3131–EM]

Florida; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Florida (FEMA–3131–EM), dated September 25, 1998, and related determinations.

EFFECTIVE DATE: September 25, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 25, 1998, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from Hurricane Georges on September 22, 1998, and continuing is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such an emergency exists in the State of Florida.

You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to identify, mobilize, and provide at your discretion, equipment and resources necessary to alleviate the impacts of the disaster. I have further authorized direct Federal assistance and emergency protective measures (Category B) for the first 72 hours at 100 percent Federal funding, if deemed necessary, and debris removal (Category A) at 75 percent Federal funding. The time period for this direct Federal assistance and emergency protective measures at 100 percent Federal funding may be extended by FEMA, if warranted.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Paul Fay of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared emergency:

FEMA is authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, FEMA is authorized to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the disaster.

Direct Federal assistance and emergency protective measures (Category B) for the first 72 hours at 100 percent Federal funding and debris removal (Category A) at 75 percent Federal funding will be provided for: Broward, Charlotte, Collier, Dade, DeSoto, Glades, Hendry, Hernando, Hillsborough, Lee, Manatee, Martin, Monroe, Palm Beach, Pasco, Pinellas and Sarasota Counties.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–27545 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3131–EM]

Florida; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Florida, (FEMA–3131–EM), dated September 25, 1998, and related determinations.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 25, 1998:

Direct Federal assistance and emergency protective measures (Category B) for the first 72 hours at 100 percent Federal funding, beginning September 28, 1998 and ending October 1, 1998. Debris removal (Category A) at 75 percent Federal funding. This assistance is for the following counties: Calhoun, Gadsden, Holmes, Liberty, Suwannee, and Washington Counties.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–27546 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3131–EM]

Florida; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Florida, (FEMA–3131–EM), dated September 25, 1998, and related determinations.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 25, 1998:

Direct Federal assistance and emergency protective measures (Category B) for the first 72 hours at 100 percent Federal funding, beginning September 25, 1998. Debris

removal (Category A) at 75 percent Federal funding. This assistance is for the following counties: Highland and Hardee.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–27553 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3131–EM]

Florida; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Florida, (FEMA–3131–EM), dated September 25, 1998, and related determinations.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Florida, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of September 25, 1998:

Direct Federal assistance and emergency protective measures (Category B) for the first 72 hours at 100 percent Federal funding, beginning September 28, 1998 and ending October 1, 1998. Debris removal (Category A) at 75 percent Federal funding. This assistance is for the following counties: Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Walton, and Wakulla.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–27554 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1246–DR]

Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana, (FEMA–1246–DR), dated September 23, 1998, and related determinations.

EFFECTIVE DATE: September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Louisiana, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 23, 1998:

Livingston, Orleans, Plaquemines, St. Bernard, St. Tammany, Tangipahoa, and Washington Parishes for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–27536 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1246–DR]

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1246–DR), dated September 23, 1998, and related determinations.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Gary E. Jones of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Graham L. Nance as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–27537 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3132–EM]

Mississippi; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Mississippi

(FEMA–3132–EM), dated September 28, 1998, and related determinations.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 28, 1998, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Mississippi, resulting from Hurricane Georges on September 28, 1998, and continuing 1998, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such an emergency exists in the State of Mississippi.

You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to identify, mobilize, and provide at your discretion, equipment and resources necessary to alleviate the impacts of the disaster. I have further authorized direct Federal assistance and emergency protective measures (Category B) for the first 72 hours at 100 percent Federal funding, if deemed necessary, and debris removal (Category A) at 75 percent Federal funding. The time period for this direct Federal assistance and emergency protective measures at 100 percent Federal funding may be extended by FEMA, if warranted.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael J. Polny of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared emergency:

FEMA is authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe. Specifically, FEMA is authorized to identify, mobilize, and provide at its discretion, equipment and resources necessary to alleviate the impacts of the disaster.

Direct Federal assistance and emergency protective measures (Category B) for the first 72 hours at 100 percent Federal funding and debris removal (Category A) at 75 percent Federal funding will be provided for the counties of: Hancock, Harrison, Jackson, Pearl River, Stone, George, Pike, Walthall, Marion, Lamar, Forrest, Perry, Greene, Lawrence, Jefferson Davis, Covington, Jones and Wayne.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–27547 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1247–DR]

Puerto Rico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–1247–DR), dated September 24, 1998 and related determinations.

EFFECTIVE DATE: September 24, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 24, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Puerto Rico, resulting from Hurricane Georges on September 20–22, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the Commonwealth of Puerto Rico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Hazard Mitigation, and debris removal and emergency protective measures (Categories A and B) under Public Assistance in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jose A. Brovo of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Puerto Rico to have been affected adversely by this declared major disaster:

All 78 municipios for Individual Assistance and debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

All counties within the Commonwealth of Puerto Rico are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–27538 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1247–DR]

Puerto Rico; Amendment No.1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Puerto Rico, (FEMA–1247–DR), dated September 24, 1998, and related determinations.

EFFECTIVE DATE: September 29, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Puerto Rico, is hereby amended to include Categories C through G under the Public Assistance program in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 1998:

All 78 municipios for Categories C through G under the Public Assistance program (already designated for Categories A and B under the Public Assistance program and Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–27539 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3130–EM]

Commonwealth of Puerto Rico; Amendment No. 3 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the Commonwealth of Puerto Rico, (FEMA–3130–EM), dated September 21, 1998, and related determinations.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the Commonwealth of Puerto Rico, is hereby amended to extend direct Federal assistance at 100 percent Federal funding through September 30, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–27555 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1245–DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1245-DR), dated September 23, 1998 and related determinations.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 23, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe storms and flooding associated with Tropical Storm Frances beginning on September 9, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James LeGortte of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

Brazoria, Galveston, and Harris Counties for Individual Assistance.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–27534 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1245–DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1245–DR), dated September 23, 1998, and related determinations.

EFFECTIVE DATE: September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 23, 1998:

Harris County for Public Assistance (already designated for Individual Assistance).

Jefferson County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–27535 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1248–DR]

U.S. Virgin Islands; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the U.S. Virgin Islands (FEMA–1248–DR), dated September 24, 1998, and related determinations.

EFFECTIVE DATE: September 24, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 24, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the U.S. Virgin Islands, resulting from Hurricane Georges on September 19–22, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the U.S. Virgin Islands.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Barbara Russell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the U.S. Virgin Islands to have been affected adversely by this declared major disaster:

St Croix, St. John, St. Thomas and Water Island for Public Assistance.

All Islands within the U.S. Virgin Islands are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 98–27540 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1248–DR]

U.S. Virgin Islands; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the U.S. Virgin Islands, (FEMA–1248–DR), dated September 24, 1998, and related determinations.

EFFECTIVE DATE: September 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the U.S. Virgin Islands, is hereby amended to include Individual Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 1998.

St. Croix, St. John, St. Thomas and Water Island for Individual Assistance (already designated under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–27541 Filed 10–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date of this notice appears in the **Federal Register**.

Agreement No.: 203–011560–001
Title: The TransAtlantic Bridge Agreement
Parties:
The COSCO/KL TransAtlantic Vessel Sharing Agreement (FMC Agreement No. 232–011561)
The KL/YM TransAtlantic Vessel Sharing Agreement (FMC Agreement No. 232–011562)
Synopsis: The proposed amendment would extend the term of the Agreement to October 31, 2000.

Agreement No.: 203–011561–001
Title: The COSCO/KL TransAtlantic Vessel Sharing Agreement
Parties:
China Ocean Shipping (Group) Company (''COSCO'')
Kawasaki Kisen Kaisha, Ltd. (''KL'')
Synopsis: The proposed amendment would extend the term of the Agreement to October 31, 2000.

Agreement No.: 232–011562–002
Title: The KL/YM TransAtlantic Vessel Sharing Agreement
Parties:
Yangming Transportation Corporation (''YM'') Company (''COSCO'')
Kawasaki Kisen Kaisha, Ltd. (''KL'')
Synopsis: The proposed amendment would extend the term of the Agreement to October 31, 2000.

Dated: October 7, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–27411 Filed 10–13–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks 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 offices 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 October 27, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First Perry Bancorp ESOP, Pinckneyville, Illinois; to acquire additional voting shares of First Perry Bancorp, Inc., Pinckneyville, Illinois, and thereby indirectly acquire First National Bank in Pinckneyville, Pinckneyville, Illinois.

Board of Governors of the Federal Reserve System, October 7, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–27505 Filed 10–13–98; 8:45 am]

BILLING CODE 6210–01–F

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. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

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 November 6, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. First Community Bancorp, Inc., Pahokee, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First Community Bank of Palm Beach County, Pahokee, Florida.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Central Financial Corporation, Hutchinson, Kansas; to acquire 9.9 percent of the voting shares of Fort Worth National Bank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, October 7, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–27504 Filed 10–13–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, October 19, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications

scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: October 9, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–27732 Filed 10–9–98; 3:44 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0494]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Device Registration and Listing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by November 13, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Registration and Listing—21 CFR 807

Section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360) requires that manufacturers and initial importers engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of medical devices intended for human use and in commercial distribution register their establishments and list the devices they manufacture with FDA. This is accomplished by completing FDA Form 2891, ''Initial Registration of Device Establishment,'' and FDA Form 2892, ''Medical Device Listing.'' In addition, each year active, registered establishments must notify FDA of changes to the current registration and device listing for the establishment. Annual changes to current registration information are pre-printed on FDA Form 2891a and sent to registered establishments. The form must be sent back to FDA's Center for Devices and Radiological Health (CDRH), even if no changes have occurred. Changes to listing information are submitted on Form 2892. Refurbishers/reconditioners are not required to register or list; however, FDA will accept voluntary registration and listings from firms that wish to be registered with FDA.

In addition, under § 807.31 (21 CFR 807.31), each owner or operator is required to maintain a historical file containing the labeling and advertisements in use on the date of initial listing, and in use after October 10, 1978, but before the date of initial listing. The owner or operator must maintain in the historical file any labeling or advertisements in which a material change has been made anytime after initial listing, but may discard labeling and advertisements from the file 3 years after the date of the last shipment of a discontinued device by an owner or operator. Along with the recordkeeping requirements, the owner or operator must be prepared to submit to FDA upon specific request all labeling and advertising mentioned in the previous paragraph (§ 807.31(e)).

The information collected through these provisions is used by FDA to identify firms subject to the agency's regulations and is used to identify geographic distribution in order to effectively allocate its field resources for these inspections and to identify the class of the device which determines the inspection frequency. When complications occur with a particular device or component, manufacturers of similar or related devices can easily be identified.

The likely respondents to this information collection will be domestic establishments engaged in the manufacture, preparation, propagation, compounding, assembly, or processing of medical devices intended for human use and commercial distribution.

In the **Federal Register** of July 16, 1998 (63 FR 38409), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	FDA Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
807.22(a)	Form 2891—Initial Establishment, Registration	1,462	1	1,462	.25	366
807.22(b)	Form 2892—Device Listing (initial and update)	5,640	1	5,640	.50	2,820
807.22(a)	Form 2891(a)—Registration Update	22,000	1	22,000	.25	5,500
807.31(e)		200	1	200	.50	100
Total						8,786

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
807.31	7,900	10	79,000	0.5	39,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The annual reporting burden hours to respondents for registering establishments and listing devices is estimated to be 8,786 hours, and recordkeeping burden hours for respondents is estimated to be 39,500 hours. The estimates cited in Tables 1 and 2 of this document are based primarily upon the annual FDA Accomplishment Report, which includes actual FDA registration and listing figures from fiscal year (FY) 1997. These estimates are also based on conversations with industry and trade association representatives, and internal review of the FDA forms and documents referred to in the previous tables.

According to 21 CFR part 807, all owners/operators are required to list, and establishments are required to register. Each owner/operator has an average of two establishments, according to statistics gathered from FDA's Registration and Listing Data Base. The data base has 22,000 establishments listed in it. Based on past experience, the agency anticipates that approximately 1,462 registrations will be processed annually, and that 5,640 initial and update device listings will be submitted. Although FDA only processed 12,237 annual registrations during FY 1997 due to a delay in sending out the annual registration forms, the normal amount of processing of annual registrations in the past has been 22,000. FDA anticipates reviewing 200 historical files annually. Finally, because initial importers (currently estimated at 6,200) do not have to maintain historical files, FDA estimates that the number of recordkeepers required to maintain the initial historical information will be 7,900 (which is the number of establishments, 22,000 minus the number of initial importers, 6,200, divided by 2, the average number of establishments per owner/operator).

Dated: October 6, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–27493 Filed 10–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0147]

Agency Information Collection Activities; Announcement of OMB Approval; Access to Mammography Services Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Access to Mammography Services Survey'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 23, 1998 (63 FR 39581), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (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 0910–0383. The approval expires on September 30, 2001.

Dated: October 6, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–27492 Filed 10–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: September 1998

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of September 1998, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ADDIS, HOWARD SEATTLE, WA	10/20/1998
ARTMAN, CARL JR HAZELWOOD, MO	10/20/1998
ASHBAUGH, KAREN LOUISE SAN ANTONIO, TX	10/20/1998
BAUGHER, DENNIS L FT MYERS, FL	10/20/1998
CACERES, MARIO BLUE BELL, PA	10/20/1998
CRITTENDEN, JAMES C MEMPHIS, TN	10/20/1998
DIANA, KATHLEEN ANN FORT WORTH, TX	10/20/1998
DOUBLEDAY, LINDA POPE, MS	10/20/1998
ELROSE HEALTH SERVICES, INC DETROIT, MI	10/20/1998
EZEUDE, CHRISTOPHER UJU	10/20/1998

Subject city, state	Effective date
PEARLAND, TX	
GAY-MILLER, CYNTHIA LOU .. BATTLE CREEK, MI	10/20/1998
GEDON, GEORGE ..... MONTOURSVILLE, PA	10/20/1998
HEMMERICH, LOUIS ..... CHICAGO, IL	10/20/1998
HOLIDAY, BERNARD ..... LEWISBURG, PA	10/20/1998
HOUSTON, SCOTT ..... STATEN ISLAND, NY	10/20/1998
IRBY, JAMES H JR ..... ANDERSON, SC	10/20/1998
JACOBSON, JULIE ANN ..... FORSYTH, MT	10/20/1998
JANA, EDWARD ..... RIVERSIDE, IL	10/20/1998
JOHNSON, PAT ..... TAMPA, FL	10/20/1998
JOHNSON, VICKI L ..... LONGVIEW, TX	10/20/1998
JOHNSON, LATORSHIA YVETTE ..... ALEXANDRIA, LA	10/20/1998
KELLY, RITA RENEE ..... DENVER, CO	10/20/1998
LANTIGUA, ALAIN ..... MIAMI, FL	10/20/1998
LEWIS, ROYCELYN A ..... NEW ORLEANS, LA	10/20/1998
LIFE CENTERS, LTD ..... PHILADELPHIA, PA	10/20/1998
NARDONE, CHARLES ..... ELLWOOD CITY, PA	10/20/1998
NARDONE, JOSEPH ..... KOPPEL, PA	10/20/1998
PACHER, CATHERINE JEAN .. GULFPORT, MS	10/20/1998
PEKERMAN, KONSTANTINE .. BROOKLYN, NY	10/20/1998
QUISENBERRY, CHARLES PETER ..... MONROE, MI	10/20/1998
ROSENBERG, PAMELA SNOW ..... KINGMAN, AZ	10/20/1998
ROWJEE, ZEHRA ..... GLENVIEW, IL	10/20/1998
SMITH, MARCIA LEE ..... SPOKANE, WA	10/20/1998
SNUGGS, MYRTIS A ..... WISNER, LA	10/20/1998
THOMAS, LISTON ..... CUMBERLAND, MD	10/20/1998
WEISS, JODY ..... MONROE, MI	10/20/1998
WILLIAMS, LARRY DEE ..... DAYTON, OR	10/20/1998
YOUNG, DENNIS R ..... LOMITA, CA	10/20/1998

FELONY CONVICTION FOR HEALTH CARE FRAUD

SHELTON, BECKY LYNN ..... MARYSVILLE, OH	10/20/1998

FELONY CONTROL SUBSTANCE CONVICTION

ROTHAMER, DONNA DEE ..... PRESCOTT, AZ	10/20/1998

PATIENT ABUSE/NEGLECT CONVICTIONS

AKINSUNMOYE, OLAJUMOKE PROVIDENCE, RI	10/20/1998
BECKER, HEATHER LEE ..... ISABELLA, OK	10/20/1998
BOLDS, ARTHUR O ..... KNOXVILLE, TN	10/20/1998
CARPENTER, CYNTHIA L ..... HARLAN, IA	10/20/1998
DAVIS, ANGELA MARIE ..... ZANESVILLE, OH	10/20/1998
DAVIS, BEVERLY R ..... ROCHESTER, NY	10/20/1998
FINLEY, EDDIE ..... ENID, OK	10/20/1998
HARRIS, LEIA MAXINE ..... MADERA, CA	10/20/1998
HEFFREN, MICHAEL T ..... GUTHRIE, OK	10/20/1998
JENKINS, SHERMIKA TRENESSE ..... DICKENSON, TX	10/20/1998
LAWRENCE, VANNIE WILLIAMS ..... GULFPORT, MS	10/20/1998
LUBBERS, CAROL IRENE ..... DENVER, CO	10/20/1998
MARTIN, PATRICIA ..... PAWTUCKET, RI	10/20/1998
OVERSHINE, KIOKA ..... LAMARQUE, TX	10/20/1998
PERRY, ANGELA ..... HICKORY VALLEY, TN	10/20/1998
PONCE, VICTOR MANUEL ..... WALSENBURG, CO	10/20/1998
RICHARDSON, JERRY LEE .... BATH, IL	10/20/1998
SEALEY, CECILIO N ..... S BURLINGTON, VT	10/20/1998
SINGLETON, ANDRE ..... LAUREL, MS	10/20/1998
SMITH, LONNIE RAY ..... ALEXANDRIA, LA	10/20/1998
STRONG, SHIRLEY A ..... HAMPTON, AR	10/20/1998
VANDYCHE, ANDREW NATHAN ..... NASHVILLE, TN	10/20/1998
VENTURA, FERNANDO ..... SALT LAKE CITY, UT	10/20/1998
WELLS, PATRICIA ..... CHARLESTON, MS	10/20/1998
WINGO, BARBARA A ..... CLINTON, OK	10/20/1998

CONVICTION FOR HEALTH CARE FRAUD

WOODARD, RAUL ELEAZAR PEORIA, AZ	10/20/1998

CONTROLLED SUBSTANCE CONVICTIONS

JAMES, DWIGHT ..... INDIO, CA	10/20/1998
LEWIS, BEVERLY ..... LOS ANGELES, CA	10/20/1998

LICENSE REVOCATION/SUSPENSION/SURRENDERED

ADAMSON, KIM A ..... FALLON, NV	10/20/1998
ANDERSON, MICHAEL ARTHUR ..... FEDERAL WAY, WA	10/20/1998
ANGHEL, GHEORGHE ..... WILKES-BARRE, PA	10/20/1998
BALTZELL, KELLY ..... HOPKINS, MN	10/20/1998
BARILE, KATHY GAIL ..... STOCKTON, CA	10/20/1998
BARKSDALE, SAMUEL E SR .. AMHERST, VA	10/20/1998
BAY DRUG PHARMACY & SURGICAL ..... WEST ISLIP, NY	10/20/1998
BAYME, LLOYD G ..... BROOKLYN, NY	10/20/1998
BEAL, THOMAS ..... CHICAGO, IL	10/20/1998
BEAUCHAMP, KIM ..... VALLEY, CA	10/20/1998
BELCH, MARY E ..... BROWERVILLE, MN	10/20/1998
BERENSON, DAVID J ..... SAUSALITO, CA	10/20/1998
BERGLUND, BARBARA ..... WEST HAVEN, CT	10/20/1998
BERTSCH, DALE R ..... FLORENCE, AZ	10/20/1998
BHALOTRA, RAKESH ..... SHREWSBURY, MA	10/20/1998
BISCEVIC, KAMILO R ..... VACAVILLE, CA	10/20/1998
BLANCO, GREGORY ..... PEORIA, IL	10/20/1998
BLEDSOE, RISA D ..... MOUNT VERNON, IL	10/20/1998
BLOUGH, PAMELA ELIZABETH ..... RIVERSIDE, CA	10/20/1998
BOURGEOIS, JULIA M ..... LYNN, MA	10/20/1998
BOWSER, ANTHONY ..... MILAN, IL	10/20/1998
BREITENSTEIN, LARRY JACK KINGWOOD, TX	10/20/1998
BROWN, VIVIAN ..... CHICAGO, IL	10/20/1998
BRYAR, GEORGE EDWARD .. PALOS HEIGHTS, IL	10/20/1998
CAPPIELLO, RAFAEL M ..... LAS VEGAS, NV	10/20/1998
CASTELLON, VINCENT III ..... MERIDEN, CT	10/20/1998
CHAPMAN, THOMAS MORGAN JR ..... MURRIETA, CA	10/20/1998
CHECANI, KRISTEN DOLORES ..... NATICK, MA	10/20/1998
CHOMIAK, BRYANT D ..... LAS VEGAS, NV	10/20/1998
CHUN, MICHAEL S ..... VANCOUVER, WA	10/20/1998
CLAUNCH, DONALD LEE ..... TURLOCK, CA	10/20/1998
CLAY, SANDRA L	10/20/1998

Subject city, state	Effective date
PEORIA, IL	
COLFER, HARRY F ..... SAN FRANCISCO, CA	10/20/1998
COUILLARD, SHARON J ..... BROOKLYN, MN	10/20/1998
COUNTRYMAN, SANDRA M ... ST CLOUD, MN	10/20/1998
CRADER, BETH ANNE ..... WORCESTER, MA	10/20/1998
CROSS, SUSAN WRAY ..... SELDEN, NY	10/20/1998
DAVIS, NANCY D ..... PARIS, IL	10/20/1998
DEMEYER, THERESA D ..... HOLTVILLE, CA	10/20/1998
DEWITT, ROSALYN R ..... NEWPORT NEWS, VA	10/20/1998
DODGE, GAIL MARIE ..... MARBLEHEAD, MA	10/20/1998
DOLAN, JOHN W ..... OLEAN, NY	10/20/1998
DOVE, ELISA M ..... FRONT ROYAL, VA	10/20/1998
DUNAWAY, MELISSA J ..... KILARNOCK, VA	10/20/1998
EATMAN, VERNON ..... CHICAGO, IL	10/20/1998
EDDY, DONALD D ..... RIVERSIDE, CA	10/20/1998
ELLIS, ETHEL MARGARET ..... REDLANDS, CA	10/20/1998
EVANGELISTA, LUISITO A ..... LAS VEGAS, NV	10/20/1998
FARGNOLI, SAM SALVALTOR DELHI, NY	10/20/1998
FERNANDEZ, MACARIO T ..... SALT LAKE CITY, UT	10/20/1998
FISHER, PETER BERNARD .... HOUSTON, TX	10/20/1998
FOSTER, STEPHEN E ..... READFIELD, ME	10/20/1998
FREDERICK, CYNTHIA GARLAND ..... HANOVER, PA	10/20/1998
FRENYEA, DEANNA MARY .... PLATTSBURGH, NY	10/20/1998
GALIN, MILES A ..... NEW YORK, NY	10/20/1998
GAVIRIA, ELIANA ..... OAK BROOK, IL	10/20/1998
GIBSON, DARCY MARIE ..... ROCKLAND, MA	10/20/1998
GOWER-WATSON, BARBARA ANN ..... SPRINGFIELD, IL	10/20/1998
GRAVES, LINDA E ..... BASSETT, VA	10/20/1998
GRAY, DOROTHY LOIS ..... SAN FRANCISCO, CA	10/20/1998
GREEN, GREGORY ..... CHICAGO, IL	10/20/1998
GREEN, LAURA A ..... ST PAUL, MN	10/20/1998
GRIMES, BARBARA L ..... LAGUNA NIGUEL, CA	10/20/1998
GULUARTE, JILL MARIE ..... LUCERNE, CA	10/20/1998
HALE, SHARON ATKINS ..... ROANOKE, VA	10/20/1998
HANNEGAN, NECIA ANNETTE OKLAHOMA CITY, OK	10/20/1998
HANSEL, JOHN SEYBERT JR LOGAN, WV	10/20/1998
HANSEN, JAY H ..... TARRYTOWN, NY	10/20/1998
HAROLD, JENNIFER ..... SYCAMORE, IL	10/20/1998
HERMAN, PETER A ..... NEW YORK, NY	10/20/1998
HOOVER, PAULA LOUISE ..... PRESCOTT, AZ	10/20/1998
IMBER, WAYNE E ..... PASADENA, CA	10/20/1998
ISAACSON, LINDA K ..... MARION, IL	10/20/1998
JUSTICE, DENISE LUCINDA .. SANTA BARBARA, CA	10/20/1998
KAKATY, JOHN A ..... UTICA, NY	10/20/1998
KAUFFMAN, PAUL DAVID ..... HARDY, AR	10/20/1998
KLUSSMAN, RICHARD M ..... MILL VALLEY, CA	10/20/1998
KOE, FRANK JR ..... NORMAL, IL	10/20/1998
KOPCHYNSKI, HAROLD G ..... N AMITYVILLE, NY	10/20/1998
LAMBERT, CAROLYN N ..... NOKESVILLE, VA	10/20/1998
LARDIE, RICHARD LESLIE ..... ALAMEDA, CA	10/20/1998
LARROBY CHEMISTS, INC ..... BROOKLYN, NY	10/20/1998
LAZINSKY, SCOTT EDWARD NANUET, NY	10/20/1998
LEGGETT, ARLETTA ..... EVANSTON, IL	10/20/1998
LEHMAN, JEANNE E ..... WESTFIELD, MA	10/20/1998
LEVIN, ROGER M ..... MENLO PARK, CA	10/20/1998
LEWIS, JOHN M ..... PHOENIX, AZ	10/20/1998
LILLISTON, ANGEL M ..... ACCOMAC, VA	10/20/1998
LOCKWOOD, REGINA C ..... RIVERHEAD, NY	10/20/1998
LOVING, ANN MARIE ..... RICHMOND, VA	10/20/1998
LUCERO, JOSE ..... PUEBLO, CO	10/20/1998
LUPOLE, SHARON AVENALI .. KANE, PA	10/20/1998
MADDOX, ALBERT DWIGHT .. ATLANTA, GA	10/20/1998
MAGNUM, LINDA ROSE ..... PROVIDENCE, RI	10/20/1998
MAJOR, BYRON JR ..... BROOKLYN, NY	10/20/1998
MARTIN, ALLEN J ..... SANTA CRUZ, CA	10/20/1998
MAUSEL, RAE ANNE ..... BROOKLYN, MN	10/20/1998
MAYO-PARKER, CHERYL ..... TROY, VA	10/20/1998
MCDOUGALD, ANGELINE M .. RICHMOND, VA	10/01/1998
MCDUFF, JENNIFER ..... WAKEFIELD, RI	10/20/1998
MCTERNAN, ROY J ..... CLIFTON, NJ	10/20/1998
METZDORFF, JERRY ..... VANDALIA, IL	10/20/1998
MOYER, SHARON LEWIS ..... REIDSVILLE, NC	10/20/1998
NABORS, DENNIS R ..... GREENSBORO, NC	10/20/1998
NAGEL, RUTH ..... ORTONVILLE, MN	10/20/1998
NEALY, MARY KAE ..... SCOTTSDALE, AZ	10/20/1998
NEWLEN, PATRICIA M ..... WAYNESBORO, VA	10/20/1998
NICHOLSON, RODOLFO A ..... STATEN ISLAND, NY	10/20/1998
NIX, RAYMOND A ..... BLOOMFIELD, CT	10/20/1998
NORSTEN, JULIE ANNE ..... PHOENIX, AZ	10/20/1998
NOVAK, FREDDIE PATRICK ... PORTLAND, OR	10/20/1998
NULL, JOHN W ..... GLENDALE, AZ	10/20/1998
NUNEZ, MARINA ..... DENVER, CO	10/20/1998
O'CONNOR, COLLEEN MARY WESTFIELD, MA	10/20/1998
O'NEILL, BARBARA A ..... HAVERHILL, MA	10/20/1998
PAKCHAR, SETH LANE ..... SCOTTSDALE, AZ	10/20/1998
PARKER, JOHN JOSEPH ..... PROVO, UT	10/20/1998
PARTRIDGE, LINDA JEAN ..... QUARTZ HILL, CA	10/20/1998
PATNOE, LISA ANN ..... PHOENIX, AZ	10/20/1998
PAYNE, ROGER A ..... MINNEAPOLIS, MN	10/20/1998
PEARSON, WAYNE K ..... HUTCHINSON, MN	10/20/1998
PEREZ, FLORENTIN ..... PUEBLO, CO	10/20/1998
PERSZYK, DAVID P ..... ELK RIVER, MN	10/20/1998
POLCARI, DONNA MARIE ..... MELROSE, MA	10/20/1998
POWERS, JAYNE F C ..... BEVERLY, MA	10/20/1998
PROCITA, VINCENT J JR ..... WEST ISLIP, NY	10/20/1998
PULCARE, MARGARET ANN .. BEACON, NY	10/20/1998
PULLEN, CHRISTINE L ..... MORA, MN	10/20/1998
QUINN, KEVIN THOMAS ..... BEND, OR	10/20/1998
RANELLE, JOHN BARRY ..... EULESS, TX	10/20/1998
RIPLEY, DAVID A ..... OAK PARK, IL	10/20/1998
RITTER, MARY E ..... MINNEAPOLIS, MN	10/20/1998
RIVERA, SHARI A ..... HENRIETTA, NY	10/20/1998
ROMAN, JOHN ..... ROCHESTER, NY	10/20/1998
RUEDA, DARLENE ..... DENVER, CO	10/20/1998
RUNKE, LAWRENCE CARL .... PARIS, TX	10/20/1998
SAKALAUSKAS, CHARLENE RUTH ..... WORCESTER, MA	10/20/1998
SANDERS, JAMES HICKMAN BARBOURVILLE, KY	10/20/1998
SCHRODEN, MICHELLE K ..... FERGUS FALLS, MN	10/20/1998
SCHUMER, BRIAN H ..... PHOENIX, AZ	10/20/1998
SCOTT, SHIRLEY A	10/20/1998

Subject city, state	Effective date
SOUTH HADLEY, MA	
SEXTON, PAMELA ..... GALESBURG, IL	10/20/1998
SHAW, MARILYN G ..... CARTHAGE, NY	10/20/1998
SHOUP, DEBRA ..... KITTY HAWK, NC	10/20/1998
SINATRA, CHARLES R ..... JAMESTOWN, NY	10/20/1998
SMERIGLIO, DOREEN ..... DANBURY, CT	10/20/1998
SPRAGINS, WILLIAM H ..... HOLLANDALE, MS	10/20/1998
STEWART, KIRK D ..... PORTSMOUTH, VA	10/20/1998
STRAUBE, KIMBERLY ..... QUINCY, IL	10/20/1998
SULLIVAN, LISA ..... FALL RIVER, MA	10/20/1998
SUSSMAN, GERALD ..... RUNNEMEDE, NJ	10/20/1998
TAZELARR, MARVIN E ..... LOMBARD, IL	10/20/1998
THORNTON, SHERI ..... DENVER, CO	10/20/1998
TOSI, JOANN ..... NEWINGTON, CT	10/20/1998
TOWNSEND, JILL CHARLENE KEYSVILLE, VA	10/20/1998
TRAN, DIANA L ..... ROANOKE, VA	10/20/1998
TRICARICO, PATRICIA L ..... PATCHOGUE, NY	10/20/1998
TRIMBLE, CATHERINE M ..... YAKIMA, WA	10/20/1998
VERDELL, JEROME ..... FREEPORT, NY	10/20/1998
WAY, MAU SUN ..... UPLAND, CA	10/20/1998
WEBB, DALE W ..... RICHMOND, VA	10/20/1998
WEST, MARIQUITA ..... LOS GATOS, CA	10/20/1998
WHITE, SHARON H ..... RICHMOND, VA	10/20/1998
WILLIAMS, CHARLES T ..... GENEVA, NY	10/20/1998
WONG, SIDNEY HARVEY ..... GULFPORT, MS	10/20/1998
WORKS, WILLIAM A ..... HORSEHEADS, NY	10/20/1998
ZAGARA, ELLEN ..... DEPEW, NY	10/20/1998
FEDERAL/STATE EXCLUSION/ SUSPENSION	
CHERRY, RICHARD A ..... MILWAUKIE, OR	10/20/1998
CLIFTON, DANIEL S ..... YUMA, AZ	10/20/1998
EDDY, JONATHAN ..... HAMPDEN, ME	10/20/1998
FELDMAN, ROBERT ..... BRONX, NY	10/20/1998
GROMISCH, MARK E ..... WOODMERE, NY	10/20/1998
HALE, CARL RAY ..... GULFPORT, MS	10/20/1998
MOBILE MEDICAL ..... MILWAUKIE, OR	10/20/1998
OWUSU-BAAH, PAUL ..... BALDWIN, NY	10/20/1998
PEDROSO, SHIRLEY A ..... PORTLAND, ME	10/20/1998
RITE SURGICAL COMPANY ... BROOKLYN, NY	10/20/1998
SHOCKEY, TINA J ..... FRUITLAND, ID	10/20/1998
STUART PHARMACY, INC ..... BRONX, NY	10/20/1998
WALLE, ALEXANDER ..... NEW YORK, NY	10/20/1998
OWNED/CONTROLLED BY CONVICTED/ EXCLUDED	
ADVANCED REHAB CONCEPTS ..... FLORENCE, CO	10/20/1998
FLORIDA IMPOTENCE CLINIC, INC ..... TAMPA, FL	10/20/1998
RIGID, INC ..... FT MYERS, FL	10/20/1998
STRAIGHT TALK COUNSELING SVC ..... WICHITA, KS	10/20/1998
VALLEY HEARING CLINIC ..... SALT LAKE CITY, UT	10/20/1998
WINGROVE DRUGS, INC ..... KEARNY, NJ	10/20/1998
DEFAULT ON HEAL LOAN	
BROSCHINSKY, CLIFFORD K WALNUT CREEK, CA	10/20/1998
COOKE, MYRON B ..... LOS ANGELES, CA	10/20/1998
CREELY, JAMES A JR ..... PITTSBURGH, PA	10/20/1998
FLEMING, JOSEPH J ..... LONG BEACH, CA	10/20/1998
GLENN, GARLAND DWAIN II .. MABANK, TX	10/20/1998
GOACHER, DOROTHY K ..... CHARLOTTESVILLE, VA	10/20/1998
LAFLEUR, ALLEN R ..... HULL, MA	10/20/1998
LOPEZ, DAVID NARANJO ..... SAN ANTONIO, TX	10/20/1998
MANZUR, JUAN E ..... LAS VEGAS, NV	10/20/1998
MARTINELLI, BRUCE F ..... STOCKTON, CA	10/20/1998
MARTINEZ, JORGE ..... CLEARWATER, FL	10/20/1998
MCADAMS, GLEN R ..... SPRING, TX	10/20/1998
NORRIS, SCOTT M ..... CITRUS HEGITHS, CA	09/03/1998
OPDYCKE, GINA K ..... SAN DIEGO, CA	10/20/1998
PASTULA, TERESA J ..... SARASOTA, FL	10/20/1998
PENNOCK, PETER JOHN ..... CYPRESS, CA	10/20/1998
POLAKOFF, DAVID F ..... CONCORD, MA	10/20/1998
PREST, MATTHEW J ..... OAKLAND, CA	10/20/1998
SADOWSKA, NELA ..... SAN JOSE, CA	10/20/1998
SCHADE, JOHN E JR ..... FREDERICK, MD	10/20/1998
SCULLY, STEPHEN M ..... LOS ANGELES, CA	10/20/1998
SHAW, MICHAEL P ..... PLEASANTON, CA	10/20/1998
SOSA, RICHARD ..... COLTON, CA	10/20/1998
WILLIAMS, SIMEON J ..... WASHINGTON, DC	10/20/1998
WINSTON, GREGG D ..... POMPANO BEACH, FL	10/20/1998

Dated: October 6, 1998.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 98–27420 Filed 10–13–98; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4375–N–03]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: the proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comment due: December 14, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya Suarez, Office of Policy, Planning and Risk Management, Department of Housing & Urban Development, 451 7th Street, SW, Room 6226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2772 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper

performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Schedule of Subscribers and Guaranty/Contractual Agreement.

OMB Control Number, if applicable: 2503–0009.

Description of the need for the information and proposed use: The purpose of this information is to provide Ginnie Mae with a listing of subscribers/purchasers of the mortgage-backed securities approved, as well as other information needed to prepare the securities. The form also provides the contractual agreement between the issuer and Ginnie Mae. By execution of this form, the issuer and Ginnie Mae agree to contract for the issuance and guaranty of securities backed by the mortgage making up the pool and incorporate by reference all of the terms and conditions of the Ginnie Mae Mortgage-Backed Securities Guides.

Agency form numbers, if applicable: HUD form 11705.

Members of affected public: For-profit businesses (mortgage companies, thrifts, savings & loans, etc.).

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

	Respondents	Frequency of response	Hours of response*
MBS Issuers 11700	399	59	23,541

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 6, 1998.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 98–27557 Filed 10–13–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science; Central Utah Project Completion Act; Notice of Intent To Prepare a Final Supplement to the Final Environmental Impact Statement for the Diamond Fork System, Bonneville Unit, Central Utah Project

AGENCIES: Department of the Interior (Department), Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission), and Central Utah Water Conservancy District (District) are the joint-lead agencies.

ACTION: Notice of intent to prepare a Final Supplement to the Final Environmental Impact Statement (EIS) for the Diamond Fork System, Bonneville Unit, Central Utah Project.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, the Department, Mitigation Commission, and the District are preparing a Final Supplement to the Diamond Fork System Final EIS of the Bonneville Unit, Central Utah Project.

In accordance with NEPA, the Spanish Fork Canyon—Nephi Irrigation System (SFN) Draft EIS, which also included a ''Diamond Fork Tunnel Alternative'' as part of the Diamond Fork System, was filed with the Environmental Protection Agency (EPA) and released for public review on March 31, 1998. Twenty-six comment letters were received during the comment period, which ended June 15, 1998; and 58 oral comments were given during two public hearings. Because of significant issues raised in the comment letters from the Strawberry Water Users Association, the State of Utah, and EPA regarding the SFN System (i.e. the purpose and need for the SFN System and water quality issues in Utah Lake) planning on the SFN System was discontinued. The joint-lead agencies have decided to proceed with a final supplement to the Diamond Fork Final EIS based on the following facts: (1) the serious issues raised during the SFN NEPA process are directly tied to the SFN System and do not materially affect the Diamond Fork Tunnel Alternative; (2) the resolution of these issues appears to be of such a magnitude that a significant delay in proceeding with a combined NEPA compliance document (for SFN and Diamond Fork) would be expected; and (3) the Diamond Fork System is necessary and common to any plan for additional use of Bonneville Unit water stored in Strawberry Reservoir and utilized along the Wasatch Front. A Final Supplement to the Diamond Fork Final EIS will be prepared and is expected to be filed with EPA in early 1999.

This action complies with the Department Manual (516 DM 4.5B) which states that ''a bureau and/or the appropriate program Assistant Secretary will consult with the Office of Environmental Project Review and the Office of the Solicitor prior to proposing to CEQ to prepare a final supplement without preparing an intervening draft.'' Meetings were held with Office of Environmental Policy and Compliance, Office of the Solicitor, and the Council on Environmental Quality (CEQ), which resulted in their approval of the preparation of the Final Supplement to the Diamond Fork System Final EIS.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed R. Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, UT 84606–6154, Telephone: (801) 379–1237, E-Mail address: rmurray@uc.usbr.gov

Dated: October 7, 1998.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 98–27483 Filed 10–13–98; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Water and Science; Central Utah Project Completion Act; Notice of Intent To Discontinue Planning on the Spanish Fork Canyon—Nephi Irrigation System as Presented in the Draft Environmental Impact Statement DES 98–13

AGENCIES: Department of the Interior (Department), Utah Reclamation

Mitigation and Conservation Commission (Commission), and Central Utah Water Conservancy District (District) are the joint-lead agencies.

ACTION: Notice of intent to discontinue planning on the Spanish Fork Canyon—Nephi Irrigation System (SFN) as presented in the Draft Environmental Impact Statement DES 98–13 (EIS).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, the Department, Mitigation Commission, and the District issued a joint Draft EIS on the SFN System. The Department published a notice of intent to prepare an EIS for the SFN System in the **Federal Register** Vol. 56 No. 166, dated August 30, 1993. Scoping meetings were held in Salt Lake City, Orem, and Nephi, Utah. The Draft EIS was filed with the Environmental Protection Agency (EPA) on March 31, 1998. Public Hearings were held in Salt Lake City, Utah, on May 11, 1998, and Santaquin, Utah, on May 12, 1998.

The SFN Draft EIS described two systems—the Diamond Fork System and the SFN System. Comments received on the SFN Draft EIS from EPA and the State of Utah raised serious issues regarding salinity impacts to Utah Lake. Comments from the Strawberry Water Users Association with regard to their participation in the SFN seriously impacted the Purpose and Need of the SFN Main Conveyance Aqueduct. Due to these issues, which are directly related to the SFN System and not the Diamond Fork System, the joint-lead agencies have discontinued planning on the SFN Draft EIS relating to the Main Conveyance Aqueduct and alternatives thereto. However, the joint lead agencies intend to file a final supplement to the Diamond Fork System Final EIS that will be based on the Diamond Fork Final EIS and the ''Diamond Fork Tunnel Alternative'' which was presented in the SFN Draft EIS. A **Federal Register** notice regarding the proposed Diamond Fork final supplement will be issued.

The joint-lead agencies will initiate a new planning process with public involvement on the facilities authorized in section 202(a)(1) of the Central Utah Project Completion Act (Utah Lake Drainage Basin Water Delivery System). Any other additional uses of Bonneville Unit water on the Wasatch Front (Salt Lake City to Nephi, Utah), and all remaining environmental issues and commitments associated with the Bonneville Unit will be addressed during this new process. When planning for the Utah Lake Drainage Basin Water Delivery System is initiated, a Notice of Intent regarding NEPA compliance will be published.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Mr. Reed R. Murray, Program Coordinator, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo, UT 84606–6154, Telephone: (801) 379–1237, E-Mail address: rmurray@uc.usbr.gov

Dated: October 7, 1998.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 98–27484 Filed 10–13–98; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–00; IDI–016500 C]

Termination of Desert Land Entry Classification and Opening Order; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a Desert Land Entry Classification on 158.64 acres of land in Twin Falls County as this classification is no longer needed. A portion of these lands will be exchanged pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

EFFECTIVE DATE: October 14, 1998.

FOR FURTHER INFORMATION CONTACT: Catherine D. Foster, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3863.

SUPPLEMENTARY INFORMATION: On August 8, 1967, the lands listed below were classified as suitable for entry under the authority of the Desert Land Act of March 3, 1877, as amended and supplemented (43 U.S.C. 321, et seq.). This classification is hereby terminated and the segregation for the following described land is hereby terminated:

T. 9 S., R.13 E., B.M.
Section 35, SE¼SE¼.
T. 10 S., R.13 E., B.M.
Section 2, lot 2 (now lots 7 and 8);
Section 3, lots 1 and 2.

The area described above aggregates 158.64 acres in Twin Falls County.

At 9:00 a.m. on October 14, 1998, the Desert Land Entry Classification identified above will be terminated. Lot 8 of section 2, T. 10 S., R. 13 E., B.M. will remain closed to location and entry under the public land laws and the general mining laws, as this lot is currently segregated for exchange. The lands which will be opened to location and entry are described as follows:

T. 9 S., R. 13 E., B.M.
Section 35, SE¼SE¼.
T. 10 S., R. 13 E.,
Section 2, lot 7,
Section 3, lots 1 and 2.

At 9:00 a.m. on October 14, 1998, these lands will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m., on October 14, 1998, will be considered simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

At 9:00 a.m. on October 14, 1998, these lands will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the lands described above under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 7, 1998.

Jimmie Buxton,

Branch Chief, Lands and Minerals.

[FR Doc. 98–27488 Filed 10–13–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement/ Comprehensive Plan Fort Baker Site at Golden Gate National Recreation Area Marin County, California; Notice of Availability

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended), the National Park Service (NPS), Department of the Interior, has prepared a draft Environmental Impact

Statement (DEIS) identifying and evaluating potential impacts of a proposed Comprehensive Plan for Fort Baker, a developed site in Golden Gate National Recreation Area (GGNRA). When approved, this Comprehensive Plan will guide implementation of future building uses, site improvements, visitor services, and cultural and natural resource management actions.

Proposal

The Proposed Action would create a conference and retreat center in a combination of historic buildings, non-historic buildings and new construction. It would provide space for meetings, dining and accommodations. Existing tenants, the Bay Area Discovery Museum (Museum) and the U.S. Coast Guard Golden Gate Station (Station), would be retained and their facilities and programs expanded.

Public services and short-term boat moorings would be provided in the historic boat shop and marina. The waterfront landscape would be improved, the beach restored, and natural and cultural resources of the site preserved and maintained. Approximately 40 acres of native habitats (including habitat for the endangered mission blue butterfly) would be restored. Some roads and trails on the site would be improved.

Alternatives

In addition to the proposed action, three alternatives are identified and evaluated. The 1980 General Management Plan Alternative would implement the 1980 GGNRA General Management Plan (GMP) development concept to create a conference center, artist-in-residence program and hostel in the historic buildings with no new construction; remove non-historic residences to construct a 700 car shuttle staging parking lot and NPS maintenance facility; restore the beach; convert the boat shop and marina to a public facility with visitor services and short term boat mooring; improve the waterfront with a more urban landscape treatment; and create a ferry landing at the historic pier. Roads and trails would be improved.

The *Office and Cultural Center Alternative* would use the historic buildings for meeting, program, restaurant, performance and program space needs for private and non-profit groups. Non-historic residences would be retained and some removed to provide parking for the center. The marina would continue to provide long-term boat mooring and some public boat mooring and visitor services. Other treatments would be the same as the Proposed Action.

The *No Action Alternative* would lease or permit residential buildings in the historic parade ground area and adjacent non-historic area as residences. Non-residential structures would be stabilized for preservation with no new use. There would be minimal changes to the waterfront to provide for visitor safety, and no expansion of the Museum or Station. The marina would be closed, the slips and docks removed, and the boat shop would be stabilized for preservation with no new use. Minimal preservation treatment of natural and cultural resources would be carried out to meet legislative requirements and to complete currently underway restoration efforts.

Comments

Printed or CD–ROM copies of the DEIS are available at park headquarters, Building 201, Fort Mason, San Francisco, as well as at libraries in the nine-county San Francisco Bay Area. The documents are also available on the Internet at ''www.nps.gov/goga/ftbaker/ftbaker.htm''.

Written comments must be postmarked not later than December 7, 1998, pursuant to the notice of filing in the **Federal Register** by the Environmental Protection Agency. Comments should be sent to the Superintendent, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123. The Fort Baker telephone number is (415) 561–4844.

In addition, comments will be accepted during the November 18 regular meeting of the GGNRA Advisory Commission (Building 201, Fort Mason, San Francisco, CA; meetings convene at 7:30 pm). NPS managers and planning officials will provide an overview of the DEIS and Comprehensive Plan, answer questions, and listen to comments. Written copies of comments would be helpful, however it is not required as all comments will be recorded in full and considered as part of the DEIS administrative record.

Decision

Following the formal DEIS review period, all comments received will be considered in preparing a final EIS (FEIS). The FEIS is anticipated to be completed during winter, 1999. Its availability will be similarly announced in the **Federal Register**. Subsequently, a Record of Decision would be approved by the Regional Director, Pacific West Region, no sooner than 30 days after release of the FEIS. The responsible officials are the Regional Director, Pacific West Region and the Superintendent, Golden Gate National Recreation Area.

Dated: September 29, 1998.

Patricia L. Neubacher,

Acting Regional Director, Pacific West.

[FR Doc. 98–27469 Filed 10–13–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Revised Draft Wild and Scenic River Study and Legislative Environmental Impact Statement for the Lower Sheenjek River in Alaska

AGENCIES: National Park Service, Interior.

ACTION: Notice of Availability of the Revised Draft Wild and Scenic River Study and Legislative Environmental Impact Statement for the Lower Sheenjek River in Alaska.

SUMMARY: The National Park Service announces the availability of a revised draft Wild and Scenic River Study and Legislative Environmental Impact Statement for the Lower Sheenjek River in Alaska. The document describes and analyzes the environmental impacts of a proposed action and a no-action alternative. The proposed action would recommend for designation the 99-mile segment of the Lower Sheenjek River as a National Wild River. Designation would ensure long-term protection of the river's outstanding values through a river management plan for the lower river. Under the no-action alternative the lower Sheenjek River would not be recommended for designation. The no-action alternative would continue existing management conditions on the river. This notice announces the dates and locations of public meetings to solicit comments on the Draft Legislative EIS.

DATES: Comments on the Draft Legislative EIS must be received no later than January 15, 1999. Hearing dates, times, and locations are listed under **SUPPLEMENTARY INFORMATION**, below.

ADDRESSES: Comments on the Draft Legislative EIS should be submitted to Sheenjek River Study, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503–2892. FAX at (907) 257–2499, or by electronic mail to: SheenjekRiverComments@nps.gov. Copies of the draft DCP/EIS are available upon request from the aforementioned address.

Copies of the DEIS are available for public inspection at the following locations:

- Yukon Flats Refuge office in Fairbanks, AK. (101) 12th Ave., Room 264),
- Noel Wien Public Library in Fairbanks, AK. (1215 Cowles Street),
- Fort Yukon Village Office and Public Library,
- National Park Service, Alaska Regional Office (Anchorage, AK.) 2525 Gambell Street, Room 405),
- U.S. Fish and Wildlife, Alaska Regional Office (Anchorage, AK., 1011 East Tudor Road, External Affairs Office, 1st Floor),
- Alaska Resources Library and Information Services (3150 C Street, Suite 100), and
- Anchorage Loussac Public Library (3600 Denali Street).

FOR FURTHER INFORMATION CONTACT: Jack Mosby, Program Manager—Rivers, Trails, and Conservation Assistance, National Park Service, 2525 Gambell Street, Anchorage, AK 99503–2892. Telephone (907) 257–2650.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190, as amended), the National Park Service, has prepared a revised draft Wild and Scenic River Study and Legislative Environmental Impact Statement for the Lower Sheenjek River in Alaska. Information meetings and public hearings are scheduled in Alaska on the dates and at the times and locations indicated below.

- December 8, Anchorage, Loussac Public Library, 3600 Denali, 7:00 to 9:00 p.m.
- December 9, Fairbanks, Alaska Public Lands Information Center, 250 Cushman Street, Suite 1A, 7:00 to 9:00 p.m.
- December 10, Fort Yukon, Village Office, 7:00 to 9:00 p.m.

The Lower Sheenjek River study corridor (two miles on either side of the river) was evaluated and found to meet the eligibility criteria as it is ''free flowing'' and contains one or more ''outstandingly remarkable values'' {cultural (subsistence), wildlife, scenic, and recreation}. It was recommended as a ''wild river'' due to the lack of development along the river corridor. Alternatives presented in the DEIS explore the impacts of the designation versus non-designation. Alternative A (the proposed action) recommends the Lower Sheenjek River within the Yukon Flats National Wildlife Refuge be recommended for Congressional action for addition to the National Wild and Scenic Rivers System for its outstandingly remarkable cultural, wildlife, scenic, and recreational values. The segment would be classified as wild, and management of the federal lands would remain with the U.S. Fish and Wildlife Service. Management objectives would focus on keeping the river free from water resource development, major extractive resource development, minimizing the impact of recreation use on the rivers' outstandingly remarkable values, and generally maintaining the undeveloped character of the river corridor. No expenditures for administrative or public use facilities would be required under this alternative, although some funds would be spent on corridor administration (estimated at less than $5,000 per year). No land acquisition is needed. Alternative B (no action) would continue existing conditions on the refuge. The river's resource values would not receive any additional protection or management attention relative to other rivers or resources in the Yukon Flats National Wildlife Refuge.

Dated: October 8, 1998.

Robert D. Barbee,

Regional Director, Alaska Region.

[FR Doc. 98–27528 Filed 10–13–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 3, 1998. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by October 29, 1998.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Riverside County

Corn Springs, Address Restricted, Desert Center vicinity, 98001286

HAWAII

Honolulu County

Salvation Army Waioli Tea Room, 3016 Oahu Ave., Honolulu, 98001288

Maui County

Wai'ale Drive Bridge, Ka'ahumanu Ave., 0.1 mi. E of Kinipopo St., Wailuku, 98001287

KANSAS

Wabaunsee County

Paxico Historic District, 101–103, 105, 107, 109 Newbury St., Paxico, 98001289

KENTUCKY

Kenton County

Metcalfe—Stephiens House, 5241 Madison Pike, Independence, 98001290

Union County

Saline Island (Caught in the Middle:The Civil War Years on the Lower Ohio River MPS) Ohio R. mi. 865–67;Illinois side, Saline Mines vicinity, 98001291

MARYLAND

Washington County

Wilson School, Rufus Wilson Rd., Clear Spring vicinity, 98001293

Baltimore Independent City

Sydenham Hospital for Communicable Diseases, Argonne Dr., W. of Herring Rd., Baltimore, 98001294

MASSACHUSETTS

Suffolk County

St. Mary's Episcopal Church, 14–16 Cushing Ave., Boston, 98001292

MONTANA

Deer Lodge County

Alpine Apartments (Anaconda MPS), 200 Hickory, Anaconda, 98001299
Eck, Theodore, House (Anaconda MPS), 1217 W. Fourth St., Anaconda, 98001298
Furst, John, House (Anaconda MPS), 1403 W. Third St., Anaconda, 98001296
Matheson, Duncan, House (Anaconda MPS), 1300 W. Third St., Anaconda, 98001295
Stone, Arthur L., and Adelia, House (Anaconda MPS), 704 Oak St., Anaconda, 98001301
Waddell, George, House (Anaconda MPS), 506 W. Third St., Anaconda, 98001300
Zion Swedish Evangelical Lutheran Church (Anaconda MPS), 524 Cedar St., Anaconda, 98001297

NEVADA

Washoe County

Landrum's Hamburger System No. 1, 1300 S. Virginia St., Reno, 98001303

NORTH CAROLINA

Chatham County

Siler City City Hall, 311 N. Second Ave., Siler City, 98001302

TENNESSEE

Davidson County

Hibbettage, The, 2160 Old Hickory Blvd., Nashville, 98001305

Hamilton County

Louise Terrace Apartments, 314 and 316 Walnut St., Chattanooga, 98001306

Knox County

Newman, Capt. James, House (Knoxville and Knox County MPS), 8906 Newman Ln., Knoxville vicinity, 98001304

Robertson County

Sprouse, Granville Babb, House, 205 W. College St., Greenbrier, 98001307

VERMONT

Franklin County

District School No. 8 School (Educational Resources of Vermont MPS), US–7, Georgia, 98001319

VIRGINIA

Augusta County

Mt. Sidney Historic District, Lee Highway, Mt. Sidney School Ln., Pottery Shop Ln., Mt. Sidney, 98001313

Bedford County

Big Otter Mill, VA 122, Bedford vicinity, 98001314

Charlotte County

Salem School, Jct. of Rtes. 608 and 632, Red Oak, 98001309

Fairfax County

''A'' Fort and Battery Hill Redoubt—Camp Early, Balmoral Greens Ave., 1 mi S. of jct. with Compton Rd., Manassas Park vicinity, 98001315

Lancaster County

SIELE (motor yacht), Tides Inn, Carter Creek, Irvington, 98001310

Roanoke County

Johnsville Meetinghouse, 8860 Johnsville Church Rd., Catawba, 98001308

Rockbridge County

Echols Farm, Jct. of VA 130 and 501, Glasgow vicinity, 98001312

Fredericksburg Independent City

Walker—Grant School, Gunnery Rd., bet. Dunmore and Ferdinand Sts., Fredericksburg, 98001311

Martinsville Independent City

Martinsville Historic District, Roughly bounded by VA 457, Danville RR tracks, Clay St., and Market St., Martinsville, 98001317

Petersburg Independent City

Bolling, Anna P., Junior High School, 35 W. Fillmore St., Petersburg, 98001316

Suffolk Independent City

Phillips Farm, 6353 Godwin Blvd., Suffolk, 98001318

[FR Doc. 98–27514 Filed 10–13–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection Under Review; Immigration User Fee.

The Department of Justice, Immigration and Naturalization Service has submitted the following collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 14, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Reinstatement without change of previously approved collection which has expired.*

(2) *Title of the Form/Collection:* Immigration User Fee.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No Agency Form Number. Office of Finance, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The information requested from commercial air carriers, commercial vessel operators, and tour operators is necessary for effective budgeting, financial management, monitoring, and auditing of User Fee collections.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 325 responses at 15 minutes (.25) per response for reporting, in addition to 25 respondents at 10 hours per response for recordkeeping.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 331 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: October 7,1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–27470 Filed 10–13–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection Under Review; Request for the Return of Original Documents(s).

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 14, 1998.

Written comments and suggestions from the public and affected agencies

concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

Type of Information Collection: Reinstatement without change of previously approved collection that has expired.

(2) *Title of the Form/Collection:* Request for the Return of Original Documents(s).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–884. Records Operation, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. The information provided will be used by the INS to determine whether a person is eligible to obtain original document(s) contained in an Alien File.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,500 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: October 7, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–27471 Filed 10–13–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Request to Enforce Affidavit of Financial Support and Intent to Petition for Custody for Pub. L. 97–359 Amerasian.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 29, 1998 at 63 FR 40545, allowing for a 60-day public comment period. One comment was received and addressed by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 13, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Request to Enforce Affidavit of Financial Support and Intent to Petition for Custody for Pub. L. 97–359.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–363. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to determine whether an Affidavit of Financial Support and Intent to Petition for Legal Custody requires enforcement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 30 minutes (.50) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated

public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 7, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–27472 Filed 10–13–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Certificate of Eligibility for Nonimmigrant Student (F–1) Status—For Academic and Lanaguage Students.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 28, 1998 at 63 FR 40317, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 13, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have pratical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Certificate of Eligibility for Nonimmigrant Student (F–1) Status—For Acadmic and Language Students.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–20AB/ID. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form will be used to collect information from nonimmigrant students attending schools in the United States in order that INS can monitor the students' immigration status and ensure that the students do not violate the condition(s) imposed by their nonimmigrant status while attending school.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 210,000 responses at 30 minutes (.50) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection;* 105,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 7, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–27473 Filed 10–13–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Application for Removal.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 28, 1998 at 63 FR 40316, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 13, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the times contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of

information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–243. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information provided on this form allows the INS to determine eligibility for a person's request for removal from the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 41 responses at 10 minutes (.166) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 7 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 7, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–27474 Filed 10–13–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: immigrant Petition by Alien Entrepreneur.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 29, 1998 at 63 FR 40544, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 13, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention; Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Immigrant Petition by Alien Entrepreneur.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–526. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to petition for classification as an alien entrepreneur as provided by sections 121(b)(5) and 162(b) of the Immigration Act of 1990 and section 203(b)(5) of the Immigration and Nationality Act. The information collected on this form will be used by the INS to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 responses at 1.25 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated

public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: October 7, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–27475 Filed 10–13–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Aircraft/Vessel Report.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 28, 1998 at 63 FR 40318, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 13, 1998. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Aircraft/Vessel Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–92. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is part of the manifest requirements of Sections 231 and 251 of the I & N Act and is used by the INS and other agencies for data collection and statistical analysis.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 720,000 responses at 11 minutes (.18) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 129,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: October 7, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–27476 Filed 10–13–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 3, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) 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 each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), 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: Bureau of Labor Statistics.

Title: Contingent Work Supplement to the Current Populations Survey (CPS).

OMB Number: 1220–0153 (reinstatement, with change).

Frequency: One-time.

Affected Public: Individuals or households.

Number of Respondents: 48,000 respondents.

Estimated Time per Respondent: 8 minutes per response.

Total Burden Hours: 6,400 hours.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services: $0.

Description: The contingent work supplement will gather information on the number and characteristics of workers holding jobs expected to last for a limited time (contingent employment). In addition, the supplement will collect information about workers in several alternative employment arrangements.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–27532 Filed 10–13–98; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–139]

Government-Owned Software, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of software for licensing.

SUMMARY: The copyright for the software listed below is assigned to the National Aeronautics and Space Administration, and is available for licensing.

DATE: October 14, 1998.

FOR FURTHER INFORMATION CONTACT: Steve Jones, National Aeronautics and Space Administration, Code CC30, Marshall Space Flight Center, AL 35812, telephone (256) 544–4373.

NASA Case No. MFS–31,303–1: Generalized Fluid System Simulator Program, Version 2.01c. This program analyzes steady-state and transient flows in a complex system, using network modeling techniques to produce a simplified representation of complex multidimensional flow. The networks are modeled using flow branches and nodes, and can range from simple systems consisting of a few nodes and branches to very complex networks containing many flow branches simulating valves, orifices, bends, and turbines.

Dated: October 5, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–27558 Filed 10–13–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–146]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: October 14, 1998.

FOR FURTHER INFORMATION CONTACT: Guy M. Miller, Patent Counsel, Goddard Space Flight Center, Mail Code 750.2, Greenbelt, MD 20771; telephone (301) 286–7351.

NASA Case No. GSC–13,858–1: Rayleigh Scattering for Spacecraft Attitude Sensing (RSAS);

NASA Case No. GSC–13,739–1: Heat Driven Pulse Pump (HDPP);

NASA Case No. GSC–13,939–1: Low Cost GPS Receiver for Telemetry and Cell Phone Applications;

NASA Case No. GSC–13,863–1: Integrated Reaction Wheel Assembly;

NASA Case No. GSC–11,248–1: Quantitative Risk Assessment Software (QRAS) System;

NASA Case No. GSC–13,909–1: Two-dimensional Empirical Mode Decomposition and Hilbert Spectral Analysis for Image Processing

Dated: October 5, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–27565 Filed 10–13–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–147]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: October 14, 1998.

FOR FURTHER INFORMATION CONTACT: Beth Vrioni, Patent Counsel, Kennedy Space Center, Mail Stop MM-E, Kennedy Space Center, FL 32899; telephone (407) 867–6225.

NASA Case No. KSC–11957: Reactive Material Placement for Ground-Water Treatment.

Dated: October 5, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–27566 Filed 10–13–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–149]

NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Aviation Safety Reporting System Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Aviation Safety Reporting System Subcommittee meeting.

DATES: Tuesday, November 17, 1998, 9:00 a.m. to 5:00 p.m. and Wednesday, November 18, 1998, 9:00 a.m. to 5:00 p.m.

ADDRESSES: Hilton Hotel—Monterey, 1000 Aguajito Road, Monterey, California.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Connell, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–6654.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

—Report on Status of Aviation Safety Reporting System

—Report on Status of Aviation Performance Measuring System Program

—Report on Status of NASA Aviation Safety Program Progress in ASRS/APMS

—Update and Progress of Recommendations from March 1998 Meeting
—Resolution of Outstanding Issues and Items from March 1998 Meeting

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–27567 Filed 10–13–98; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–140]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Associate Technical Management Corporation of Texarkana, Arkansas, has applied for an exclusive license to practice the invention described and claimed in NASA Case No. SSC–00049, entitled ''Plant Chlorophyll Content Imager,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Kennedy Space Center.

DATES: Responses to this notice must be received by December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Beth A. Vrioni, John F. Kennedy Space Center, Mail Code MM–E, Kennedy Space Center, FL 32899, telephone (407) 867–6225.

Dated: October 7, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–27559 Filed 10–13–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–143]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Global Positioning Solutions, Inc. of Inverness, Mississippi has applied for an exclusive license to practice the invention described and claimed in NASA Case No. SSC–00050, entitled ''Plant Chlorophyll Content Meter,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Kennedy Space Center.

DATES: Responses to this notice must be received by December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Beth A. Vrioni, John F. Kennedy Space Center, Mail Code MM-E, Kennedy Space Center, FL 32899, telephone (407) 867–6225.

Dated: October 7, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–27562 Filed 10–13–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–145]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Milestone Technology, Inc., of Blackfoot, Idaho has applied for an exclusive license to practice the invention described and claimed in NASA Case No. SSC–00050, entitled ''Plant Chlorophyll Content Meter,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Kennedy Space Center.

DATES: Responses to this notice must be received by December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Beth A. Vrioni, John F. Kennedy Space Center, Mail Code MM–E, Kennedy Space Center, FL 32899, telephone (407) 867–6225.

Dated: October 7, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–27564 Filed 10–13–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–141]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Skyview Technologies L.L.C. of Walker, Louisiana has applied for an exclusive license to practice the invention described and claimed in NASA Case No. SSC–00049, entitled ''Plant Chlorophyll Content Imager,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Kennedy Space Center.

DATES: Responses to this notice must be received by December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Beth A. Vrioni, John F. Kennedy Space Center, Mail Code MM–E, Kennedy Space Center, FL 32899, telephone (407) 867–6225.

Dated: October 7, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–27560 Filed 10–13–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–144]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Solar Light Company of Philadelphia, Pennsylvania has applied for an exclusive license to practice the invention described and claimed in NASA Case No. SSC–00050, entitled ''Plant Chlorophyll Content Meter,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Kennedy Space Center.

DATES: Responses to this notice must be received by December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Beth A. Vrioni, John F. Kennedy Space

Center, Mail Code MM–E, Kennedy Space Center, FL 32899, telephone (407) 867–6225.

Dated: October 7, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–27563 Filed 10–13–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–142]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Spectrum Technologies, Inc. of Plainfield, Illinois has applied for an exclusive license to practice the invention described and claimed in NASA Case No. SSC–00050, entitled ''Plant Chlorophyll Content Meter,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Kennedy Space Center.

DATES: Responses to this notice must be received by December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Beth A. Vrioni, John F. Kennedy Space Center, Mail Code MM–E, Kennedy Space Center, FL 32899, telephone (407) 867–6225.

Dated: October 7, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–27561 Filed 10–13–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

General Records Schedule (GRS) 20

AGENCY: National Archives and Records Administration.

ACTION: Notice regarding General Records Schedule (GRS) 20.

SUMMARY: In accordance with the Memorandum Opinion and Order of the United States District Court for the District of Columbia, dated September 29, 1998, in Public Citizen v. Carlin, Civil No. 96–2840, the Archivist of the United States issues the following statement:

The District Court's injunction of April 9, 1998, prohibiting the Archivist from issuing **Federal Register** notices, bulletins, directives or other official statements of any kind stating that General Records Schedule 20 currently authorizes the disposition of electronic records, remains in effect.

The District Court has further authorized the Archivist to state that a federal agency may continue to follow its present disposition practices for electronic records until (1) the agency has submitted and received approval from the National Archives and Records Administration (NARA) on a Request for Records Disposition Authority; (2) notification by NARA that the appeal in this case has been resolved and NARA has provided further guidance as a result of the appellate court's decision; or (3) further Order of the District Court.

FOR FURTHER INFORMATION CONTACT: Michael Miller, Modern Records Program (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, (301) 713–7110, or NARA's web site at <http://www/nara/gov/records/grs20/index.html>.

Dated: October 8, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–27513 Filed 10–13–98; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. STN 50–530]

Arizona Public Service Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–74, issued to Arizona Public Service Company (APS or the licensee) for the Palo Verde Nuclear Generating Station (PVNGS) Unit 3 located in Maricopa County, Arizona.

The proposed amendment would clarify the power level threshold at which certain reactor protective system (RPS) instrumentation trips must be enabled and may be bypassed, and clarify that this level is a percentage of the neutron flux at rated thermal power (RTP). The bypass power level, 1E–4% RTP, would be specified as logarithmic power instead of thermal power. The intent of (and the implementation of) the 1E–4% RTP RPS instrumentation bypass threshold level in the technical specifications (TS) has always been that this power level is neutron power, which would be indicated by logarithmic power, and is not the heat transfer from the reactor core to the coolant, including decay heat, which is the thermal power definition in the TS.

This exigent situation for PVNGS Unit 3 exists because the current ''THERMAL POWER'' and ''RATED THERMAL POWER'' (RTP) wording in the PVNGS TS, when interpreted literally in its application in TS Table 3.3.1–1 footnote (b), could prevent the resumption of operation of the unit following its current refueling outage. This exigent situation could not have been avoided because, although this wording has existed in the PVNGS TS since initial licensing, it was not identified as a potential source of conflict until APS learned on or about September 24, 1998, of emergency TS amendment requests by Southern California Edison Company, for the San Onofre Nuclear Generating Station, and Entergy Corporation, for the Waterford Nuclear Station.

The literal interpretation of ''THERMAL POWER'' in TS Table 3.3.1–1 footnote (b) could prevent the return to power operation of a shutdown reactor. This footnote specifies that the local power density—high trip and departure from nucleate boiling ratio-low trip may be bypassed when thermal power is less than 1E–4% RTP, and that the bypass must be automatically removed when thermal power is at or above 1E–4% RTP. Since thermal power, as defined in TS Section 1.1, includes decay heat, and decay heat would remain above 1E–4% RTP for a considerable time after shutdown, the literal interpretation of thermal power would effectively prevent the local power density and departure from nucleate boiling ratio trips from being bypassed during a normal outage, which would prevent low power testing and subsequent startup.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a

significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would replace the words ''THERMAL POWER'' with ''logarithmic power'' for the 1E–4% rated thermal power (RTP) level threshold in Table 3.3.1–1 footnotes (a) and (b), surveillance requirement SR 3.3.1.7 Note 2, and Table 3.3.2–1 footnote (d) for the reactor protective system (RPS) instrumentation. The purpose of the 1E–4% RTP threshold is to (1) specify the power, below which, the logarithmic power level trip is required to be operable and surveilled, and (2) specify the power, above which, the local power density (LPD) and departure from nucleate boiling ratio (DNBR) trips are required to be operable. For these purposes, the appropriate power threshold should be logarithmic power, which is the power indicated on the logarithmic nuclear instrumentation, and not thermal power. Thermal power is defined in TS section 1.1 as the total reactor heat transfer rate to the reactor coolant, and would include decay heat. Thermal power would therefore not drop to 1E–4% RTP for a considerable period of time after shutdown, and would not provide the plant protective function correlation required at 1E–4% neutron RTP. However, logarithmic power, which is indicated by neutron flux, does provide the plant protective function correlation required at 1E–4% neutron RTP for the required reactor trips as required by safety analyses. The logarithmic power level of 1E–4% neutron RTP nominally correlates to the neutron flux measured by the excore neutron instrumentation that is 1E–4% of the neutron flux at 100% RTP (3876 MWt) measured by the excore neutron instrumentation.

The proposed editorial amendment would also replace ''RTP'' with ''NRTP,'' in Table 3.3.1–1 footnotes (a) and (b), surveillance requirement SR 3.3.1.7 Note 2, and Table 3.3.2–1 footnotes (c) and (d). A definition would be added for NRTP (nuclear rated thermal power) in section 1.1 as the indicated neutron flux at RTP. These editorial clarifications will reflect the fact that the logarithmic power level of 1E–4% is not a percentage of the ''total reactor core heat transfer rate to the reactor coolant of 3876 MWt,'' as RTP is defined in section TS 1.1, but is instead a percentage of the indicated neutron flux at RTP.

An editorial change is also proposed to specify NRTP as the ''ALLOWABLE VALUE'' parameter for the high logarithmic power level trip setpoint in Table 3.3.1–1 to correct the unintended omission of the trip setpoint parameter during preparation of the Improved Technical Specifications. This change will fill in the omitted parameter with the correct parameter of NRTP that is also consistent with the high logarithmic power trip setpoint parameter in Table 3.3.2–1.

These changes do not constitute a physical change to the Unit or make changes in the RPS instrumentation setpoints, system logic or manual actuation. In addition, these changes do not alter physical plant equipment or the way in which plant equipment is operated. This change is editorial in that it corrects the TS wording to match the appropriate power parameter that was originally intended and required by safety analyses, and that has been implemented since original licensing of the PVNGS plants. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

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 would replace the words ''THERMAL POWER'' with ''logarithmic power'' for the 1E–4% RTP level threshold in Table 3.3.1–1 footnotes (a) and (b), surveillance requirement SR 3.3.1.7 Note 2, and Table 3.3.2–1 footnote (d) for the RPS instrumentation. The purpose of the 1E–4% RTP threshold is to (1) specify the power, below which, the logarithmic power level trip is required to be operable and surveilled, and (2) specify the power, above which, the LPD and DNBR trips are required to be operable. For these purposes, the appropriate power threshold should be logarithmic power, which is the power indicated on the logarithmic nuclear instrumentation, and not thermal power. Thermal power is defined in TS section 1.1 as the total reactor heat transfer rate to the reactor coolant, and would include decay heat. Thermal power would therefore not drop to 1E–4% RTP for a considerable period of time after shutdown, and would not provide the plant protective function correlation required at 1E–4% neutron RTP. However, logarithmic power, which is indicated by neutron flux, does provide the plant protective function correlation required at 1E–4% neutron RTP for the required reactor trips as required by safety analyses.

The proposed editorial amendment would also replace ''RTP'' with ''NRTP,'' in Table 3.3.1–1 footnotes (a) and (b), surveillance requirement SR 3.3.1.7 Note 2, and Table 3.3.2–1 footnotes (c) and (d). A definition would be added for NRTP (nuclear rated thermal power) in section 1.1 as the indicated neutron flux at RTP. These editorial clarifications will reflect the fact that the logarithmic power level of 1E–4% is not a percentage of the ''total reactor core heat transfer rate to the reactor coolant of 3876 MWt,'' as RTP is defined in section TS 1.1, but is instead a percentage of the indicated neutron flux at RTP.

An editorial change is also proposed to specify NRTP as the ''ALLOWABLE VALUE'' parameter for the high logarithmic power level trip setpoint in Table 3.3.1–1 to correct the unintended omission of the trip setpoint parameter during preparation of the Improved Technical Specifications. This change will fill in the omitted parameter with the correct parameter of NRTP that is also consistent with the high logarithmic power trip setpoint parameter in Table 3.3.2–1.

These changes do not constitute a physical change to the Unit or make changes in the RPS instrumentation setpoints, system logic or manual actuation. In addition, these changes do not alter physical plant equipment or the way in which plant equipment is operated. The proposed change does not introduce any new modes of plant operation or new accident precursors. This change is editorial in that it corrects the TS wording to match the appropriate power parameter that was originally intended and required by safety analyses, and that has been implemented since original licensing of the PVNGS plants. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change would replace the words ''THERMAL POWER'' with ''logarithmic power'' for the 1E–4% RTP level threshold in Table 3.3.1–1 footnotes (a) and (b), surveillance requirement SR 3.3.1.7 Note 2, and Table 3.3.2–1 footnote (d) for the RPS instrumentation. The purpose of the 1E–4% RTP threshold is to (1) specify the power, below which, the logarithmic power level trip is required to be operable and surveilled, and (2) specify the power, above which, the LPD and DNBR trips are required to be operable. For these purposes, the appropriate power threshold should be logarithmic power, which is the power indicated on the logarithmic nuclear instrumentation, and not thermal power. Thermal power is defined in TS section 1.1 as the total reactor heat transfer rate to the reactor coolant, and would include decay heat. Thermal power would therefore not drop to 1E–4% RTP for a considerable period of time after shutdown, and would not provide the plant protective function correlation required at 1E–4% neutron RTP. However, logarithmic power, which is indicated by neutron flux, does provide the plant protective function correlation required at 1E–4% neutron RTP for the required reactor trips as required by safety analyses.

The proposed editorial amendment would also replace ''RTP'' with ''NRTP,'' in Table 3.3.1–1 footnotes (a) and (b), surveillance requirement SR 3.3.1.7 Note 2, and Table 3.3.2–1 footnotes (c) and (d). A definition would be added for NRTP (nuclear rated thermal power) in section 1.1 as the indicated neutron flux at RTP. These editorial clarifications will reflect the fact that the logarithmic power level of 1E–4% is not a percentage of the ''total reactor core heat transfer rate to the reactor coolant of 3876 MWt,'' as RTP is defined in section TS 1.1, but is instead a percentage of the indicated neutron flux at RTP.

An editorial change is also proposed to specify NRTP as the ''ALLOWABLE VALUE'' parameter for the high logarithmic power level trip setpoint in Table 3.3.1–1 to correct the unintended omission of the trip setpoint parameter during preparation of the

Improved Technical Specifications. This change will fill in the omitted parameter with the correct parameter of NRTP that is also consistent with the high logarithmic power trip setpoint parameter in Table 3.3.2–1.

These changes do not constitute a physical change to the Unit or make changes in the RPS instrumentation setpoints, system logic or manual actuation. In addition, these changes do not alter physical plant equipment or the way in which plant equipment is operated. This change is editorial in that it corrects the TS wording to match the appropriate power parameter that was originally intended and required by safety analyses, and that has been implemented since original licensing of the PVNGS plants. Therefore, this 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.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 13, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S.

Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 6, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Phoenix Public Library, 1221 N. Central Avenue, Phoenix, Arizona 85004.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 8th day of October 1998.

Mel B. Fields,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–27654 Filed 10–13–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–313 and 50–368]

Entergy Operations, Inc. (Arkansas Nuclear One, Units 1 and 2); Exemption

I

Entergy Operations, Inc., (the licensee) is the holder of Facility Operating License Nos. DPR–51 and NPF–6, which authorize operation of Arkansas Nuclear One, Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors at the licensee's site located in Pope County, Arkansas.

II

Section 70.24 of Title 10 of the Code of Federal Regulations, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored and provides that (1) the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means to identify quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for SNM used or to be used in the reactor. Paragraph (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The SNM that could be assembled into a critical mass at ANO–1 and ANO–2 is in the form of nuclear fuel; the quantity of SNM other than fuel that is stored on site in any given location is small enough to preclude achieving a critical mass. The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at ANO–1 and ANO–2, and has determined that it is extremely unlikely for such an accident to occur if the licensee meets the following seven criteria:

1. Only one new assembly is allowed out of a shipping cask or storage rack at one time.
2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water.
3. If optimum moderation occurs at low moderator density, then the k-effective does not exceed 0.98, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with a moderator at the density corresponding to optimum moderation.
4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U–235 enrichment and flooded with pure water.
5. The quantity of forms of special nuclear material, other than nuclear fuel, that are stored on site in any given area is less than the quantity necessary for a critical mass.
6. Radiation monitors, as required by General Design Criterion 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.
7. The maximum nominal U–235 enrichment is limited to 5.0 weight percent.

By letter dated October 31, 1997, the licensee requested an exemption from 10 CFR 70.24. In this request the licensee addressed the seven criteria given above. The Commission's technical staff has reviewed the licensee's submittals and has determined that the applicable criteria are satisfied for ANO–1 and ANO–2. Therefore, the staff has determined that it is extremely unlikely for an inadvertent criticality to occur in SNM handling or storage areas at ANO–1 and ANO–2.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of SNM, personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely

that such an accident could occur; furthermore, the licensee has radiation monitors, as required by General Design Criterion 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality, together with the licensee's adherence to General Design Criterion 63, constitute good cause for granting an exemption from the requirements of 10 CFR 70.24.

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Entergy Operations, Inc., an exemption from the requirements of 10 CFR 70.24 for ANO–1 and ANO–2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (63 FR 51380).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 6th day of October 1998.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–27507 Filed 10–13–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–80 and DPR–82, issued to the Pacific Gas and Electric Company (PG&E or the licensee), for operation of the Diablo Canyon Power Plant, Units 1 and 2 (DCPP), located in San Luis Obispo County, California.

The proposed amendment, requested by the licensee in a letter dated June 2, 1997, as supplemented by letters dated January 9, June 25, August 5, and August 28, 1998, would represent a full conversion from the current Technical Specifications (CTS) to a set of improved Technical Specifications (ITS) based on NUREG–1431, ''Standard Technical Specifications, Westinghouse Plants,'' Revision 1, dated April 1995. NUREG–1431 has been developed by the Commission's staff through working groups composed of both NRC staff members and industry representatives, and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve the Technical Specifications for nuclear power plants. As part of this submittal, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the CTS, and, using NUREG–1431 as a basis, proposed an ITS for CW. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change that was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

This conversion is a joint effort in concert with three other utilities: Union Electric Company for Callaway Plant, Unit 1 (Docket No. 50–483); TU Electric for Comanche Peak Steam Electric Station, Units 1 and 2 (Docket Nos. 50–445 and 50–446); and Wolf Creek Nuclear Operating Corporation for Wolf Creek Generating Station (Docket No. 50–482). It is a goal of the four utilities to make the ITS for all the plants as similar as possible. This joint effort includes a common methodology for the licensees in marking-up the CTS and NUREG–1431 Specifications, and the NUREG–1431 Bases, that has been accepted by the staff. This includes the convention that, if the words in the CTS specification are not the same as the words in the ITS specification but they mean the same or have the same requirements as the words in the ITS specification, the licensee does not indicate or describe a change to the CTS.

This common methodology is discussed at the end of Enclosure 2, ''Mark-Up of Current TS''; Enclosure 5a, ''Mark-Up of NUREG–1431 Specifications''; and Enclosure 5b, ''Mark-Up of NUREG–1431 Bases'', for each of the 14 separate ITS sections that were submitted with the licensee's application. For each of the 14 ITS sections, there is also the following: Enclosure 1, the cross reference table connecting each CTS specification (i.e., limiting condition for operation, required action, or surveillance requirement) to the associated ITS specification, sorted by both CTS and ITS Specifications; Enclosure 3, the description of the changes to the CTS section and the comparison table showing which plants (of the four licensees in the joint effort) that each change applies to; Enclosure 4, the no significant hazards consideration (NHSC) of 10 CFR 50.91 for the changes to the CTS with generic NHSCs for administrative, more restrictive, relocation, and moving-out-of-CTS changes, and individual NHSCs for less restrictive changes and with the organization of the NHSC evaluation discussed in the beginning of the enclosure; and Enclosure 6, the descriptions of the differences from NUREG-1431 specifications and the comparison table showing which plants (of the four licensees in the joint effort) that each difference applies to. Another convention of the common methodology is that the technical justifications for the less restrictive changes are included in the NHSCs.

The licensee has categorized the proposed changes to the CTS into four general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes and less restrictive changes.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operating requirement. The reformatting, renumbering and rewording process reflects the attributes of NUREG–1431 and does not involve technical changes to the existing TS. The proposed changes include (a) providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information that must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1431 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in TS. Relocated changes are those current TS requirements that do not satisfy or fall within any of the four criteria specified in the Commission's policy statement and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in Attachment 2 to its June 2, 1997, submittal, which is entitled, ''General Description and Assessment.'' The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TS to administratively controlled documents such as the quality assurance program, the Final Safety Analysis Report (FSAR), the ITS BASES, the Equipment Control Guidelines (ECG), the Technical Requirements Manual (TRM) that is incorporated by reference in the FSAR, the Core Operating Limits Report (COLR), the Offsite Dose Calculation Manual (ODCM), the Inservice Testing (IST) Program, or other licensee-controlled documents. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms, and may be made without prior NRC review and approval. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures that are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

More restrictive changes are those involving more stringent requirements compared to the CTS for operation of the facility. These more stringent requirements do not result in operation that will alter assumptions relative to the mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems, and components described in the safety analyses. For each requirement in the CTS that is more restrictive than the corresponding requirement in NUREG–1431 that the licensee proposes to retain in the ITS, they have provided an explanation of why they have concluded that retaining the more restrictive requirement is desirable to ensure safe operation of the facility because of specific design features of the plant.

Less restrictive changes are those where CTS requirements are relaxed or eliminated, or new plant operational flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TS may be appropriate. In most cases, relaxations previously granted to individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the Improved Standard Technical Specifications. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design will be reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431, thus providing a basis for these revised TS, or if relaxation of the requirements in the current TS is warranted based on the justification provided by the licensee.

These administrative, relocated, more restrictive, and less restrictive changes to the requirements of the CTS do not result in operations that will alter assumptions relative to mitigation of an analyzed accident or transient event.

In addition to the proposed changes solely involving the conversion, there are also changes proposed that are different than the requirements in both the CTS and the improved Standard Technical Specifications (NUREG–1431). These proposed beyond-scope issues to the ITS conversion are as follows:

1. ITS 1.1—revised definition of channel functional test.
2. ITS 3.1.7—a new action added to more than one digital rod position indicator per group inoperable.
3. ITS Surveillance Requirement (SR) 3.2.1.2—add frequency of once within 24 hours for verifying the axial heat flux hot channel factor is within limit after achieving equilibrium conditions.
4. ITS SR 3.2.2.1 note—revise the allowance to increase power until a power distribution is obtained after equilibrium is achieved.
5. ITS Table 3.3.8–1—does not include gaseous activity fuel handling building ventilation mode change functions.
6. ITS Limiting Condition for Operation (LCO) 3.4.1.2—revise appliability note to allow a longer time, up to 4 hours, for injecting into the reactor coolant system.
7. ITS LCO 3.5.5, Action A—increases the reactor coolant pump seal injection flow completion time from 4 to 72 hours for the action.
8. ITS SR 3.6.3.7—note added to not require leak rate test of containment purge valves with resilient seals when penetration flow path is isolated by leak-tested blank flange.
9. Actions and table for ITS LCO 3.7.1—changes to main steam safety valves (MSSVs) to reflect Westinghouse Nuclear Safety Letter 94–01, revising acceptable power levels when MSSVs are inoperable.
10. ITS SR 3.7.8.1—added alternative verification of operability in that motive force is available for repositioning auxiliary saltwater valves.
11. ITS 3.8.1.10—revises the generator voltage during and following a load rejection from not exceeding 4580 volts to less than or equal to 6200 volts.
12. ITS 5.6.5—adds refueling boron concentration and shutdown margin limits to the core operating limits report.
13. ITS 5.7—changes limits for high radiation areas to reflect the requirements of revised 10 CFR Part 20.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 12, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the

results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Christopher J. Warner, Esq., Pacific Gas & Electric Company, Post Office Box 7442, San Francisco, California 94120, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 2, 1997, as supplemented by letters dated January 9, June 25, August 5, and August 28, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Departments, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 7th day of October 1998.

For the Nuclear Regulatory Commission.

Steven D. Bloom,

Project Manager Project Directorate IV–2 Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–27508 Filed 10–13–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–352 and 50–353]

Philadelphia Electric Company Limerick Generating Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–39 and NPF–85, issued to Philadelphia Electric Company (the licensee), for operation of the Limerick Generating Station (LGS), Units 1 and 2, located in Montgomery and Chester Counties, Pennsylvania.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Facility Operating License Nos. NPF–39 and NPF–85 and the Technical Specifications (TSs) and the Environmental Protection Plans (EPPs) appended to Facility Operating Licenses Nos. NPF–39 and NPF–85 for LGS, Units 1 and 2. Specifically, the proposed action would amend the licenses to reflect the change in the licensee's name from Philadelphia Electric Company to PECO Energy Company.

The proposed action is in accordance with the licensee's application for amendment dated February 25, 1997, as supplemented September 8 and November 18, 1997, and January 8 and July 2, 1998.

The Need for the Proposed Action

The proposed action is needed to have the licenses accurately reflect the legal name of the licensee, which changed on January 1, 1994.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed changes to the licenses, and EPPs. By letter dated December 21, 1993, the Philadelphia Electric Company informed the NRC that effective January 1, 1994, it was changing its name to PECO Energy Company. PECO Energy Company was not to be a new corporation, or a successor corporation to Philadelphia Electric Company, but it was to remain and continue to be the same company with a different name. As a result, contracts, agreements, obligations, licenses, and permits relating to Philadelphia Electric Company would continue to be legal, valid, and binding with respect to PECO Energy Company.

This proposed change should have no effect or impact on the regulatory obligations of the licensee under the laws and regulations administered by the Commission, or the licensee's qualifications to hold the license, and should not change in any way the business of the licensee with the Commission. There should be no change in the safety and security of the public from the name change and the applicable antitrust condition will continue to apply.

The proposed name change is administrative in nature, and will not affect plant operations. Thus, the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed name change is administrative in nature and does not involve any physical features of the plant. Thus, it does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action (no-action alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for LGS, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on July 23, 1998, the staff consulted with the Pennsylvania State official, Mr. David Ney, of the Pennsylvania Department of Environmental Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated February 25, 1997, as supplemented September 8 and November 18, 1997, and January 8 and July 2, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 7th day of October 1998.

For the Nuclear Regulatory Commission.

Bartholomew C. Buckley,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–27509 Filed 10–13–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on November 4, 1998, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, November 4, 1998—10:00 a.m.–12:00 Noon

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the qualifications of candidates for appointment to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: October 7, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–27506 Filed 10–13–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of October 12, 19, 26, and November 2, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed

MATTERS TO BE CONSIDERED:

Week of October 12—Thursday, October 15

11:30 a.m. Affirmative Session (Public Meeting) (if needed)

Week of October 19—Tentative

There are no meetings scheduled for the week of October 19, 1998.

Week of October 26—Tentative—Wednesday, October 28

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

Week of November 2—Tentative—Monday, November 2

2:00 p.m. Briefing on Improvements to the Plant Assessment Process (Public Meeting)

3:30 p.m. Affirmation Session (Public Meeting) (if needed)

* 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: Bill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

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 it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). 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 wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: October 9, 1998.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–27680 Filed 10–9–98; 2:47 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23479; File No. 812–11116]

American Fidelity Assurance Company, et al.; Notice of Application

October 6, 1998.

AGENCY: Securities and Exchange Commission (the ''SEC'' or the ''Commission'').

ACTION: Notice of application for an order pursuant to Section 17(b) of the Investment Company Act of 1940 (the ''1940 Act'').

SUMMARY OF APPLICATION: The Applicants seek an order pursuant to Section 17(b) of the 1940 Act exempting the Applicants from the provisions of Section 17(a) of the 1940 Act, to the extent necessary to permit the transfer of securities and other instruments held by Account A to the Dual Strategy Fund in exchange for shares of the Dual Strategy Fund in connection with the reorganization of Account A (the ''Reorganization'') that will change Account A from a management investment company to a unit investment trust (Continuing Account A).

APPLICANTS: American Fidelity Assurance Company (''American Fidelity''), American Fidelity Variable Annuity Fund A (''Account A'') and American Fidelity Dual Strategy Fund, Inc. (the ''Dual Strategy Fund'') (collectively, the ''Applicants'').

FILING DATE: The application was filed on April 30, 1996, and amended and restated on August 6, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on November 2, 1998, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, Stephen P. Garrett, Senior Vice President, American Fidelity Assurance Company, 2000 Classen Center, Oklahoma City, Oklahoma 73106.

FOR FURTHER INFORMATION CONTACT: Megan L. Dunphy, Attorney, or Mark Amorosi, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202)942–8090).

Applicants' Representations

1. American Fidelity, a stock life insurance company incorporated in Oklahoma, is the sponsoring insurance company for Account A and will become the depositor of Continuing Account A pursuant to the Reorganization.

2. Account A is a separate account of American Fidelity that was established in 1968 to fund variable annuity contracts (''Contracts''). Account A is registered under the 1940 Act as an open-end diversified management investment company and consists of a diversified portfolio of primarily equity securities. The primary investment objective of Account A is long-term capital growth. The secondary investment objective is the production of current income. American Fidelity serves as the investment adviser to Account A and has retained Lawrence W. Kelly & Associates, Inc. (''Kelly'') and Todd Investment Advisors, Inc. (''Todd Investment'') to act as sub-advisers for Account A.

3. The Dual Strategy Fund is a registered open-end, diversified management investment company, established as a Maryland corporation on March 18, 1998. Immediately after the Reorganization, the Dual Strategy Fund will consist solely of the portfolio of securities and other instruments received by it from Account A pursuant to the Reorganization. The Dual Strategy Fund initially will offer its shares solely to Continuing Account A as a funding vehicle for the Contracts supported by Continuing Account A. In the future, the Dual Strategy Fund may offer its shares to another American Fidelity separate account supporting other variable annuity contracts.

4. The primary investment objective of the Dual Strategy Fund is long-term capital growth and its secondary investment objective is production of current income. Pursuant to an investment advisory agreement and subject to the authority of the Dual Strategy Fund's Board of Directors, American Fidelity will serve as the Dual Strategy Fund's investment adviser and will retain Kelly and Todd Investment to serve as its subadvisers.

5. As part of the Reorganization, Continuing Account A, will be renamed American Fidelity Separate Account A, will be registered under the 1940 Act as a unit investment trust. Continuing Account A will invest exclusively in shares of the Dual Strategy Fund.

6. Applicants state that only one type of Contract has been offered through Account A, a group variable annuity contract issued by American Fidelity for use by employers and self-employed persons in connection with certain tax-qualified group retirement plans. The Contract provides for, among other things: (a) four monthly payout options beginning at any time elected by a Contract participant; (b) certain minimum initial and subsequent purchase payments; and (c) a death

benefit payable if the participant dies before the commencement of annuity payments.

7. American Fidelity deducts transaction expenses from each purchase payment made under the Contract (3% for front-end sales load, .25% for administrative expense, and .75% for minimum death expense), a per payment charge of $.50 and any applicable premium taxes. Under each Contract, there are daily deduction from the assets of Account A made for mortality risk equal to an annual rate of .85% and for expense risk equal to an annual rate of .11025%. An investment management charge of .50% also is deducted annually. There is a one time Contract fee of $15.00 and there is no surrender or withdrawal charge imposed.

The Proposed Reorganization

1. The Board of Directors of American Fidelity, the Board of Managers of Account A, and the Board of Directors of the Dual Strategy Fund, including a majority of the disinterested members of each of the latter two boards, have approved an Agreement and Plan of Reorganization (the ''Reorganization Agreement'') and have each adopted resolutions authorizing the restructuring of Account A from a management investment company into a unit investment trust investing exclusively in the Dual Strategy Fund and the transfer of the portfolio assets and related liabilities of Account A to the Dual Strategy Fund at net asset value in exchange for shares of the Dual Strategy Fund of equal value. The Dual Strategy Fund will mirror the investment and policies of Account A. The membership of the Board of Managers of Account A is the same as that of the Board of Directors of the Dual Strategy Fund. The annuity features of the Contracts will not be affected by the Reorganization.

2. In connection with the approval of the Reorganization Agreement, a disinterested majority of the Board of Managers of Account A and the Board of Directors of the Dual Strategy Fund determined that the Reorganization would be in the best interests of Account A and the Dual Strategy Fund and that the interests of existing Contract owners would not be diluted as a result of the Reorganization. The Reorganization is subject to be the consideration and approval of the Contract owners and participants of Account A.

3. At the effective time of the Reorganization, American Fidelity will transfer the portfolio assets and related liabilities of Account A to the Dual Strategy Fund in exchange for shares of the Dual Strategy Fund of equal value. American Fidelity will record shares issued by the Dual Strategy Fund as assets of Continuing Account A. The total net assets of Account A will be determined, in the customary manner, as of the business day immediately preceding the effective time of the Reorganization. The number of Dual Strategy Fund shares issued will be determined by dividing the value of the net portfolio assets to be transferred from Account A by the net asset value per share of the Dual Strategy Fund. Both determinations will be made in accordance with Section 22(c) of the Act and Rule 22c–1. Immediately following the Reorganization, a Contract owner's interest in Continuing Account A will be equal to its former interest in Account A. American Fidelity will take all action necessary to insure that such interest in Continuing Account A immediately following the effective time of the Reorganization is duly and validly recorded in the individual account records of Contract participants.

4. Applicants expect to use the Dual Strategy Fund as an underlying investment medium for Continuing Account A and other American Fidelity separate accounts funding variable annuity contracts. As a result of its increase in size, the Dual Strategy Fund should experience administrative efficiencies and economies of scale, and should be able to satisfy diversification requirements more easily.

5. The Dual Strategy Fund will have the same investment objectives, substantially the same investment policies and restrictions, the same Board of Directors and the same investment adviser and sub-advisers as Account A, provided such arrangements are approved by the Account A Contract owners and participants. The Applicants represent that all the assets to be acquired by the Dual Strategy Fund in the Reorganization will be suitable investments for the Dual Strategy Fund. Further, the parties do not anticipate that there will be any need to liquidate any portfolio securities held by Account A in order to complete the Reorganization. If such a need should arise, American Fidelity would bear any associated transaction costs of the liquidation.

6. American Fidelity will bear all of the costs of the Reorganization. The Reorganization will not affect the total amount of fees and charges assessed, directly or indirectly, under the Contracts. The Dual Strategy Fund will incur certain operating expenses in addition to the management and investment advisory fee. To ensure that annual expenses to be charged against the Contracts by Continuing Account A plus the Dual Strategy Fund's expenses will not be greater in amount than the annual expenses that would have been charged by Account A had the Reorganization not occurred, American Fidelity will bear all of the Dual Strategy Fund's expenses of a type or in an amount which would not have been borne by Account A had the Reorganization not occurred.

7. Following the Reorganization, Contract owners will be charged the same fees and expenses that applied before the Reorganization, except that American Fidelity will receive the fee for its management and investment advisory services from the Dual Strategy Fund, and there will be no such charge by Continuing Account A. The management and investment advisory fee, brokerage fees and commissions, other investment transaction expenses and taxes, if any, will be expenses borne by the Dual Strategy Fund, and they will be reflected in the net asset value per share of the Dual Strategy Fund. All other expenses incurred by the Dual Strategy Fund, such as custodial fees, fees of disinterested directors, costs of meetings of shareholders, legal and accounting expenses, reporting costs and registration fees, will be borne by American Fidelity and will not be reflected in the Dual Strategy Fund's net asset value.

8. Following the Reorganization, American Fidelity will offer each Contract owner pursuant to instructions from participants, the opportunity to instruct American Fidelity in voting the Dual Strategy Fund shares attributable to that Contract owner. American Fidelity will vote shares of the Dual Strategy Fund held by Continuing Account A for which no voting instructions have been received in the same proportion as those for which instructions have been received.

Applicants' Legal Analysis

1. Section 17(a) of the 1940 Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, from selling or purchasing any security or other property to or from such registered investment company. Section 17(b) of the 1940 Act authorizes the Commission to grant an order exempting a transaction otherwise prohibited by Section 17(a) of the 1940 Act if evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with

the policy of each registered investment company concerned; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

2. Each Applicant may be deemed to be an affiliated person of the other Applicants or an affiliated person of an affiliated person by virtue of being under the common control of American Fidelity, and the Reorganization may be deemed to entail the purchase or sale of securities or other property by or between Applicants. Accordingly, Account A's sale of its portfolio assets to the Dual Strategy Fund and the Dual Strategy Fund's purchase of those assets from Account A may be prohibited by Section 17(a) of the 1940 Act absent an exemptive order permitting the purchase and sale transaction.

3. Rule 17a–8 under the 1940 Act provides exemptive relief for sales of substantially all of the assets of one registered investment company to another if such companies are affiliated solely because of common directors, officers, or investment advisers. Because of the various relationships among them, Applicants state that they may not be able to rely on Rule 17a–8 in connection with the Reorganization. Applicants state that they intend to conform to the conditions set forth in Rule 17a–8, including the requirement that a majority of the independent directors of the Board of Managers of Account A and a majority of the independent directors of the Board of Directors of the Dual Strategy Fund make the determinations prescribed by Rule 17a–8.

4. Applicants maintain that the proposed Reorganization is in the best interests of Account A, to the extent the Dual Strategy Fund is used to fund other separate accounts. Applicants state that Contract owners and participants will benefit from administrative efficiencies and economies of scale, particularly with respect to the level of fixed administrative expenses. Applicants state that these benefits are created without any diminution or dilution of Contract owners and participants interests and at no cost to Contract owners or participants.

5. Applicants state that the restructuring of Account A into a unit investment trust also will benefit future owners of other variable contracts issued by American Fidelity because they will benefit from administrative efficiencies and economies of scale created by this structure without bearing the organizational costs.

6. The conversion of Account A from a management investment company to a unit investment trust will result in Contract owner and participant interests which, in practical economic terms, do not differ in any measurable way from such interests immediately prior to the Reorganization. The exchange of the portfolio assets of Account A for shares of the Dual Strategy Fund will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder. American Fidelity will assume all expenses incurred in preparing for and carrying out the transactions constituting the Reorganization. As a result, Contract owners' and participants' interests in Continuing Account A immediately after the Reorganization will be equal to their former interests in Account A immediately prior to the Reorganization and their interests will not be diluted as a result of the Reorganization.

7. Applicants state the Reorganization will not require the liquidation of any assets of Account A because the Reorganization will take the form of an exchange of the portfolio investments of Account A for shares of the Dual Strategy Fund. Because the investment policies and restrictions of the Dual Strategy Fund will be indentical in substance to those of Account A the only sales of Account A assets following the Reorganization will be those arising in the ordinary course of business. Therefore, neither Account A nor the Dual Strategy Fund will incur any extraordinary costs, such as brokerage commissions, in effecting the transfer of assets.

8. American Fidelity believes that the transfer of portfolio assets from Account A to the Dual Strategy Fund in exchange for the issuance of shares of the Dual Strategy Fund will be a tax-free event. As a condition to the closing of the Reorganization. American Fidelity will receive an opinion of counsel confirming the tax-free nature of the Reorganization. However, to the extent any tax liability arises out of this transfer, Applicants state that such liability will be borne by American Fidelity.

9. Applicants maintain that because the investment objectives of the Dual Strategy Fund will be substantially identical to the investment objectives of Account A immediately prior to the Reorganization, the transactions are consistent with the objectives and policies of Account A and the Dual Strategy Fund. Applicants state that they will obtain Contract owner and participant approval of the transactions by at least the vote required under the 1940 Act to effect any change in fundamental investment policy. This eliminates any questions that might otherwise exist as to whether investment in the Dual Strategy Fund is in compliance with the investment objectives and policies of Account A. The Account A Contract owners and participants will be fully informed of the terms of the Reorganization through proxy materials and will have an opportunity to approve or disapprove the Reorganization Agreement at a meeting of Account A Contract owners.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemption from Section 17(a) of the 1940 Act to permit the Reorganization and the related transactions meets the standards set forth in Section 17(b) of the 1940 Act. In this regard, Applicants assert the Reorganization is fair and reasonable, does not involve any overreaching on the part of any person concerned, is consistent with the policy of each registered investment company concerned, and is consistent with the provisions, policies, and purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–27415 Filed 10–13–098; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23478; 812–11148]

MACC Private Equities Inc., et al.; Notice of Application

October 6, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(c0 and 57(i) of the Investment Company Act of 1940 (the ''Act''), and under rule 17d–1 under the Act permitting certain joint transactions otherwise prohibited by section 57(a)(4) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies to co-invest with certain affiliates in portfolio companies.

APPLICANTS: MACC Private Equities, Inc. (''Private equities''), MorAmerica Capital Corporation (''MorAmerica Capital''), and InvestAmerica Investment Advisors, Inc. (''InvestAmerica'').

FILING DATES: The application was filed on May 21, 1998, and amended on

September 21, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 2, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicants, Suite 310, 101 Second Street SE, Cedar Rapids, Iowa 52401.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549. (tel. 202–942–8090).

Applicants' Representations

1. Private Equities and MorAmerica, incorporated under the laws of the States of Delaware and Iowa, respectively, are closed-end investment companies that each have elected to be regulated as a business development company (a ''BDC'') under the Act. MorAmerica, a wholly-owned subsidiary of Private Equities, is licensed to operate as a small business investment company under the Small Business Investment Act of 1958. Both Private Equities and MorAmerica have the investment objective of long-term capital appreciation through venture capital investments in small, lesser-known companies (''Portfolio Companies'').[1]

2. InvestAmerica is an investment adviser registered under the Investment Advisers Act of 1940. InvestAmerica serves as investment adviser to both Private Equities and MorAmerica Capital.

3. As of January 15, 1998, Zions Bancorporation (''Zions''), a bank-holding company, and Zions First National Bank (''Bank''), a wholly-owned subsidiary of Zions, owned approximately 21.44% of the issued and outstanding shares of Private Equities. On February 24, 1998, a majority of the board of directors (''Board'') of Private Equities, including a majority of the Board who are not ''interested persons'' of Private Equities, agreed to permit Zions and/or the Bank to increase their collective ownership of Private Equities common stock up to 35% of Private Equities' issued and outstanding shares.

4. Applicants request an order under section 57(i) of the Act and under rule 17d–1 under the Act to permit Private Equities and/or MorAmerica (the ''Investing Company''), Zions, and/or direct or indirect wholly-owned subsidiaries of Zions (''Zions Subsidiaries,'' and together with Zions, ''Zions Affiliates'') to co-invest in Portfolio Companies.

Applicants' Legal Analysis

1. Section 57(a)(4) of the Act prohibits certain affiliated persons from participating in a joint transaction with a BDC in contravention of rules as prescribed by the Commission. Under section 57(b)(2), any person directly or indirectly controlling, controlled by, or under common control with, a BDC is subject to section 57(a)(4) of the Act. Under section 2(a)(9) of the Act, a control relationship is presumed to exist if a person, either directly or through one or more controlled companies, is the beneficial owner of more than 25% of a company's outstanding voting securities.

2. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under sections 17(a) and (17)(d) of the Act applicable to closed-end investment companies shall be deemed to apply to sections 57(a) and 57(d) of the Act. Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 applies.

3. rule 17d–1 under the Act generally prohibits affiliated persons of an investment company from entering into joint transactions with the company without prior Commission authorization. In passing upon applications under rule 17d–1(b), the Commission will consider whether the participation by the BDC in such joint transaction in consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

4. Applicants state that when Zions and the Bank increase their collective ownership of Private Equities above 25% of the issued and outstanding shares, they will be presumed to control Private Equities. Applicants also state that because Zions directly or indirectly owns all, or substantially all, of the issued and outstanding shares of each of the Zions Subsidiaries, Private Equities and the Zions Subsidiaries may be deemed to be under common control. As a result, the Zions Affiliates may be prohibited from entering into joint transactions with applicants absent an exemptive order.

5. Applicants anticipate that the Zions Affiliates may have access to a broad range of attractive co-investment opportunities which are consistent with applicants' investment objectives and which may allow investment in a broader geographic area.[2] Applicants state that Private Equities and MorAmerica both have investment committees (each an ''Investment Committee'') which will review the proposed co-investments with the Zions Affiliates. None of the voting members of the Investment Committees are interested persons or applicants, nor will they have any direct or indirect financial interest in any matter than before the Investment Committees. The voting members consist of five outside directors of MorAmerica and Private Equities. The non-voting members are two directors who are affiliates of InvestAmerica and a nominee of Zions. Applicants submit that granting the requested relief is consistent with the provisions, policies, and purposes of the Act and that the co-investments will be on a basis no different from or less advantageous than that of the other participants.

Applicants' Conditions.

Applicants agree that the requested order shall be subject to the following conditions:

1. (a) To the extends that Private Equities and MorAmerica Capital are considering new investments,

[1] Private Equities and MorAmerica received an order to operate essentially as one company. *See MACC Private Equities Inc.*, Investment Company Act Release Nos. 20831 (Jan. 12, 1995) (notice) and 20887 (Feb. 7, 1995) (order).

[2] To the extent permitted by rule 17d–1(d)(3) under the Act, a Zions Affiliate may make loans or extend credit to companies in which Private Equities or MorAmerica Capital invest. Under no circumstances will an investment by Private Equities or MorAmerica Capital in a Portfolio Company be used to repay a loan to a Zions Affiliate.

InvestAmerica will review investment opportunities on their behalf, including investments which are being considered by the Zions Affiliates. InvestAmerica will determine whether an investment being considered by one or more of the Zions affiliates and which is offered to Private Equities and MorAmerica Capital for investment (a ''Zions Affiliates Investment'') is eligible for investment by Private Equities and MorAmerica Capital.

(b) If InvestAmerica deems a Zions Affiliates Investment eligible for investment by the Investing Company (a ''co-investment opportunity''), InvestAmerica will determine what it considers to be an appropriate amount that the Investing Company should invest. Where the aggregate amount recommended for the Investing Company and that sought by the Zions Affiliates exceeds the amount of the co-investment opportunity, the amount invested by the investing Company shall be based on the ratio of the net assets of the Investing Company to the aggregate net assets of the Investing Company and the Zions Affiliate seeking to make the investment.

(c) Following the making of the determinations referred to in (a) and (b) above, InvestAmerica will distribute written information concerning all co-investment opportunities to the Investing Company's Investment Committee. The information will include the amount the Zions Affiliate proposes to invest.

(d) Information regarding InvestAmerica's preliminary determinations will be reviewed by the Investing Company's Investment Committee. The Investing Company will co-invest with a Zions Affiliate only if a required majority (as defined in section 57(o) of the Act) (''Required Majority'') of the Investing Company's Investment Committee conclude, prior to the acquisition of the investment, that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the shareholders of Private Equities and do not involve overreaching of the Investing Company or it shareholders on the part of any persons concerned;

(ii) The transaction is consistent with the interests of the shareholders of Private Equities and is consistent with the Investing Company's investment objectives and policies as recited in filings made by the Investing Company under the Securities Act of 1933, as amended, its registration statement and reports filed under the Securities Exchange Act of 1934, as amended, and its reports to shareholders;

(ii) The investment by the Zions Affiliates would not disadvantage the Investing Company, and that participation by the Investing Company would not be on a basis different from or less advantageous than that of the Zions Affiliates; and

(iv) The proposed investment by the Investing Company will not benefit the Zions Affiliates or any affiliated entity thereof, other than the Zions Affiliates making the co-investment, except to the extent permitted pursuant to sections 17(e) and 57(k) of the Act.

(e) The Investing Company has the right to decline to participate in the co-investment opportunity or purchase less than its full allocation.

2. The Investing Company will not make an investment for its portfolio if any Zions Affiliate, or a person controlling, controlled by, or under common control with the Zions Affiliates: (a) is an existing investor in such issuer, with the exception of a follow-on investment that complies with condition 5 below; or (b) has made a loan or extended credit to the issuer, except as permitted by rule 17d–1(d)(3) under the Act.

3. For any purchase of securities by the Investing Company and Zions Affiliate is a joint participant, the terms, conditions, price, class of securities, settlement date, and registration rights shall be the same of or the Investing Company and the Zions Affiliate.

4. If a Zions Affiliate elects to sell, exchange, or otherwise dispose of an interest in a security that is also held by the Investing Company, such Zions Affiliate will notify the Investing Company of the proposed disposition at the earliest practical time and the Investing Company will be given the opportunity to participate in the disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Zions Affiliates. InvestAmerica will formulate a recommendation as to participation by the Investing Company in a follow-on co-investment, and provide the recommendation to the Investing Company in such a disposition, and provide a written recommendation to the Investing Company's Investment Committee. The Investing Company will participate in the disposition to the extent that a Required Majority of its Investment Committee determines that it is in the Investing Company's best interest. Each of the Investing Company and Zions Affiliate will bear its own expenses associated with any such disposition of a portfolio security.

5. If a Zions Affiliate desires to make a ''follow-on'' co-investment (*i.e.*, an additional investment in the same entity) in a portfolio company whose securities are held by the Investing Company or to exercise warrants or other rights to purchase securities of the issuer, such Zions Affiliate will notify the Investing Company of the proposed transaction at the earliest practical time. InvestAmerica will formulate a recommendation as to the proposed participation by the Investing Company's Investment Committee along with notice of the total amount of the follow-on co-investment. The Investing Company's Investment Committee will make its own determination with respect to follow-on co-investment. The relative amount of investment in a follow-on co-investment opportunity by the Investing Company and each Zions Affiliate will be based upon the amount of the Investing Company's and the Zions Affiliate's initial investments. The Investing Company will participate in the follow-on co-investment to the extent that a Required Majority of its Investment Committee determines that it is in the Investing Company's best interest. The acquisition of follow-on co-investments as permitted by this condition will be subject to the other conditions in the application.

6. The voting member of the Investing Company's Investment Committee will review quarterly all information concerning co-investment opportunities during the preceding quarter to determine whether the conditions in the application were complied with.

7. The Investing Company will maintain the records required by section 57(f)(3) of the Act as if each of the investments under these conditions were approved by the Investing Company's Investment Committee under section 57(f).

8. No voting member of the Investing Companies' Investment Committees will be a director or general partner of a Zions Affiliate with which the Investing Company co-invests.

For the Commission, by Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–27416 Filed 10–13–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23480; 812–11186]

Sanford C. Bernstein Fund, Inc. et al.; Notice of Application

October 6, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order under section 17(b) of the Act in connection with a proposed division of the International Value Portfolio (the ''Existing Portfolio'') of Sanford C. Bernstein Fund, Inc. (the ''Fund') into two separate portfolios.

APPLICANTS: The Fund and Sanford C. Bernstein & Co., Inc. (the ''Adviser'').

FILING DATES: The application was filed on June 22, 1998. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 27, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicants, 767 Fifth Avenue, New York, New York 10153.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete applications may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20459 (tel. (202) 942–8090).

Applicant's Representations

1. The Fund is organized as a Maryland corporation and is registered under the Act as an open-end management investment company. The Fund currently offers eleven series, including the Existing Portfolio. The investment objective of the Existing Portfolio is to seek long-term capital growth on a total return basis. The Adviser is an investment adviser registered under the Investment Advisers Act of 1940. The Adviser is the investment adviser to the Existing Portfolio.

2. Applicants propose that the Existing Portfolio be divided into two separate portfolios, designed to accommodate the needs of two distinct categories of investors. After the division, the Existing Portfolio will be managed in a tax-efficient manner and directed toward taxable shareholders (''Taxable Shareholders''). A newly formed series of the Fund (''New Portfolio'') will be managed without regard to tax consequences and directed toward shareholders not subject to federal income taxation (''Tax-Exempt Shareholders'').

3. The division of the Existing Portfolio will be accomplished by offering each Tax-Exempt Shareholder an opportunity to redeem its shares of the Existing Portfolio in-kind and invest the assets received in the New Portfolio (the ''Transaction'').[1] To avoid the cost and inconvenience of the physical transfer of securities and other assets to and from the Tax-Exempt Shareholders, the redemption and reinvestment transactions will be ''collapsed'' so that assets will be transferred directly from the Existing Portfolio to the New Portfolio. The applicants state that, in practical effect, the Transaction will not result in tax consequences for any shareholders.

4. The securities to be transferred to the New Portfolio will be valued in a manner identical to the Existing Portfolio's valuation practices and the shares of the New Portfolio issued to the Tax-Exempt Shareholders will have an aggregate net asset value equal to the value of the assets so transferred. Shares of the New Portfolio will be credited to each Tax-Exempt Shareholder, pro rata, according to the Tax-Exempt Shareholder's interest in the Existing Portfolio immediately prior to the Transaction. No brokerage commission, fee (except customary transfer fees) or remuneration will be paid in connection with the Transaction.

5. In considering the Transaction, the Fund's board of directors (the ''Board''), including a majority of the directors who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (''Independent Directors''), determined that the Transaction would be in the best interests of both Tax-Exempt and Taxable Shareholders and would not dilute the interests of shareholders. In making its determination, the Board considered the anticipated benefits of separately managing the Portfolios for the benefit of these two categories of shareholders. The Board, including the Independent Directors, also considered that, although a modest increase in the expense ratios with respect to each of the Existing and New Portfolios might be expected, the Adviser anticipates that the expected increase in return would more than offset the increase in the expense ratio with respect to each Portfolio.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such registered investment company, or to purchase from such registered investment company any security or other property (except securities of which the seller is the issuer). Section 2(a)(3) of the Act defines the term ''affiliated person'' of another person to include any person owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; any person controlling, controlled by, or under common control with, the other person; and, if the other person is an investment company, any investment adviser of the investment company.

2. Applicants state that the Existing Portfolio and New Portfolio might be viewed as being under the common control of the Adviser, and thus affiliated persons of each other. Applicants further state that to the extent that the redemptions in-kind from the Existing Portfolio coupled with the investment in the New Portfolio (collectively, the ''Transfer'') may be deemed to constitute an indirect purchase and sale of securities between the Portfolios, the Transfer would be prohibited by section 17(a). In addition, to the extent that the redemption in-kind (''Redemption'') may be deemed to

[1] Tax-Exempt Shareholders not choosing to invest in the New Portfolio could remain in the Existing Portfolio or redeem their shares of the Existing Portfolio at any time in accordance with the redemption procedures set out in the Funds prospectus and statement of additional information.

involve the ''purchase'' of portfolio securities by any shareholder that owns more than 5% of the Existing Portfolio's outstanding voting securities (''Covered Shareholder'') that may exist at the time of the Transaction, section 17(a) would prohibit the Redemption.

3. Rule 17a–7 under the Act exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of the security. Applicants state that the relief provided by rule 17a–7 is not available for the Transfer because it will not be effected in cash. Moreover, rule 17a–7(b) requires that the securities being sold be valued at the ''last sale price or the average of the highest current independent bid and lowest current independent offer.'' The Existing Portfolio's valuation procedures provide that securities are priced at the last sale price or, if that is not available, the current bid price of the securities.

4. Rule 17a–8 exempts certain mergers, consolidations, and asset sales of registered investment companies from the provisions of section 17(a) of the Act if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the board of directors of each affiliated investment company make certain determinations that the transaction is fair. Applicants state that the relief provided by the rule 17a–8 is unavailable for the Transfer because the Transfer is not structured as a merger, consolidation or asset sale.

5. Section 17(b) provides that the Commission shall exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching, the proposed transaction is consistent with the policy of reach registered investment company concerned, and the proposed transaction is consistent with the general purposes of the Act. Applicants request relief under section 17(b) to allow (a) the Redemption of the Covered Shareholders, and (b) the Transfer.

6. Applicants submit that the terms of the proposed Redemption by a Covered Shareholder meet the standards set forth in section 17(b). Applicants state that the Covered Shareholders will not have a choice as to the type of assets to be received in the Redemption, and neither the Adviser nor a Covered Shareholder will have any opportunity to select the specific portfolio securities to be distributed in a manner that will benefit Covered Shareholders or be detrimental to the interests of other shareholders. In addition, the Fund will use an objective, verifiable standard to value the securities to be distributed pursuant to the Redemption.

7. Applicants state that the Board has approved the Transaction in the manner required by rule 17a–8. Applicants also state that the Transfer will comply with rule 17a–7 to the extent possible. Applicants assert that if the Transfer were effected in cash, as required under rule 17a–7(a), rather than in-kind, the Tax-Exempt Shareholders would bear unnecessary expense and inconvenience in transferring securities to the New Portfolio. The Existing Portfolio would also incur brokerage expenses on the sale of portfolio securities. The New Portfolio also would incur brokerage expenses on the subsequent purchase of similar securities. Applicants state that the securities involved in the Transfer will be valued in a manner identical to the Existing Portfolio's valuation practices and that the shares of the New Portfolio issued to the Tax-Exempt Shareholder will have an aggregate net asset value equal to the value of the assets so transferred. Applicants also assert that valuing securities for which a ''last sales price'' is not available at their bid price, rather than the average of the bid and ask price as required by rule 17a–7, is appropriate. Applicants state that the use of the calculation methodology contained in rule 17a–7(b) could skew the Existing Portfolio's net asset value calculation and result in the relative dilution of interests of either the Taxable or Tax-Exempt Shareholders.

Applicants' Conditions

1. The Transaction will comply with the terms of rule 17a–7, except as described in the Application.

2. The in-kind securities will be distributed by the Existing Portfolio on a *pro rata* basis after excluding: (a) Securities which, if distributed would require registration under the Securities Act of 1933 or violate a restriction with respect to transferability, or other securities not transferable in the manner contemplated in the application; (b) securities issued by entities in countries which (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Fund, or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; and (c) certain portfolio assets (such as forward foreign currency exchange contracts, futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of the Existing Portfolio's assets represented by cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and other assets which are not readily distributable as described in the preceding sentence (as well as receivables and prepaid expenses), net of all liabilities (including accounts payable). The Existing Portfolio will also distribute cash in lieu of securities held in its portfolio if distributing the securities would result in the New Portfolio receiving odd lots or fractional shares. In effecting the proposed in-kind redemptions, the Existing Portfolio will round down the proportionate distribution of each portfolio security to the nearest round lot amount and will redeem the remaining odd lot in cash.

3. The in-kind securities distributed to the Tax-Exempt Shareholders will be valued in the same manner as they would be valued for purposes of computing the net asset value of each of the Existing and New Portfolios.

4. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the Transaction occurs, the first two years in an easily accessible place, a written record of such redemptions setting forth a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–27417 Filed 10–13–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: (63 FR 53969/October 7, 1998).

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: October 5, 1998.

CHANGE IN THE MEETING: Date Change.

The open meeting previously scheduled for Wednesday, October 14, 1998 at 10: a.m. has been rescheduled for Thursday, October 15, 1998, at 10:00 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting times. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary, (202) 942–7070.

Dated: October 8, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–27579 Filed 10–8–98; 4:39 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40520; File No. SR–CHX–98–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Membership Dues and Fees

October 5, 1998.

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 September 29,1998, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in items I, II, and III below, which Items have been prepared by CHX. 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

CHX proposes to amend its membership dues and fees schedule, effective with the September billing statements. The changes are as follows:

Membership Dues and Fees

Additions are in *italics;* deletions [bracketed]

(d) Transaction Fee Schedule

(3) Monthly maximums for fees incurred in (2) above

(i) Maximum monthly transaction fees for orders sent via MAX	$7,000	
(ii) Maximum monthly transaction fee for firms without a floor broker or market maker presence on the floor	[$65,000]	*$78,000*
(iii) Maximum monthly transaction fee for firms with a floor broker or market maker presence on the floor	[$45,000]	*$54,000*

(iv) Maximum monthly transaction fees shall not exceed the lesser of that specified in (ii) or (iii) above, or [$.45] *$.40* per 100 average monthly gross round lot shares.

The above transaction fees shall not apply to transactions in Tape B eligible issues which are executed through MAX.

* * * * *

(u) Floor Broker Credits

Total Monthly fees owed by a floor broker to the Exchange will be reduced (but to no less than zero) by the application of the following Earned Credit.

Earned Credit = Average Daily Billable Shares × Average Rate per Billable Share × Credit Percentage.

In calculating the above Earned Credit, the following definitions shall apply:

''Average Daily Billable Shares'' means, for a given month, (i) Total Billable Shares in Month divided by (ii) Total Trading Days in Month.

''Total Billable Shares in Month'' means, for a given month, the total number of shares executed on the Exchange by the floor broker for which the Exchange received a transaction fee. Any share executed for which the Exchange did not receive a transaction fee shall not be considered a billable share.

''Total Trading Days in Month'' means, for a given month, the number of business days that the Exchange was open for business during the month. Days in which the Exchange closes early, due to a holiday or otherwise, shall nonetheless be considered a day that the Exchange is open for business.

''Average Rate per Billable Share'' means, for a given month, (i) the total dollar amount of transaction fees received by the Exchange for trades executed on the Exchange by the floor broker divided by (ii) Total Billable Shares in Month.

''Credit Percentage'' means the applicable percentage taken from the following table:

		Average Daily Billable Shares			
		0–49,999 Shares	50,000–99,999 Shares	100,000–499,999 Shares	500,000 Shares or Greater
Average Rate per Billable Share	Less than $.0040	20%	30%	40%	50%
	$.0040–$.0055	30%	45%	60%	75%
	Greater than $.0055	40%	60%	80%	100%

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX 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. CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend CHX's membership dues and fees schedule to (i) change the maximum monthly transaction fee caps

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

for both firms with and without a market maker or floor broker presence on the floor and (ii) provide a credit to floor brokers that can be used to reduce the floor broker's monthly Exchange bill.

Maximum Monthly Transaction Fees. One purpose of the proposed rule change is to change the current maximum monthly transaction fee caps. Currently, transaction fees are calculated on a sliding scale depending on the size of the order, with a maximum of $100 per side. To encourage additional order flow, the current fee schedule provides for maximum monthly caps on transaction fees incurred by members. Currently, these caps include a cap of $65,000 for firms without a market maker or floor broker presence on the floor and $45,000 for firms with either a floor broker or market maker presence on the floor.[3] Under the current fee schedule, these two caps are subject to adjustment if the transaction fees for a firm's average monthly gross round lot shares exceeds $.45 per 100. In such a case, the maximum transaction fee is reduced to $.45 per 100 average monthly gross round lot shares.

The Exchange proposes to increase the current $65,000 cap to $78,000 and the current $45,000 cap to $54,000, while reducing the level at which the adjustment occurs from the current $.45 per 100 average monthly gross round lot shares to $.40 per 100 average monthly gross round lot shares. This change accommodates the increase in aggregate total volume of trades executed on the Exchange (with higher resulting aggregate transaction fees) while ensuring that transaction fees, on a per share basis, remain competitive.

Floor Broker Credit. Another purpose of the proposed rule change is to amend the CHX fee schedule to provide a credit to floor brokers, calculated on a sliding scale according to the formula described below, that acknowledges the floor broker's role in obtaining revenue for the Exchange. This credit, to be called an Earned Credit, can be used to reduce the floor broker's monthly Exchange bill (but will never result in a bill that is less than zero). A floor broker's Exchange bill currently includes dues and other fees assessed by the Exchange as well as rebills and SEC fees. Most of these dues and fees are fixed, regardless of the amount of revenue that the floor broker generates for the Exchange. A floor broker generates revenue for the Exchange by bringing business to the Exchange that results in CHX transaction fees.

The Earned Credit both recognizes the existence of externally generated revenue as an offset to Exchange fixed expenses and the role of the floor broker in obtaining this revenue. The Earned Credit is calculated by using a formula that takes into account (i) the daily average number of shares (not trades) executed, during a given month, on the Exchange by a floor broker for which the Exchange received a transaction fee (the ''Average Daily Billable Shares''), (ii) the daily average amount (calculated on a per share basis) of such transaction fee (the ''Average Rate per Billable Share''), and (iii) a sliding percentage amount calculated from a matrix that uses (i) and (ii) above (the ''Credit Percentage''). The precise definitions for these terms, and the matrix used for the Credit Percentage, is in the text of the proposed rule change set forth above. Under the proposal, the maximum Earned Credit in a given month would be, in essence, equal to 100% of the transaction fee revenue generated by orders executed by the floor broker for one average day in the month.

The application of the Earned Credit can be demonstrated by the following example. Suppose a floor broker executed 10 trades of 2500 shares each and one trade of 30,000 shares for August 1998. The Exchange would first determine the number of billable shares per trade, i.e., the number of shares in each trade for which the Exchange received a transaction fee. Assuming the member paying the transaction fee in each case has not hit its monthly cap, for each of the 2500 share trades, the Exchange receives transaction fees from 2000 out of the 2500 shares. (Under the current transaction fee schedule, the first 500 shares are free). In addition, for the 30,000 share trade, the Exchange receives transaction fees from 21,375 shares. (Under the current fee schedule, the first 500 shares are free. The Exchange then receives a transaction fee (of varying amounts) for the next 21,375 shares and no transaction fee for any additional shares (because of the cap of $100 per side).)

The exchange would then add all of the billable shares per trade together for a given month to determine the Total Billable Shares per Month (as defined in the fee schedule). This would be 20,000 shares (2000 shares times 10 trades) plus 21,375 shares, for a total of 41,375 shares.

The Exchange would then take (i) the Total Billable Shares per Month and divide that by (ii) the Total Trading Days in Month, to determine the Average Daily Billable Shares. This equals 1970, which represents 41,375 (total number of billable shares) divided by 21 (the number of trading days in August 1998).

Once the Exchange determined the Average Daily Billable Shares, the Exchange would then calculate the Average Rate per Billable share. The Exchange would first calculate the total dollar amount of transaction fees received by the Exchange for trades executed on the Exchange by the floor broker during a month using the Exchange's transaction fee schedule. In the above example, this would be $15 per trade for each of the 2500 share trades ($.0 multiplied by the first 500 shares and $.0075 multiplied by next 2000 shares) and $100 for the 30,000 share trade ($.0 multiplied by the first 500 shares, $.0075 multiplied by the next 2000 shares, $00.5 multiplied by the next 7500 shares and $.004 multiplied by the next 11,875 shares and $.0 for the remaining 8125 shares (because of the $100. cap per side)). Thus, the total dollar amount of transaction fees received by the Exchange for trades executed by the floor broker during the month of August 1998 would equal $250 ($15 multiplied by ten trades, plus $100). The Average Rate per Billable Share would be $250 divided by 41,375 (the total billable shares), for an average of $.006.

Using the $.006 (average rate per billable share) and the 1970 (average daily billable shares), the applicable Credit Percentage (as defined in the fee schedule) for the floor broker would be 40% which is taken from the Credit Percentage matrix.

Finally, the Exchange would determine the Earned Credit by multiplying $.006 by 1970 by 40%, which would give the floor broker an Earned Credit of $4.73 which can be used by the floor broker to reduce his monthly Exchange bill.

The Exchange's Finance Committee has determined that after the preposed changes in the fee structure, the Exchange will have ample capital and resources to continue to fulfill its prescribed duties in its capacity as a self-regulatory organization and as a registered national securities exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4)[4] of the Act because it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

[3] The fee schedule also includes a cap of $7,000 for orders sent through MAX. This fee cap is not being changed in this filing.

[4] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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 establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii) [5] and subparagraph (e)(2) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

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. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of CHX. All submissions should refer to File No. SR–CHX–98–22 and should be submitted by November 4, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–27414 Filed 10–13–98; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40528; International Series Release No. 1161; File No. SR–NASD–98–72]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to an Extension of the Nasdaq International Service Pilot Program

October 7, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 6, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by The Nasdaq Stock Market, Inc. (''Nasdaq''). The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule

The NASD proposes to extend for one year: (1) the pilot term of the Nasdaq International Service (''Service''); and (2) the effectiveness of certain rules (''International Rules'') that are unique to the Service. This proposed rule change does not entail any modification of the International Rules. The present authorization for the Service and the International Rules expires on October 9, 1998. With this proposed rule change, the pilot period for the Service and the International Rules would be extended until October 9, 1999.

[1] 15 U.S.C. 78s(b)(1).

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 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 III below. The 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

I. Purpose

The NASD proposes to extend for an additional year, until October 9, 1999, the pilot operation of the Service and the effectiveness of the International Rules governing broker-dealers' access to and use of the Service. The existing pilot operation of the Service and the International Rules was originally authorized by the Commission in October 1991 [2] and the Service was launched on January 20, 1992. The pilot has since been extended [3] and is currently set to expire on October 9, 1998.[4]

The Service supports an early trading session running from 3:30 a.m. to 9:00 a.m. Eastern Time on each U.S. business day (''European Session'') that overlaps the business hours of the London financial markets. Participation in the Service is voluntary and is open to any authorized NASD member firm or its approved broker-dealer affiliate in the U.K. A member participates as a Service market maker either by staffing its trading facilities in the U.S. or the facilities of its approved affiliate during the European Session. The Service also has a variable opening feature that permits Service market makers to elect to participate starting from 3:30 a.m., 5:30 a.m. or 7:30 a.m. Eastern Time. The election is required to be made on a security-by-security basis at the time a

[2] Securities Exchange Act Release No. 29812 (October 11, 1991), 56 FR 50282 (October 17, 1991) (File No. SR–NASD–90–33).

[3] Securities Exchange Act Release No. 33037 (October 8, 1993), 58 FR 53752 (October 18, 1993) (approval of File No. SR–NASD–93–50 extending the pilot for two years through October 11, 1995). Securities Exchange Act Release No. 36359 (October 11, 1995), 60 FR 53820 (October 17, 1995) (approval of File No. SR–NASD–95–45 extending the pilot for two years through October 11, 1997).

[4] Securities Exchange Act Release No. 39216 (October 7, 1997), 62 FR 53673 (October 15, 1997) (approval of File No. SR–NASD–97–72 extending the pilot for 1 year through October 9, 1998).

firm registers with the NASD as a Service market maker.[5] At present, there are no Service market makers participating in the Service.

As noted above, the NASD is seeking to extend the pilot term for one year. During this period, the NASD will continue to reevaluate the Service's operation and consider possible enhancements to the Service to broaden market maker participation. The NASD continues to view the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by Nasdaq. Accordingly, the NASD believes this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility and attractiveness to the investment community.[6] The NASD maintains its belief that it is extremely important to preserve this facility and opportunities it provides, especially in light of the increasingly global nature of the securities markets and the trend of cross-border transactions generally.

In addition, the Service serves an invaluable role as a critical early warning mechanism in the context of significant changes in involving Nasdaq software and hardware systems. Specifically, because the Service operates in the early morning hours prior to the opening of trading in the domestic session of Nasdaq, the Service has provided for the early detection of systems or communications problems when Nasdaq implements these systems' changes.

2. Statutory Basis

The NASD believes that the proposed role change is consistent with sections 11A(a)(1)(B)[7] and (C)[8] and 15A(b)(6) of the Act.[9] Subsections (B) and (C) of section 11A(a)(1)[10] set forth the Congressional goals of achieving more efficient and effective market operations, broader availability of information with respect to quotations for securities, and the execution of investor orders in the best market through the use of advanced data processing and communications techniques. Section 15A(b)(6)[11] requires, among other things, that the NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The NASD believes that the proposed extension of the Service and the International Rules is fully consistent with these statutory provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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–98–72 and should be submitted by November 4, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with Sections 11A(a)(1)(B) and (C) and 15A(b)(6) of the Act.[12] The Commission believes that, in connection with the globalization of securities markets, the Service provides an opportunity to advance the statutory goals of: (1) Achieving more efficient and effective market operations; (2) broader availability of information with respect to quotations for securities; (3) the execution of investor orders in the best market through the use of advanced data processing and communications techniques; and (4) fostering cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

The Commission continues to view the Service as a significant experiment in expanding potential opportunities for international trading via systems operated by Nasdaq. The Service is intended to promote additional commitments of member firms' capital to market making and to attract commitments from firms based in Europe that currently do not function as Nasdaq market makers. Although there are no Service market makers participating in the Service, the NASD plans to reevaluate the Service's operating and consider possible enhancements to the Service to broaden market maker participation. Additionally, the Service provides an early warning system when Nasdaq implements significant changes involving its hardware and software systems. Because the Service operates before the opening of the domestic session of Nasdq, the Service allows for the early detection of systems or communication problems. Accordingly, the Commission believes that this pilot operation warrants an extension to permit possible enhancements that will increase the Service's utility and attractiveness to the investment community. Any changes to the operation of the Service will be filed pursuant to section 19(b)(2) of the Act.[13]

Pursuant to section 19(b)(12) of the Act,[14] the Commission finds good cause for approving the proposed rule change prior of to the 30th day after the date of publication of notice of filing thereof. The Commission believes that it is appropriate to approve on an accelerated basis the one year extension of the Nasdaq International Service, until October 9, 1999, to ensure the continuous operation of the Service,

[5] Regardless of the opening time chosen by the Service market maker, the Service market maker is required to fulfill all the obligations of a Service market maker from that time (*i.e.*, either 3:30 a.m., 5:30 a.m. or 7:30 a.m.) until the European Session closes at 9:00 a.m. Eastern Time. *See,* Securities Exchange Act Release No. 32471 (June 15, 1993), 58 FR 33965 (June 22, 1993) (approval of File No. SR–NASD–92–54).

[6] Assuming that the pilot term is extended, the NASD will continue to supply the Commission with the statistical reports prescribed in the initial approval for the Service order at six month intervals.

[7] 15 U.S.C. 78k–1(a)(1)(B).

[8] 15 U.S.C. 78k–1(a)(1)(C).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78k–1(a)(1).

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2).

[14] *Id*.

which is set to expire on October 9, 1998.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–27511 Filed 10–13–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40521; File No. SR–NASD–98–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Nasdaq's Workstation II Service for Those Subscribers Who Are Not Members of the NASD

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 20, 1998, as amended on September 15, 1998,[3] the National Association of Securities Dealers, Inc. (''NASD'') through its wholly-owned subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 7010(h)(2) relating to Nasdaq Workstation II (''NWII'') and network fees. The proposed rule change is intended to amend the current fee schedule for subscribers to the NWII service who are not NASD members. The NASD has filed a parallel rule filing to effect the same amendments to the NWII fee structure to apply to NASD members.[4] Nasdaq also is eliminating Digital Interface Service fees as Nasdaq no longer provides this service. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

NASD Rule 7010. System Services

(a)–(g) No Change

(h) Nasdaq Workstation Service

(1) No Change

(2) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq Workstation II Service:

Service Charge	[$100]*$1,500*/month per [server] *service delivery platform (''SDP'').*
Display Charge	[$500]*$525*/month per presentation device (''PD'').
Additional Circuit/*SDP Charge*	[$1,150 per]*$2,700*/month.*

A subscriber that access Nasdaq Workstation II Service via an application programming interface (''API'') shall be assessed the Service Charge for each of the subscriber's SDPs and shall be assessed the Display Charge for each of the subscriber's API linkages, including an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit/SDP Charge.

(3) No Change

[(j) Digital Interface Service

The following charges shall apply to the receipt of Level 3 Nasdaq service via the Digital Interface Service:

Service Charge.	$1,300/month per server.
Display Charge.	$345/month per terminal display.
Additional Circuit.	$500/month.
Equipment Charge.	$290/month per server].

(k)–(n) Re-designated as subparagraphs (j)–(m)

**A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDP(s) by placing eight PDs and/or API servers on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the Service Charge) for each ''underutilized'' SDP(s) (i.e., the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its PDS and/or API servers, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its existing T1 circuit(s) by placing six SDPs on a T1 circuit and obtains an additional T1 circuit(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the Service Charge) for each ''unutilized'' slot on the existing T1 circuit(s). Regardless of SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDPs, assuming a six-to-one ratio.*

* * * * *

II Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to amend the subscriber fees applicable for subscribers to Nasdaq Workstation II (''NWII'') who are not NASD members. In 1994, Nasdaq rolled out the NWII service, which provided many

[15] *Id.*

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On September 23, 1998, Nasdaq filed Amendment No. 1 with the Commission. *See* Letter from Robert Aber, Senior vice President and General Counsel, Nasdaq, to Richard Strasser, Assistant director, Division of Market Regulation (''Division''), Commission, dated September 23, 1998. Amendment No. 1 clarified the circumstances under which Nasdaq would apply the Additional Circuit. SDP Charge to subscribers, clarified the way that Nasdaq would adjust the size of the deposits required from subscribers who ordered NWII service starting in July 1998, stated Nasdaq's intent to bill the new fee structure retroactively for non-member subscribers who receive EWN II technology prior to the approval of this proposed rule change, and made technical corrections to the filing.

[4] *See* File No. SR–NASD–98–62.

enhancements to the then-existing Nasdaq Workstation service.[5] As part of the NWII rollout, Nasdaq installed a network, known as the Enterprise Wide Network (''EWN I''), to deliver NWII functionality. To access NWII service, each subscriber location has at least one service delivery platform (''SDP''), or server, that resides on the network and connects to Nasdaq by a dedicated circuit. The SDP functions as the subscriber's gateway from the NWII to the enterprise-wide network.[6] Each SDP currently is permitted to support up to eight presentation devices (''PD''), or Nasdaq Workstation IIs,[7] although a firm may elect to have fewer than eight PDs on a single SDP. In addition, a subscriber may obtain NWII service through an application programming interface (''API''), which essentially allows a firm to obtain NWII Service using the firm's own hardware (*e.g.*, personal computer) and software systems to access, display, interface with, and operate NWII service.[8]

Due to the ongoing growth in the Nasdaq market and unprecedented increases in daily share volume since EWN I was installed, Nasdaq became concerned that its existing enterprise-wide network capacity was rapidly approaching maximization. Specifically, the network's bandwidth—the amount of data that can be transmitted through a given communications circuit in a fixed amount of time—currently can handle one and one-half billion shares per day. The 1998 average daily share volume to date is 750 million, with a high single-day volume of 1.250 billion shares. In addition, on October 28, 1997, Nasdaq experienced its largest daily share volume ever with 1,354,164,600 shares traded. In Nasdaq's view, these dramatic increases in average and peak share volumes clearly mandate the creation of a new network with increased capacity.

Moreover, based on the average rate of circuit additions for both new and existing subscribers, EWN I is expected to reach maximum circuit capacity during the second quarter of 1999.[9] To respond to these concerns and to avoid the potential for any disruption to the Nasdaq market, Nasdaq contracted in late 1997 with MCI Communications Corporation (''MCI'') to build a new network—EWN II—to accommodate increased usage and provide increased circuit capacity.

Nasdaq notes that concerns about present and future system capacity have been repeatedly expressed by the Commission as part of its releases recommending that self-regulatory organizations voluntarily establish automation review policies to comprehensively plan, test, and assess the trading capacity of their systems.[10] This emphasis on sufficient trading-system capacity reflects the Commission's recognition of the significant negative impact system failures can have on public investors, broker-dealer risk exposure, and market efficiency. Moreover, Congress has specifically found that ''the maintenance of stable and orderly markets *with maximum capacity* for absorbing trading imbalances without undue price movements'' is a paramount objective of a national market system.[11] EWN II is Nasdaq's response to these mandates.

EWN II will be a significant improvement over EWIN I. First, EWN II will have a four billion share per day capacity by the year 2001, with the additional capability to be expanded to a daily eight billion share capacity. EWN II's design contains certain features that are aimed at significantly reducing the likelihood of a network failure. These features are designed to ensure that Nasdaq, and the market professionals and individual investors who rely on its facilities, are provided with the most robust and flexible system available, thereby ensuring the smooth functioning of the public securities markets both now and in the future.

Nasdaq shortly will begin converting existing subscribers to EWN II. Specifically, on or about September 1, 1998, Nasdaq will begin replacing subscribers' existing dedicated circuits to accommodate the new network. The installation process should be completed by May 1999. As with previous technology roll-outs (*e.g.*, EWIN I and NWII), the EWN II conversion will be implemented regionally and each firm will be pre-scheduled for a particular conversion date.[12]

In light of the increased costs and value-added benefits of EWN II. Nasdaq is proposing to revise the current NWII fee structure. Under the proposal, the fee charged to a subscriber for an SDP would change from $100 per month for each server to $1,500 per month for each server. The display charge would change from $500 per month for each PD to $525 per month for each PD. The charge associated with an unutilized or underutilized circuit or SDP would change from $1,150 per month to $2,700 per month.[13] Thus, under the new fee

[5] NWII provides a widows-based environment and several data management facilities not previously available in Nasdaq's former (pre-1994) workstation service.

[6] Under EWN I, each dedicated circuit supported one SDP. Under Nasdaq's proposed new network—know as ''EWN II''—each dedicated circuit (''T1 circuit'') will be capable of supporting up to six SDPs.

[7] This also will be true for EWN II.

[8] API provides an electronic interface between a subscriber's systems and the NWII system. Through the use of the API, a subscriber may build its own workstation presentation software to integrate the NWII service into the subscriber's existing presentation facilities. The API allows a subscriber to emulate the NWII presentation software with equivalent functionality, capacity utilization and through-put capability, in addition to providing enhanced capability to develop customized internal presentations for use in support of subscriber's activities. API also allows a subscriber to operate a quote-update facility to assist solely in complying with the SEC's Order Handling Rules. Generally, a subscriber establishes an API ''linkage,'' such as an NWII substitute or quote-update facility, which in turn connects to an SDP via an API server.

[9] Similar to any other private network, EWN I was designed to have a maximum circuit capacity (*i.e.*, 2,100 circuits). In 1995, the projected average circuit growth between 1995 and 1999 was estimated to be seven circuits per month, so that by 1999 there would be a total of 1,400 circuits. In 1996, however, there was an average growth of 35 circuits per month. For 1998, Nasdaq is averaging 10 circuits per month. Nasdaq projects that by 1999, there will be 2,100 circuits, and that Nasdaq will exhaust circuit capacity without the EWN II upgrade.

[10] Securities Exchange Act Release No. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989) (Automation Review Policy); Securities Exchange Act Release No. 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) (Second Automation Review Policy).

[11] *See* S. Rep. No. 94–75, at 7, *reprinted in* 1975 U.S.C.C.A.N. 179, 185 (report accompanying bill enacted as Securities Acts Amendments of 1975) (emphasis added).

[12] *See* Securities Exchange Act Release No. 35189 (January 3, 1995), 60 FR 3014 (January 12, 1995) EWN I rollout). Thus, while the rollout proceeds, some subscribers will continue to utilize EWN I and pay the fees for that service, until they are upgraded to EWN II.

[13] As noted above, A T1 circuit supports up to six SDPs, and an SDP supports up to eight PDs. A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDP(s) by placing eight PDs and/or API servers on an SDP and obtains an additional SDP(s). In such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the Service Charge) for each ''underutilized'' SDP(s) (*i.e.*, the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its PDs and/or API servers, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its existing T1 circuits by placing six SDPs on a T1 circuit and obtains an additional T1 circuit(s). In such case, the subscriber shall be charged the Additional Circuit/SDP Charge for each ''unutilized'' slot on the existing T1 circuit(s) Regardless of SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDPs, assuming a six-to-one ratio.

For example, if a subscriber has four SDPs (each with eight PDs) on an existing T1 circuit, and the subscriber orders a second T1 circuit on which the subscriber places one SDP (with eight PDs), the subscriber would pay on a monthly basis: 1) $1,500 for each of the four fully utilized SDPs on the first T1 circuit, plus $525 for each of the PDs on the circuit; 2) $2,700 for each of the two unutilized SDP

structure, a firm with one SDP ($1,500) and eight PDs (8 × $525 = $4,200) would be charged a monthly fee of $5,700,while a firm with one SDP ($1,500) and two PDs (2 × $525 = $1,050) would be charged a monthly fee of $2,550.

The proposed rule change also clarifies that the fees in NASD Rule 7010(h)(2) likewise apply to NWII service obtained via API. Specifically, if a subscriber chooses to access NWII through API, the subscriber would be assessed the service charge for each SDP, the display charge for each of the subscriber's linkage (*e.g.*, NWII substitute, quote-update facility), as well as the additional circuit charge.[14]

Although NASD Rule 7010(h)(2) generally applies to both members and non-member subscribers to NWII service, this filing will only affect a change to the fees charged to those subscribers who are not NASD members. The NASD has filed a separate but virtually identical proposed rule change to impose the proposed new fees on non-member subscribers. Lastly, the proposed rule filing removes the fee schedule for ''Digital Interface Service,'' as Nasdaq no longer offers this service.

Nasdaq believes that the proposed rule change is consistent with the section 15A(b)(5) of the Act,[15] which requires that the rules of a registered securities association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq notes that the proposed fees, which will only apply to those that utilize NWII service, are reasonable and proportionate to the projected costs of operating and maintaining EWN II.

Although the proposed fees are higher than those associated with EWN I, Nasdaq believes that these fees are both reasonable and necessary. Specifically, Nasdaq notes that EWN II will be faster, more secure, and provide greater capacity, all of which are essential to protecting the integrity of the Nasdaq market and maintaining the confidence of the investing public. In addition, the new fees will more fairly allocate system costs among Nasdaq market participants.[16]

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will—

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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. 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–98–63 and should be submitted by November 4, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

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slots on the first circuit; and 3) $1,500 for the SDP on the second T1 circuit, plus $525 for each of the PDs on that circuit.

As a second example, if a subscriber has five SDPs (each with eight PDs) on an existing T1 circuit, and the subscriber orders a second T1 circuit on which the subscriber places two SDP (with eight PDs), the subscriber would pay on a monthly basis $1,500 for each of the SDPs on the first and second T1 circuit, plus $525 for each of the PDs on the SDPs. The firm would not be subject to the Additional Circuit/SDP Charge because it has seven SDPs and needs two T1 circuits to support this number of SDPs.

As a third example, if a subscriber has on a T1 circuit four SDPs each with four PDs, the subscriber would pay on a monthly basis: 1) $525 for each of the 16 PDs; and 2) $1,500 for two of the SDPs and $2,700 for two SDPs because two SDPs are fully utilized while two SDPs are not. That is, to support the firm's 16 PDs, the firm only needs two SDPs. Thus, there are two ''underutilized'' or ''nonessential'' SDPs, for which the firm must pay the Additional Circuit/SDP Charge.

This pricing structure encourages subcribers to maximize circuit capacity and is aimed at preventing the premature exhaustion of such capacity. Furthermore, Nasdaq notes that under EWN II, each T1 will be a dual circuit and that there will be a virtually seamless switch-over from one circuit to the next if one of the circuits fails. Thus, it is anticipated that, due to the new features of EWN II, subscribers will be less likely to order additional circuits without first optimizing capacity on existing circuit(s).

[14] Since July 1998, new subscribers to NWII service have placed work orders for EWN II technology (instead of EWN I technology). During this period, Nasdaq charged new subscribers the required security deposit using the EWN I pricing structure, as the new EWN II pricing structure had not yet been filed. (NASD Rule 7070 provides that new subscribers to Nasdaq Workstation service shall be subject to a deposit in the amount of: estimated telecommunications provider charges for network infrastructure, connection and testing; two months circuit charges; and estimated telecommunications provider disconnect charges.) Nasdaq processed new work orders for EWN II (instead of EWN I) to avoid these subscribers having to pay for the installation and subsequent deinstallation of soon-to-be obsolete EWN I technology, and the installation of EWN II technology in September 1998 (when the upgrade is set to begin).

Upon approval of this filing, new subscribers that are non-members and that have placed work orders form July 1998 forward, will be billed for the security deposit for an amount equal to the differential under the EWN I and the EWN II fee structures. Additionally, if non-member subscribers receive EWN II technology prior to approval of the EWN II fees proposed herein, upon approval of this filing, Nasdaq will bill these non-member subscribers in an amount equal to the differential under the EWN I and EWN II fee structures. Nasdaq believes that this is a fair approach in that all subscribers should be required to pay the same fees for the EWN II technology, regardless of the timing of their order.

[15] 15 U.S.C. 78o–3(b)(5).

[16] According to Nasdaq, the proposed fee schedule's Service Charge, like the prior fee schedule, does not pass on all of the SDP/server costs that MCI charges the NASD. The proposed fee schedule's Display Charge, like the prior fee schedule, in part helps the NASD recoup its subsidy of the SDP/server costs, and permits the NASD to recoup other expenses associated with the development and the maintenance of NWII. *See* Conversation between John Malitzis, Senior Attorney, Nasdaq, and Joshua Kans, Attorney, Division, Commission, September 10, 1998.

[17] *See* 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40524; File No. SR–NYSE–98–27]

Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Arbitration Rules

October 6, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 8, 1998,[1] the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 proposed amendment to Rule 600 will exclude shareholder derivative actions from arbitration. The proposed amendments to Rules 604 and 621 will allow arbitrators to dismiss pleadings, with or without prejudice, as a sanction for a willful failure to comply with their orders. The proposed amendments to Rules 608 and 613 will increase the minimum notice of the appointment of arbitrators and the initial hearing date from eight to 15 business days. The proposed amendments to Rules 609 and 611 will extend the time to exercise a peremptory challenge from five to ten business days. The proposed amendment to Rule 627 will require the award to be served contemporaneously on all parties and will allow the Exchange to serve awards via facsimile or other electronic means. New Rule 638 will require, on a two year pilot basis, a single mediation session in non-customer cases, where the amount of the claim is $500,000 or more. Rule 638 will also provide mediation, with the parties' consent, in cases involving public customers where the amount of the claim is $500,000 or more. The mediator's fee for this required first session will be borne by the Exchange. In addition, the Rule provides for mediation in all other cases upon the consent of the parties and at their expense. New rule 639 will require, on a two year pilot basis, an administrative conference between the parties and arbitrators in all cases where the amount of the claims is $500,000 or more.

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 self-regulatory organization 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 statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE states that the proposed rule change, with the exception of amendments to Rule 600 and new Rules 638 and 639, is based on proposals developed by the Securities Industry Conference on Arbitration.

The Exchange proposes to amend Rule 600 to exclude shareholder derivative actions from arbitration. The Exchange's Arbitration rules already exclude class actions. The Exchange believes that shareholder derivative actions, like class actions, are representative in nature. ''Shareholder controversies are not appropriately within the mandatory arbitration provisions of the Exchange's Constitution.''[2] The NYSE believes that the court system is better equipped to manage shareholder derivative actions which involve parties in different jurisdictions and issues such as the notification of shareholder, the appointment of counsel and the awarding of attorneys' fees. In the past, the Exchange has declined the use of its arbitration facilities for shareholder derivative actions. Under Article XI, Section 3 of the Exchange Constitution, the Exchange has discretion to ''decline in any case to permit the use of the arbitration facilities of the Exchange.'' The Exchange's arbitration rules were not intended to provide a forum for shareholder derivative actions on behalf of member firms that are organized as corporations.

The Exchange proposes amendments to Rules 604 and 612 to provide that arbitrators may dismiss claims or defenses, with or without prejudice, as a sanction for a willful failure to comply with their orders. This amendment is intended to encourage compliance with the arbitrators' orders on discovery issues and other pre-hearing matters. The Exchange will keep records on any dismissals under the amended rules.

The proposed rule change amends Rules 608 and 613 to provide that the minimum notice of the appointment of arbitrators and the initial hearing date be extended from eight to 15 business days. The amendment is intended to give the parties greater notice of the hearing date and additional time to evaluate the arbitrators.

The proposed rule change amends Rules 609 and 611 to extend the parties' time to exercise a peremptory challenge from five to ten business days after notification of the identity of the arbitrators. The amendment will give the parties more time to research the arbitrators' backgrounds and decide whether to exercise a peremptory challenge.

The proposed rule change amends Rule 627 to provide that the Exchange may serve awards via facsimile or other electronic means. The award will be served contemporaneously on all parties. The amendment is intended to enable the Exchange to deliver the award in the fastest and most reliable way. The amendment is intended to adapt Exchange arbitration practices to technological changes.

The proposed rule change adds new Rule 638 which requires, on a pilot basis for two years from the date of Commission approval, a single mediation session, in non-customer cases where the amount of the claim is $500,000 or more. The mediator's fee for this first session will be borne by the Exchange. The pilot will also provide for mediation, with the parties' consent, in cases involving public customers where the amount of the claim is $500,000 or more. The mediator's fee for this first session will be borne by the Exchange. Moreover, mediation will be available upon the consent of the parties and at their expense in all other cases. Where the parties have not selected a mediator on their own, the Exchange will provide the names and profiles of five mediators. The current ''Arbitrator Profile'' form will be used to provide the parties with biographical and disclosure data regarding the proposed mediators.

[1] The Exchange filed Amendment No. 1 to the proposed rule change on September 28, 1998, the substance of which is incorporated into this notice. *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Katherine A. England, Assistant Director, Commission, dated September 24, 1998 (''Amendment No. 1'').

[2] *In re Salomon Inc. Shareholders' Derivative Litigation*, 68 F.3d 554, 556 (1995) (Judge McLaughlin of the Second Circuit quoting from the exchange's decision denying jurisdiction in a shareholder derivative action).

The profile form includes the employment histories of the mediators for the past 10 years and any information disclosed regarding conflicts of interest. The profile also includes information about the mediator's education, business and professional background, mediation experience and training and memberships in professional associations. Mediation is a voluntary method of dispute resolution where a mediator attempts to facilitate a settlement of the dispute. When mediation is successful, cases are settled earlier, often with significant cost savings. The parties' rights are protected since any settlement is reached with their participation and agreement.

Finally, the proposed rule change adds new Rule 639 to require, on a pilot basis for two years from the date of Commission approval, an administrative conference between the parties and arbitrators in all cases where the amount of the claim is $500,000 or more. An administrative conference early in the process will allow the arbitrators to intervene to establish discovery schedules resolve discovery disputes and other preliminary matters. The conference is intended to expedite the arbitration by narrowing the issues in dispute and avoiding costly contests over procedural matters.

2. Statutory Basis

The Exchange believes that the proposed changes are consistent with Section 6(b)(5) of the Act [3] in that they promote just and equitable principles of trade by insuring the members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change in 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. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–98–27 and should be submitted by November 4, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–27413 Filed 10–13–98; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b)(5).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted within 60 days of this publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: ''8(a) Export Survey Initiative''.

Type of Request: Revision of a currently approved collection.

Form No.: 2068.

Description of Respondents: 8(a) Firms.

Annual Responses: 200.

Annual Burden: 33.

Comments: Send all comments regarding this information collection to, William A. Fisher, Acting Associate Administrator, Office of Minority Enterprise Development, Small Business Administration, 409 3rd Street S.W., Suite 8000, Washington, D.C. 20416. Phone No.: 202–205–6412.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–27497 Filed 10–13–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3138]

State of Alabama

As a result of the President's major disaster declaration on September 30, 1998, I find that the following Counties in the State of Alabama constitute a disaster area due to damages caused by Hurricane Georges beginning on September 25, 1998 and continuing: Baldwin, Clarke, Coffee, Covington, Crenshaw, Escambia, Geneva, Mobile, Monroe, and Washington. Applications for loans for physical damage may be filed until the close of business on November 29, 1998 and for economic injury until the close of business on June 30, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Butler, Choctaw, Conecuh, Dale, Houston, Lowndes, Marengo, Montgomery, Pike, and Wilcox in the State of Alabama. Any counties contiguous to the above-

named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.875
Homeowners Without Credit Available Elsewhere	3.437
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 313808 and for economic injury the number is 9A2700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 5, 1998.

James Rivera,

Acting Associate Administrator For Disaster Assistance.

[FR Doc. 98–27499 Filed 10–13–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3135]

State of Florida; and Contiguous Counties in Georgia

As a result of the President's major disaster declaration on September 28, 1998, and amendments thereto on October 1, I find that the following Counties in the State of Florida constitute a disaster area due to damages caused by Hurricane Georges beginning on September 25, 1998 and continuing: Bay, Escambia, Gadsden, Holmes, Monroe, Okaloosa, Santa Rosa, Suwannee, Walton, and Washington. Applications for loans for physical damage may be filed until the close of business on November 27, 1998 and for economic injury until the close of business on June 28, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Dade, Calhoun, Collier, Columbia, Gilchrist, Gulf, Hamilton, Jackson, Lafayette, Leon, Liberty, and Madison in the State of Florida; and Decatur, Grady, and Seminole in the State of Georgia. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

The interest rates are:

	(Percent)
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.875
Homeowners Without Credit Available Elsewhere	3.437
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 313508. For economic injury the numbers are 9A1700 for Florida and 9A32 for Georgia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 5, 1998.

James Rivera,

Acting Associate Administrator For Disaster Assistance.

[FR Doc. 98–27501 Filed 10–13–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3133]

State of Louisiana; Amendment #1

In accordance with a notice from the Federal Emergency Management Agency dated October 2, 1998, the above-numbered Declaration is hereby amended to include St. Charles Parish, Louisiana as a disaster area due to damages caused by Tropical Storm Frances and Hurricane Georges beginning on September 9, 1998 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous parishes may be filed until the specified date at the previously designated location. All parishes contiguous to the above-named primary parish have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is November 22, 1998 and for economic injury the termination date is June 23, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 6, 1998.

James Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–27500 Filed 10–13–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3139]

State of Mississippi

As a result of the President's major disaster declaration on October 1, 1998, and amendments thereto on October 3, I find that the following Counties in the State of Mississippi constitute a disaster area due to damages caused by Hurricane Georges beginning on September 25, 1998 and continuing: Forrest, George, Greene, Hancock, Harrison, Jackson, Jones, Lamar, Pearl River, Perry, and Stone. Applications for loans for physical damage may be filed until the close of business on November 30, 1998 and for economic injury until the close of business on July 1, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Covington, Jasper, Jefferson Davis, Marion, Smith, and Wayne in the State of Mississippi. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.875
Homeowners Without Credit Available Elsewhere	3.437
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

	Percent
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 313908 and for economic injury the number is 9A3100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 5, 1998.

James Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–27498 Filed 10–13–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9882]

State of Washington; Amendment # 1

The above-numbered Declaration is hereby amended to include Grays Harbor and Pacific Counties in the State of Washington as an economic injury disaster area due to the effects of the warm water ocean current known as El Nino beginning on May 1, 1997.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Lewis, Mason, Thurston, and Wahkiakum in the State of Washington may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for economic injury is March 5, 1999.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: October 5, 1998.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 98–27502 Filed 10–13–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2904]

Secretary of State's Advisory Committee on Private International Law (ACPIL) Study Group on Assignment in Receivables Financing; Request for Comment

The Department of State's Office of the Assistant Legal Adviser for Private International Law is seeking private sector comment on a proposed international convention on assignment in receivables financing (the 'Convention'). The Convention is sponsored by the United Nations Commission on International Trade Law (UNCITRAL), and the initial draft is the result of cooperative efforts between the United States and approximately fifty United Nations Member States.

The purpose of the Convention is to create a uniform international law on assignment in receivables financing transactions in order to facilitate the use of this type of financing arrangement internationally. While receivables financing is quite common in the United States and has defined legal parameters in the form of the Uniform Commercial Code Article 9, it is relatively new and infrequently used in some other countries, especially developing markets. One goal in negotiating the Convention is to help introduce receivables financing to more countries, in the hope that new uniform ways of extending financing and creating security interests may spur investment, increase economic growth and provide companies with additional commercial opportunities.

The Convention would cover assignments of receivables (i.e. contractual and other rights to payment) where the assignor is located in one country and the account debtor is located in another country. It would also cover assignments of receivables where the assignor and the assignee are located in different countries. The assignments addressed would include secured transactions as well as true sales and, accordingly, would impact upon asset based financing, factoring, securitization and project finance.

While the Convention is not scheduled to be finalized until mid-2000, it is important to receive comments from various industry groups now, so that there is an opportunity to address concerns and questions while the Convention is still in the developmental phase. Specifically, comments would be helpful on: (i) whether it would benefit certain industries or common industry transactions to be included or excluded from the Convention, and (ii) assuming an industry is included, what provisions would be helpful in order to best facilitate that industry's transactions.

Requests for a copy of the latest version of the Convention may be sent to Ms. Allison Gray by fax at (202) 776–8482, by phone at (202) 776–8422, or by e-mail to <pildb@his.com>. Comments on the Convention may be directed to Ms. Gray at the above numbers and e-mail address or by mail to L/PIL, Room 357 South Building, 2430 E Street, NW., Washington, DC 20037–2800.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law.

[FR Doc. 98–27510 Filed 10–13–98; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Noise Certification Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss noise certification issues.

DATES: The meeting will be held on October 29 at 10:00 a.m.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Angela O. Anderson, (202) 267–9681, Office of Rulemaking (ARM–200), 800 Independence Avenue, SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss noise certification issues. This meeting will be held October 29, 1998, at 10:00 a.m., at the General Aviation Manufacturers Association. The agenda for this meeting will include a progress report from the FAR/JAR Harmonization Working Group for Subsonic Transport Airplanes.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contracting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on October 7, 1998.

Paul Dykeman,

Assistance Executive Director for Noise Certification Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–27527 Filed 10–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that the Executive Committee, Department of Veterans Affairs Voluntary Service (VAVS) National Advisory Committee (NAC) will meet October 22–23, 1998, at the Richmond Marriott, 500 East Broad Street, Richmond, Virginia. The meeting is scheduled from 8:00 a.m. until 4:30 p.m. on October 22, 1998, and from 8:00 a.m. until 12 noon on October 23, 1998.

The NAC consists of sixty-two national organizations and advises the Under Secretary for Health and other members of the Department of Veterans Affairs Central Office staff on how to coordinate and promote volunteer activities within VA facilities. The Executive Committee consists of nineteen representatives from the NAC member organizations and acts as the NAC governing body in the interim period between NAC Annual Meetings. Business topics for the October 22, 1998, morning session include: VAVS program progress since the 1998 NAC Annual Meeting, subcommittee appointments, financial report, and review of the 1998 Annual Meeting Evaluations. The October 22, 1998, afternoon business session topics include: 53rd Annual Meeting plans, 2000 NAC Annual Meeting planning, process recommendations pending NAC approval at the 2001 Annual Meeting. The October 23, 1998, morning business session topics include: subcommittee reports, Standard Operating Procedure Revisions, New Business, and VHA Update by Dr. Thomas Garthwaite, Acting Under Secretary for Health.

The meeting is open to the public. Individuals interested in attending are encouraged to contact: Ms. Laura Balum, Administrative Officer, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8392.

Dated: October 1, 1998.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–27465 Filed 10–13–98; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Wage Committee, Notice of Meetings

The Department of Veterans Affairs (VA), in accordance with Pub. L. 92–463, gives notice that meetings of the VA Wage Committee will be held on:

Wednesday, November 4, 1998, at 2:00 p.m.

Wednesday, November 18, 1998, at 2:00 p.m.

Wednesday, December 2, 1998, at 2:00 p.m.

Wednesday, December 16, 1998, at 2:00 p.m.

The meetings will be held in Room 246, Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW, Washington, DC 20420.

The Committee's purpose is to advise the Under Secretary for Health on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Department of Veterans Affairs and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and 5 U.S.C. 552b(c) (2) and (4).

However, members of the public are invited to submit material in writing to the Chairperson for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairperson, VA Wage Committee (05), 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: October 1, 1998.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–27466 Filed 10–13–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 63, No. 198

Wednesday, October 14, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 440

[Docket 28635; Amendment No. 98–1]

RIN 2120–AF98

Financial Responsibility Requirements for Licensed Launch Activities

Correction

In rule document 98–22728 beginning on page 45592 in the issue of Wednesday, August 26, 1998, make the following corrections:

PART 440—[CORRECTED]

1. On page 45619, third column, in the table of contents for Part 440, in the title for Appendix B to Part 440, ''Assignment'' should read ''Agreement''.

§ 440.7 [Corrected]

2. On page 45620, third column, § 440.7 (c), seventh line, ''Appendix I'' should read ''Appendix A''.

Appendix B to Part 440—[Corrected]

3. On page 45625, third column, under ''DEPARTMENT OF TRANSPORTATION'' and above the issue date, insert:

By:_____

Its:_____

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Rotocraft Draft Advisory Material

Correction

In notice document 98–26882, appearing on page 53975, in the issue of Wednesday, October 7, 1998, under **FOR FURTHER INFORMATION CONTACT**, in the fourth line, ''(817) 222–5961'' should read ''(817) 222–5359''.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[AD–FRL–6149–7]

RIN 2060–AE55

National Volatile Organic Compound Emission Standards for Architectural Coatings

Correction

In rule document 98–22659 beginning on page 48848, in the issue of Friday, September 11, 1998, make the following corrections:

PART 59—[CORRECTED]

On page 48886, in appendix A to subpart D, the entries in Table 1 are corrected to read as set forth below.

TABLE 1 TO SUBPART D.—VOLATILE ORGANIC COMPOUND (VOC), CONTENT LIMITS FOR ARCHITECTURAL COATINGS

[Unless otherwise specified, limits are expressed in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation excluding the volume of any water, exempt compounds, or colorant added to tint bases.]

Coating category	Grams VOC per liter	Pounds VOC per gallon [a]
Stains:		
Clear and semitransparent	550	4.6
Opaque	350	2.9
Low solids	120[b]	1.0[b]
Wood preservatives:		
Low solids	120[b]	1.0[b]

[a] English units are provided for information only. Compliance will be determined based on the VOC content limit, as expressed in metric units.
[b] Units are grams of VOC per liter (pounds of VOC per gallon) of coating, including water and exempt compounds, thinned to the maximum thinning recommended by the manufacturer.

BILLING CODE 1505–01–D

federal register

Wednesday
October 14, 1998

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6164–2]

RIN 2060–AG91, 2060–AF06, 2060–AG94, 2060–AF09, 2060–AE36

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This consolidated rulemaking proposal includes several related elements. Today's proposal would establish a ''Generic MACT Standards'' program to be utilized by the EPA in establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) under section 112 of the Clean Air Act (Act) for certain small source categories consisting of five or fewer sources. As part of this generic MACT program, the EPA is proposing an alternative methodology under which the EPA will make its maximum available control technology (MACT) determination for appropriate small categories by referring to previous MACT standards that have been promulgated for similar sources in other categories. The basic purposes of the proposed generic MACT program are to use public and private sector resources efficiently, and to promote regulatory consistency and predictability in MACT standard development.

In this consolidated rulemaking package, the EPA is also proposing general control requirements for certain types of emission points for hazardous air pollutants (HAP), which will then be referenced, as appropriate, in the generic MACT requirements for individual source categories. These proposed general control requirements are set forth in new proposed subparts and would be applicable to storage vessels managing organic materials, process vents emitting organic vapors, leaks from equipment components. In addition, the EPA is proposing a separate subpart of requirements for closed vent systems, control devices, recovery devices and routing to fuel gas systems or a process.

Today's consolidated rulemaking package also includes specific proposed MACT standards that have been developed within the generic MACT framework for four specific source categories that are included on the EPA's list of categories for which NESHAP are required. These proposals include standards for acetal resins (AR) production, acrylic and modacrylic fiber (AMF) production, hydrogen fluoride (HF) production, and polycarbonate(s) (PC) production.

DATES: *Comments.* Comments must be received on or before January 12, 1999.

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed generic MACT standards. If any person specifically requests that a public hearing be held by November 4, 1998, a public hearing will be held on November 25, 1998 beginning at 10:00 a.m.

Request to Speak at a Hearing. Any request that a hearing be held concerning this proposed rule must be submitted orally or in writing no later than November 4, 1998, by contacting Ms. Dorothy Apple at (919) 541–4487, Policy Planning and Standards Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), (LE–131), Attention, Docket No. A–97–17, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. All technical comments pertaining solely to individual source categories should be submitted to the dockets established for the individual source categories (see *Docket* for individual docket numbers). The EPA requests that a separate copy of comments also be sent to Mr. David W. Markwordt (see **FOR FURTHER INFORMATION CONTACT** for address).

Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems. Comments and data will also be accepted on Microsoft DOS formatted 3.5 inches high-density diskettes containing WordPerfect® 5.1 or 6.1, or ASCII formatted files. All comments and data submitted in electronic form must note the docket number: A–97–17 for nonsource category-specific comments and data; and A–97–19 for AR production, A–97–18 for AMF production, A–96–54 for HF production, and A–97–16 for PC production source category-specific comments and data. No confidential business information (CBI) should be submitted by e-mail. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Public Hearing. The public hearing, if required, will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing should contact Ms. Dorothy Apple at (919) 541–4487, Policy Planning and Standards Group (MD–13), to verify that a hearing will be held.

Docket. A docket, No. A–97–17, containing information considered by the EPA in the development of the proposed standards for the generic MACT, is available for public inspection between 8:30 a.m. and 3:30 p.m., Monday through Friday (except for Federal holidays), at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW., Washington DC 20460, telephone: (202) 260–7548. The EPA's Air Docket section is located at the above address in Room M–1500, Waterside Mall (ground floor). Dockets established for each of the source categories proposed to be assimilated under the generic MACT standards with this proposal include the following: (1) AR production (Docket No. A–97–19); AMF production (Docket No. A–97–18); HF production (Docket No. A–96–54); and PC production (Docket No. A–97–16). These dockets include source category-specific supporting information. The proposed standards, and supporting information are available for inspection and copying. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed standards, contact the following at the Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711:

Information type	Contact	Group	Phone/facsimile/ e-mail address
Nonsource category-specific.	David W. Markwordt	Policy, Planning and Standards Group.	(919) 541–0837/(919) 541–0942/ markwordt.david@epa.gov.

Information type	Contact	Group	Phone/facsimile/ e-mail address
AR Production	John M. Schaefer	Organic Chemicals Group	(919) 541–0296/(919) 541–3470/ schaefer.john@epa.gov.
AMF Production	Anthony P. Wayne	Policy, Planning and Standards Group.	(919) 541–5439/(919) 541–0942/ wayne.tony@epa.gov.
HF Production	Richard S. Colyer	Policy, Planning, and Standards Group.	(919) 541–5262/(919) 541–0942/ colyer.rick@epa.gov.
PC Production	Mark A. Morris	Organic Chemicals Group	(919) 541–5416/(919) 541–3470/ morris.mark@epa.gov.

SUPPLEMENTARY INFORMATION: This notice, the proposed regulatory text, and supporting documentation are available in Docket No. A–97–17 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**). This notice and the proposed regulatory text are also available on the Technology Transfer Network (TTN) on the EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air emissions control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,400 baud per second modem. For further information, contact the TTN HELP line at (919) 541–5384, from 1:00 p.m. to 5:00 p.m. Monday through Friday, or access the TTN web site at: http://www.epa.gov/ttn.

Regulated entities. Entities potentially regulated are those that produce AR, AMF, HF, and PC and are major sources of HAP as defined in section 112 of the Act. Regulated categories and entities include:

Category	Regulated entities[a]
Industry	Producers of homopolymers and/or copolymers of alternating oxymethylene units. Producers of either acrylic fiber or modacrylic fiber synthetics composed of acrylonitrile (AN) units. Producers of, and recoverers of HF by reacting calcium fluoride with sulfuric acid. For the purpose of implementing the rule, HF production is not a process that produces gaseous HF for direct reaction with hydrated aluminum to form aluminum fluoride (i.e., the HF is not recovered as an intermediate or final product prior to reacting with the hydrated aluminum). Producers of a special class polyester formed from any dihydroxy compound and any carbonate diester or by ester exchange.

[a] This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability criteria in § 63.1104(a)(1), (b)(1), (c)(1), and (d)(1) of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The following outline is provided to aid in reading the preamble to the proposed generic MACT standards.

I. Background
A. Purpose of the Proposed Standards
B. Technical Basis for the Proposed Standards
C. Stakeholder and Public Participation
II. Source Category List
III. Basis for Generic MACT Approach
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B. Acetal Resins Production Standards
C. Acrylic and Modacrylic Fiber Production Standards
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V. Summary of Environmental, Energy, and Economic Impacts
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VII. Selection of MACT for Proposed Standards
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XI. Relationship to Other Standards and Programs Under the Act
A. Relationship to the Part 70 and Part 71 Permit Programs
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A. Public Hearing
B. Docket
C. Executive Order 12866
D. Enhancing the Intergovernmental Partnership Under Executive Order 12875
E. Paperwork Reduction Act
F. Regulatory Flexibility Act
G. Unfunded Mandates
H. National Technology Transfer and Advancement Act
I. Protection of Children from Environmental Health Risks
J. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
XIV. Statutory Authority

I. Background

A. Purpose of the Proposed Standards

The Act was developed, in part,

* * * to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population (the Act, section 101(b)(1)).

Sources that would be subject to the standards proposed for each of the source categories (i.e., AR production, AMF production, HF production, PC production) with today's notice are major sources of HAP emissions on the EPA's list of categories scheduled for regulation under section 112(c)(1) of the Act. Major sources of HAP emissions are those sources that have the potential to emit greater than 9.1 megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 22.7 Mg/yr (25 tpy) of any combination of HAP. The HAP that would be controlled with today's proposal are associated with a variety of adverse health effects. Adverse health effects associated with HAP include chronic health disorders (e.g., cancer, aplastic anemia, pulmonary (lung) structural changes), and acute health

disorders (e.g., dyspnea (difficulty in breathing), and neurotoxic effects.

The EPA chose to regulate the AR production, AMF production, HF production, and PC production source categories under one subpart to streamline the regulatory burden associated with the development of separate rulemaking packages. All of these source categories have 5 or fewer major sources that would be subject to the standards proposed with today's notice. This subpart will be referred to as the ''generic MACT standards'' subpart. The generic MACT standards subpart has been structured to allow source categories with similar emission points and MACT control requirements to be covered under one subpart.

B. Technical Basis for the Generic MACT Standards

Section 112 of the Act regulates stationary sources of HAP. Section 112(b) (as amended) of the Act lists 188 chemicals, compounds, or groups of chemicals as HAP. The EPA has been directed by section 112 to regulate the emission of HAP from stationary sources by establishing national emission standards.

Section 112(a)(1) of the Act defines a major source as:

> * * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential-to-emit, considering controls, in the aggregate 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

The statute requires the EPA to establish standards to reflect the maximum degree of reduction in HAP emissions through application of MACT for major sources on the EPA's list of categories scheduled for regulation under section 112(c)(1) of the Act. The EPA is required to establish standards that are no less stringent than the level of control defined under section 112(d)(3) of the Act (this minimal level of control is referred to as the ''MACT floor.''

For new sources, the maximum degree of reduction in emissions

> shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator.

The EPA defines a similar source as a source that has comparable emissions, and a design and capacity structure, such that emissions from that source can be controlled using the same control technology as applied to the given source.

For existing sources in the same category or subcategory, standards may be less stringent than standards for new sources in the same category or subcategory but shall not be less stringent, and may be more stringent than

> the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information) * * * in the category or subcategory for categories or subcategories with 30 or more sources, or * * * the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources.

The following approach was used to collect and evaluate information pertaining to the proposed MACT for the AR production, AMF production, HF production, and PC production source categories:

1. Established a stakeholder group consisting of representatives of the affected industries, State and local agencies, and other interested parties (e.g., environmental groups, EPA).
2. Assembled available information from previous studies within the Agency and from the affected industries on the source category.
3. Collected additional information (e.g., site visits, existing State regulations) on the source category, as necessary, for determining baseline HAP emissions and existing emissions control.
4. Determined the affected source, control applicability criteria, and MACT for the source category. The MACT for an individual source category was determined based on available information on existing emissions control that applies to (1) sources within the source category, and (2) similar sources for which standards have been promulgated outside the source category (where practical).

Section III of this notice presents the EPA's proposed rationale for and summary of the EPA's proposed approach for determining MACT for source categories with a limited population of sources. Discussion on the EPA's rationale for, and determination of, MACT under the generic MACT standards for the AR production, AMF production, HF production, and PC production source categories is presented in section VII of this notice.

C. Stakeholder and Public Participation

Representatives of the AR production, AMF production, HF production, and PC production industries; environmental groups; State and local agencies; and the EPA were consulted in the development of the proposed standards. Industry representatives were asked to assist in data gathering, arranging site visits, and technical review. Documentation for stakeholder and public participation for the AR production, AMF production, HF production and PC production standards is included in the docket for the proposed standards (Docket No. A–97–17). Source category-specific supporting information is maintained within dockets established for each of these source categories (see **ADDRESSES**). These dockets are cross referenced by the generic MACT standards docket.

Representatives from other EPA offices and programs were included in the regulatory development process. These representatives' responsibilities included the review of the proposed standards. Their involvement ensures that the impacts of the proposed standards to other EPA offices and programs are adequately considered during the development process.

Additionally, this notice solicits comment on the proposed standards and offers a chance for a public hearing on the proposal (see ADDRESSES section) in order to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards and the generic MACT approach.

II. Source Category List

Acetal resins production, AMF production, HF production, and PC production are included in the EPA's list of categories of major sources of HAP emissions established under section 112(c)(1) of the Act. The initial list was published on July 16, 1992 (57 FR 31576). An update of the list was published on June 4, 1996 (61 FR 28202). Each of these source categories have 5 or fewer sources (i.e., plants) and are, with this proposal, the first source categories proposed to be regulated under the proposed generic MACT standards. The documentation supporting the initial listing of these source categories is entitled ''Documentation for Developing the Initial Source Category List,'' EPA–450/3–91–030, July 1992. A description of each of these source categories follows.

1. Acetal Resins Production Source Category

The AR production source category includes any facility which manufactures homo polymers and/or copolymers of alternating oxymethylene units. Acetal resins are also known as polyoxymethylenes, polyacetals, and aldehyde resins. They are generally produced by polymerizing

formaldehyde (HCHO) with the methylene functional group (CH2) and are characterized by repeating oxymethylene units (CH20) in the polymer backbone. There are currently 3 plants operating in the United States.

2. Acrylic and Modacrylic Fibers Production Source Category

The AMF production source category includes any facility engaged in the production of either of the following synthetic fibers composed of AN:

(1) Acrylic fiber in which the fiber-forming substance is any long-chain synthetic polymer composed of at least 85 percent by weight of AN units; or

(2) Modacrylic fiber in which the fiber-forming substance is any long-chain synthetic polymer composed of at least 35 percent but less than 85 percent by weight of AN units. There are currently 4 plants operating in the United States.

3. Hydrogen Fluoride Production Source Category

The HF production source category includes any facility engaged in the production and recovery of HF by reacting calcium fluoride with sulfuric acid. For the purpose of the proposed standards, HF production does not include any process that produces gaseous HF for direct reaction with hydrated aluminum to form aluminum fluoride. In these processes, HF is not recovered as an intermediate or final product prior to reacting with the hydrated aluminum. Facilities utilizing these processes will be regulated under a separate MACT standard.

There are currently 2 HF production plants operating in the United States, only one of which will be affected by this rule. A third HF plant has been indefinitely ''mothballed'' (shut down but not dismantled, with the possibility of resuming production in the future).

4. Polycarbonates Production Source Category

The PC production source category includes any facility engaged in the production of a special class of polyester formed from any dihydroxy compound and any carbonate diester or by ester exchange. Polycarbonates may be produced by solution or emulsion polymerization, although other methods may be used. A typical method for the manufacture of PC includes the reaction of bisphenol-A with phosgene in the presence of pyridine to form PC. Methylene chloride is used as a solvent in this polymerization reaction. There are currently 5 plants operating in the United States.

Additional source categories that are scheduled for regulation no later than November 15, 2000 that the EPA has identified as having 5 or fewer sources include the following:

1. Alumina processing
2. Ammonium sulfate production
3. Antimony oxides manufacturing
4. Asphalt/coal tar application—metal pipes
5. Carbonyl sulfide (COS) production via carbon disulfide
6. Carboxymethylcellulose production
7. Cellophane production
8. Cellulose ethers production
9. Chromium refractories production
10. Fume silica production
11. Methylcellulose production
12. Primary magnesium refining
13. Rayon production
14. Spandex production
15. Steel foundries
16. Uranium hexafluoride production

The EPA believes that there is a potential for many more of the source categories scheduled for regulation no later than November 15, 2000 to have a limited number (5 or fewer) of major sources because of the existence of synthetic minor and area HAP sources. Identification of such source categories would be made when the initial data collection and analysis is conducted for an individual source category during the ''presumptive MACT'' (discussed below) process and/or in the information gathering and analyses stage of MACT development. Source categories determined by the EPA to include a limited number (5 or fewer) major sources will be evaluated by the EPA according to the criteria described below, to determine whether or not each source category is considered to be an appropriate candidate for assimilation in generic MACT standards.

If a listed source category on the EPA's source category list for regulation is not promulgated by the scheduled date for a given source category, section 112(j)(2) requires major sources of HAP to apply for a permit (in States with approved permit programs) within 18 months and comply with emissions limitations equivalent to MACT. Section 112(g) requires compliance with MACT on a case-by-case basis for major new sources and source modifications when no national MACT standard has been set by the EPA. In such cases, State and local permitting authorities are required to make case-by-case MACT determinations. Presumptive MACT is an estimate made within a limited timeframe based on a review of available information of what the proposed MACT standard would be, and is intended to assist State and local permitting authorities in making a possible case-by-case MACT determination.

III. Basis for Generic MACT Approach

In order to fulfill the requirements of the Act, the EPA is required to develop standards that reflect the maximum degree of reduction in HAP emissions through the application of MACT for major sources. For new sources, the EPA is required to establish standards that are no less stringent than the emission control that is achieved in practice by the best controlled similar source (referred to as the ''MACT floor'' for new sources). For existing sources, the EPA is required to establish standards that are no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources in a category or subcategory with 30 or more sources, or the average emission limitation achieved by the best performing 5 sources in a category or subcategory with fewer than 30 sources (referred to as the ''MACT floor'' for existing sources).

The statute is somewhat ambiguous with respect to the process for derivation of a MACT floor for existing sources in those instances where the source category in question has fewer than five major sources. In prior rulemakings, the EPA has derived a MACT floor for categories with fewer than five sources directly, by determining the average emission limitation achieved by all sources in the category. However, while this approach to determining compliance with the MACT floor is clearly permissible, the EPA believes that derivation of a MACT floor in this manner for small source categories will generally be superfluous and uninformative with respect to the ultimate determination of MACT itself. This is especially true in those instances where the sources to be controlled are essentially the same types of sources repeatedly evaluated by the EPA as part of the development of previous MACT standards. In order to conserve limited EPA resources, avoid duplication of effort, and encourage consistency in its regulatory determinations, the EPA is now proposing to establish an alternative generic process for determining MACT for certain small source categories. This process will focus primarily on extension of prior MACT determinations to additional categories and determine compliance with MACT floor requirements by logical inference rather than a separate quantitative analysis.

A. Background

Of 93 source categories on the EPA source category list for which standards have not yet been developed, 17 have been identified as having 5 or fewer major sources. The tight schedule for establishing MACT standards for 93 source categories no later than November 15, 2000 has required the EPA to assess and implement different approaches to streamline regulatory development efforts while continuing to meet the objectives of the Act. For example, 20 source categories have been combined for regulation under one rulemaking (i.e., the Miscellaneous Organic NESHAP), and source categories with similar emission points and characteristics have been assimilated with others (e.g., the dodecanedioic acid production source category has been assimilated under the Hazardous Organic NESHAP).

Under the statutory process, even after a MACT floor has been determined, the EPA must consider control options more stringent than the floor. When considering control requirements beyond the floor, the EPA evaluates the relative cost of achieving different levels of emissions reductions, non-air quality health and environmental impacts, and the energy requirements of the controls. The objective of this consideration is to achieve the maximum degree of emission reduction without imposing unreasonable economic or other impacts.

In deciding what level of emission control constitutes MACT for a particular source category, the EPA is not limited solely to evaluation of the sources in that category. Rather, the EPA will consider its prior experience in deriving MACT requirements for similar types of sources in other categories. The more limited the population of sources in a category, the less likely that such sources will be fully representative of the range of reasonably available emission control technologies and strategies. Furthermore, in a larger source category, the statutory MACT floor determination is based on a subset of the sources in the category which is deliberately skewed toward greater control. Thus, the smaller the source category, the lower the likelihood that a MACT floor determined within the category will be useful or informative with respect to the determination of MACT itself.

For example, averaging the HAP emission control level achieved by one well-controlled source (e.g., vented to a control device achieving a HAP emission reduction of 95 percent by weight) with two uncontrolled sources (i.e., HAP emission reduction efficiency of zero percent by weight) would result in an average HAP emission control reduction level of approximately 32 percent by weight. This calculated ''average'' HAP emission control level is clearly below the HAP emission control level already demonstrated by a source in the source category, and is clearly not indicative of MACT for the source type. Selection of the median facility of the three, which is uncontrolled, would also have little relevance to the determination of MACT itself. Even if the EPA were to declare that the MACT floor is no control, the EPA would then be required to undertake a separate MACT analysis based on the general practicality of the control achieved at the well-controlled source as well as similar sources outside of the category.

B. Rationale

From the above discussion, it is apparent that, as a practical matter, the statutory safeguard of the MACT floor becomes less and less relevant to MACT itself as the size of a source category declines. Given the large number of small source categories scheduled for standard development and the limited time remaining, the EPA would like to focus its resources on the most relevant issues. Therefore, the Agency has attempted to develop a policy for small source categories which identifies and recognizes those instances where a separate MACT floor analysis is unnecessary and compliance of the overall MACT standard with the MACT floor limitation may be reasonably inferred.

There are two basic scenarios where the EPA can reasonably infer as part of establishing MACT that MACT floor requirements have been satisfied. First, when the EPA intends to select a MACT standard that coincides with the level of control achieved by the best controlled source(s) in a category, it is self-evident that the MACT floor has been met, and it is clearly a waste of EPA resources to undertake a separate quantitative MACT floor analysis based, in part, on control levels at the less well controlled facilities. This common sense principle is equally applicable to both small and large source categories.

Second, in those instances where the EPA will base its MACT standard for a small category (five or fewer sources) on MACT standards previously established for a larger group of demonstrably similar sources in other categories, it is also reasonable to infer MACT floor compliance without the need for a detailed new analysis. In each of the prior standards, the EPA will have selected a MACT standard requiring control equal to or greater than the MACT floor, and each of those MACT floors will, in turn, have been derived from a subset of the category consisting of the best-controlled facilities. Unless there is something about the nature of the sources in the small category that undercuts the basic premise that it is similar to the larger group of previously regulated sources, it is extremely implausible that the average control achieved by the small group of sources would be better than the MACT standards previously derived from the larger universe of similar sources.

If the EPA adopts objective criteria for assessing the similarity of sources in a small category to the larger group of sources upon which its generic MACT standards are based, and conducts a separate MACT analysis rather than adopting a generic standard whenever sources in the small category in question are shown to have achieved greater control or to be otherwise dissimilar, the EPA believes that the adoption of generic MACT standards will generally comport with statutory requirement.

It is apparent that a process that applies generically derived MACT requirements to small groups of sources that are similar in character to the larger groups of sources from which the generic standards were derived will conserve resources and will foster regulatory predictability and consistency. For the reasons explained above, the EPA believes that MACT standards derived in this manner will also comply with any applicable MACT floor and otherwise meet statutory requirements. Although such a conclusion is logical, the EPA decided that it would be useful to test this conclusion by comparing the results likely under this alternative approach with actual standards promulgated in the past.

In order to do this, the EPA reviewed and evaluated MACT standards promulgated as of March of 1998 that regulated source categories or source subcategories with 5 or fewer major sources. The EPA's review and evaluation supports the EPA's position that the control level established using the proposed alternative MACT determination approach would parallel the control level that would be established under the conventional MACT determination approach (refer to Docket No. A–97–17, Item No. II–B–7).

Although the EPA believes it is sensible to address small source categories through application of generic standards derived from EPA experience in setting prior standards,

the EPA will not automatically utilize a generic standard approach for all small categories. If the EPA determines that the sources in a particular small source category are demonstrably different in a material way, a generic approach will not be utilized in that instance. Factors that could cause the EPA to determine that a source category is not an appropriate candidate for generic MACT include, but are not limited to, the following: sources in the small category are dissimilar from the types of sources addressed by generic standards, factors specific to the sources in question significantly reduce or increase the practicality of the specified generic emission controls, the sources present unusual hazards of the sort that may have affected development of existing control strategies, or the sources have already achieved emission limitations greater than anticipated generic standards.

The EPA will determine the appropriateness of assimilating a particular small source category into its generic standards on a case-by-case basis. Moreover, as will be apparent from the discussion below, the EPA intends to establish a process that will enable early identification of any factors that make a small category inappropriate for inclusion in generic MACT.

C. Description of Alternative Approach

Under the EPA's proposed alternative MACT determination approach for source categories with 5 or fewer major sources, MACT would be established based on (1) sources within the category, and (2) similar sources for which standards have been promulgated outside the source category. In developing a streamlined approach for establishing MACT when a source category has a limited population of major sources, the EPA acknowledged that the following legal and procedural issues needed to be addressed:

1. The approach needed to fulfill the Act's intent of establishing MACT.
2. The approach needed to allow the EPA to establish specific enforceable standards.
3. The approach needed to allow the EPA to develop appropriate monitoring, recordkeeping, and reporting requirements.
4. The approach needed to include procedural steps to ensure appropriate decision making, and input from stakeholders.

The EPA's proposed basic approach for determining MACT for source categories with a limited population of major sources involves the following:

1. Establishment of a stakeholder group that consists of representatives of the affected industries, State and local agencies, and other interested parties (e.g., environmental groups, the EPA Regional Offices).
2. Assembly of available information from previous studies within the Agency and from the affected industries on the source category.
3. Collection of additional information (e.g., site visits, existing State regulations) on the source category, as necessary, for determining baseline HAP emissions and existing emissions control.
4. Determination of the affected source, control applicability criteria, and MACT for an individual source category based on available information on existing emissions control that applies to (1) sources within the category, and (2) similar sources for which standards have been promulgated outside the source category (where practical and there is consensus among the stakeholders).

The EPA chose the presumptive MACT process as the starting point for the alternative MACT determination because sufficient information would be available in the process to do an initial screening of small major HAP source categories (sources with five or fewer major HAP sources) to determine the appropriateness of MACT based on the alternative MACT determination approach (e.g., identification of source category as a category with a limited number of major sources; identification of HAP emission points, characteristics, and waste streams). If the EPA decides that the alternative MACT determination approach is appropriate, it will be implemented for that source category and standards for that source category would be assimilated under the generic MACT standards subpart. If it is decided that it is not appropriate to determine MACT for the source category based on the EPA's alternative approach, the conventional MACT determination process will be utilized. Under the latter scenario, the source category-specific MACT standards may be assimilated under the generic MACT standards subpart or placed in a separate subpart.

Based on the EPA's establishment of previously-promulgated MACT standards, the determination of MACT generally consists of two basic components: an ''applicability'' criteria component and a ''control requirement'' component. The applicability component consists of identifying and determining the HAP emission points within the source category that can and have been controlled by emission control technologies. The control requirement component is identified and determined by the emission control technology (or emission reduction) that should be applied to a selected source to achieve the maximum degree of reduction in HAP emissions (taking into consideration the factors specified in the Act).

The approach used to determine the applicability component for existing and new source MACT is independent of the total number or sources in the source category. This component of MACT is determined based on the characteristics specific to an individual source category (e.g., the type and quantity of HAP, size of storage vessel). Therefore, under the EPA's proposed alternative MACT determination approach, the EPA would determine the applicability component of MACT on a source category-specific basis, which would parallel what has been implemented for previously-promulgated NESHAP. For example, a small fixed roof storage vessel containing a HAP with a low vapor pressure or at a low concentration may not be a significant source of HAP emissions warranting additional emissions control. In such cases, control requirement applicability would be established for the source category's storage vessels that would acknowledge low-emitting storage vessels by exempting them from additional control, monitoring, recordkeeping, and reporting requirements.

The proposed alternative approach would establish the control requirement component based on MACT determinations made by the EPA under previously-promulgated NESHAP for emission point types sharing similar pollutant stream characteristics (e.g., organic HAP emissions from storage vessels, process vents, wastewater treatment systems, bulk organic liquid transfer loading racks, fugitive emissions from pump and valve leaks).

Under the proposed approach, the EPA would consider the following factors when determining whether it is appropriate to adopt generic control or source reduction technologies demonstrated outside of an applicable source category: (1) The volume and concentration of emissions, (2) the type of emissions, (3) the similarity of emission points, (4) the cost and effectiveness of controls for one source category relative to the cost and effectiveness of controls for the other source category, (5) whether a source has unusual characteristics that might require more or less stringent controls, and (6) whether any of the sources have existing emission controls that are

dissimilar and more stringent than controls required for similar sources outside the source category. These factors would be considered on a source category-specific basis in order to ensure that sources are appropriately similar, and that emissions control technologies and reductions demonstrated outside of a source category are achievable for new and existing sources in an applicable source category. The proposed alternative MACT determination approach would enable the EPA to determine MACT considering MACT determinations made by the EPA under previously-promulgated NESHAP for similar HAP emission point and source types sharing similar pollutant stream characteristics.

To assist in the implementation of the EPA's proposed alternative MACT determination approach, the EPA identified control technologies used in previously-promulgated NESHAP that establish standards specific to a common group of sources or emission points types (see Docket No. A–97–17, Item No. II–B–8). The control requirements selected for an emission point, and control or recovery equipment type are referred to hereafter as ''common control requirements.''

For example, at least seven MACT standards have been promulgated by the EPA for individual source categories that establish specific air emission control requirements for vessels storing liquids and other materials containing organic HAP (40 CFR 63 subparts G, R, U, CC, DD, EE, and JJJ). The EPA believes that it is reasonable to group the HAP storage vessels represented by these MACT determinations under a single emission point type because, regardless of the type of production process or operation with which the storage vessels are associated, the storage vessels have similar emission mechanisms and control technologies.

Organic HAP emissions from fixed-roof storage vessels are generated by the same emission mechanisms (e.g., breathing losses resulting from diurnal changes in ambient temperature, displacement of head space vapors when filling the storage vessel). The quantity of emissions from a storage vessel is a function of the same characteristic properties (e.g., organic vapor pressure) of the material stored in other vessels containing organic HAP. Similarly, the same control technology options are applicable to reducing the air emissions from fixed-roof storage vessels (e.g., retrofitting internal floating roofs, or venting vapors to a control device). Thus, the EPA believes that it is reasonable to apply a common set of control requirements, defined by existing MACT standards, to storage vessels sharing similar characteristics, regardless of the individual source category in which a storage vessel may be designated as an affected source. Following this rationale, common control requirements can be selected for other types of HAP emission points that share similar HAP emission characteristics.

As with previously-promulgated NESHAP and this proposal, the rationale for each MACT determination made for a small category pursuant to the alternative methodology would be presented in the preamble at the time of proposal and opportunity for comment given. Additionally, the costs, economical, and other impacts would be assessed to ensure that unreasonable impacts do not result from the implementation of the proposed MACT. The EPA is soliciting comment on the proposed generic MACT program and approach with this proposal (see section XII.A of the preamble).

IV. Summary of Proposed Standards

The proposed standards for AR production, AMF production, HF production, and PC production include requirements that reflect existing emission point control requirements for similar sources, requirements that are source category-specific, and requirements that would apply to all source categories that are regulated under the generic MACT standards subpart (e.g., general recordkeeping, reporting, compliance, operation, and maintenance requirements). Section IV.A of this preamble presents the generic MACT standards subpart structure, and sections IV.B through IV.E present a summary of the proposed standards applicable for each of the source categories being assimilated under the generic MACT standards with this proposal.

The proposed standards apply to process units and emission points that are part of a plant site that is a major source as defined in section 112 of the Act. The applicability section of the regulation specifies what source categories are being assimilated under the generic MACT standards with this proposal and defines the emission points subject to the proposed standards.

A. Generic MACT Standards Structure

The following discussion presents a summary of the structure of the proposed generic MACT standards.

1. *Applicability.* The proposed generic MACT standards have been structured to allow source categories with similar emission points and MACT control requirements to be covered under one subpart. The applicability section specifies the source categories and affected source for each of the source categories subject to the generic MACT standards. This section also clarifies the applicability of certain emission point provisions for which both the generic MACT standards subpart and other existing Federal regulations might apply.

2. *Definitions.* The definitions section specifies definitions that apply across source categories.

3. *Compliance schedule.* The compliance schedule section provides compliance dates for new and existing sources.

4. *Source category-specific applicability, definitions, and standards.* The source category-specific applicability, definitions and standards section specifies the definitions, and standards that apply to an affected source based on applicability criteria, for each source category.

5. *Applicability determination procedures and methods.* The applicability determination procedures and methods section provides procedures for an owner or operator of an affected source to follow when determining control requirements under the standard applicability section of the rule. Standard applicability determination procedures (as applicable) are footnoted in the standard requirement applicability tables specified for each source category.

6. *Generic standards and procedures for approval for an alternative means of emissions limitation.* The remaining sections of the proposed rule contain provisions that would apply across source categories within the generic MACT subpart. These provisions include generic compliance, maintenance, monitoring, recordkeeping, and reporting requirements. An alternative means of emission limitation to the design, operational, work practice, or equipment standards specified for each source category within the generic MACT subpart may also be established as provided in § 63.1113 of 40 CFR Part 63, subpart YY (Generic MACT Standards).

B. Acetal Resins Production Standards

The AR production standard consists of standards that regulate HAP emissions from storage vessels storing process feed materials, process vents, process wastewater treatment systems, and equipment leaks from compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves,

connectors, and instrumentation systems. Requirements would be the same for both existing and new sources.

Storage vessels. Storage vessels with specified sizes that store materials with specified vapor pressures would be required to control HAP emissions by using an external floating roof equipped with specified primary and secondary seals; by using a fixed roof with an internal floating roof equipped with specified seals; or by covering and venting emissions through a closed vent system to one of the following:

1. A recovery device or an enclosed combustion device that achieves a HAP control efficiency ≥95 percent.

2. A flare.

Process vents from continuous unit operations (back end and front end process vents). Front end process vents would be required to control HAP or TOC emissions by venting emissions through a closed vent system to a flare, or venting emissions through a closed vent system to any combination of control devices that reduces emissions of HAP or TOC by 60 percent by weight or to a concentration of 20 parts per million by volume (ppmv), whichever is less stringent. Back end process vents with a total resource effectiveness index value (TRE) less than 1.0 would be required to control HAP or TOC emissions by venting emissions through a closed vent system to a flare, or venting emissions through a closed vent system to any combination of control devices that reduces emissions of HAP or TOC by 98 percent by weight or to a concentration of 20 parts per million by volume (ppmv), whichever is less stringent; or by achieving and maintaining a TRE index value greater than 1.0.

Wastewater treatment systems. Process wastewater treatment systems with wastewater streams with an average HAP concentration ≥10,000 parts per million by weight (ppmw) at any flow rate, or an average HAP concentration ≥1,000 ppmw and an annual average flowrate ≥10 liters per minute would be required to control HAP emissions by covering (e.g., with a floating roof cover, or a floating membrane cover), and venting emissions through a closed vent system to one of the recovery or control devices specified for control of emissions from storage vessels. For individual drain systems, an owner or operator also has the option of using hard-piping to control HAP emissions.

Equipment leaks. For equipment containing or contacting HAP in amounts ≥5 percent, HAP emissions would be required to be controlled through the implementation of a leak detection and repair (LDAR) program for affected equipment.

C. Acrylic and Modacrylic Fibers Production Standards

The AMF production standards consist of standards that regulate AN emissions from storage vessels storing process feed materials, process vents, fiber spinning lines, process wastewater treatment systems; and equipment leaks from compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, or instrumentation systems. Requirements for individual sources would be the same for both existing and new sources.

As an alternative to these individual source requirements, an owner or operator of an affected AMF production facility can comply with the rule by controlling facility-wide AN emissions (not including equipment leaks as identified above) to a level such that emissions do not exceed 0.5 kilograms of AN per megagram (Mg) of fiber produced (1.0 pound AN per ton of fiber produced) for existing sources, and 0.25 kilograms of AN per Mg of fiber produced (0.5 pounds AN per ton of fiber produced) for new sources.

Storage vessels. Storage vessel emissions storing process feed material would be required to control AN emissions by using an external floating roof equipped with specified primary and secondary seals; using a fixed roof with an internal floating roof equipped with specified seals; or by venting emissions through a closed vent system to one of the following:

1. A recovery device that achieves a HAP control efficiency ≥95 percent;

2. An enclosed combustion control device that achieves a HAP control efficiency ≥98 percent; or

3. A flare that meets the EPA design and operation specifications of 40 CFR 60.18.

Process vents from continuous unit operations. Process vents with vent streams with an average flow rate ≥ 0.005 cubic meters per minute and a AN concentration ≥50 ppmv would be required to control HAP emissions by venting vapors through a closed vent system to a recovery or control device that reduces emissions of HAP or TOC by 95 or 98 percent by weight or to a concentration of 20 ppmv, whichever is less stringent. If the controlled vent stream is halogenated, emissions are required to be vented to a halogen reduction device that reduces hydrogen halides and halogens by 99 percent by weight or to less than 0.45 kg/hr either prior to or after (other than by using a flare) reducing the HAP or TOC by 98 percent by weight.

Fiber spinning lines. Fiber spinning lines using spinning solution or spin dope with an AN concentration ≥100 parts per million (ppm) are required to reduce AN emissions by 85 percent by weight or more by enclosing the spinning and washing areas of the spinning line and venting to a control and/or recovery device.

Wastewater treatment systems. Process wastewater treatment systems with an annual average AN concentration ≥10,000 ppmw at any flow rate, or an annual average AN concentration ≥1,000 ppmw and an annual average flowrate ≥10 liters per minute would be required to control HAP emissions from those units managing wastewater by covering (e.g., with a floating roof cover, or a floating membrane cover), and venting through a closed vent system to one of the recovery or control devices specified for control of emissions from storage vessels. For individual drain systems, an owner or operator also has the option of using hard-piping to control HAP emissions.

Equipment leaks. For equipment containing or contacting AN in amounts ≥10 percent by weight, HAP emissions would be required to be controlled through the implementation of a LDAR program for affected equipment.

D. Hydrogen Fluoride Production Standards

The HF production standards consist of standards that regulate HAP emissions from storage vessels; process vents on HF recovery and refining vessels; bulk loading of HF liquid into tank trucks and railcars; kilns used to react calcium fluoride with sulfuric acid; and equipment leaks from compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, or instrumentation systems. Requirements would be the same for both existing and new sources.

Storage vessels and transfer racks. Storage vessels and transfer loading racks would be required to control HF emissions by venting to a recovery system or wet scrubber that achieves a 99 percent by weight removal efficiency.

Process vents from continuous unit operations. Process vents for HF recovery and refining would be required to control HF emissions by venting emissions to a wet scrubber that achieves a 99 percent by weight HF removal efficiency.

Kilns. Kilns used to react calcium fluoride with sulfuric acid would be required to capture HF emissions and vent emissions to a wet scrubber that achieves a 99 percent by weight HF removal efficiency during emergencies.

Equipment leaks. All equipment leaks would be controlled through a LDAR program.

E. Polycarbonates Production Standards

The PC production standards consist of standards that regulate HAP emissions from process vents from batch and continuous unit operations, storage vessels, process wastewater treatment systems, and equipment leaks from compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems that are not already subject to the hazardous organic NESHAP (HON). Different requirements and applicability criteria apply for existing and new sources.

Storage vessels. Storage vessels with specified sizes that store materials with specified vapor pressures would be required to control HAP emissions by using an external floating roof equipped with specified primary and secondary seals; by using a fixed roof with an internal floating roof equipped with specified seals; or by covering and venting emissions through a closed vent system to any of the following control devices:

1. A recovery device that achieves a HAP control efficiency ≥95 percent;
2. An enclosed combustion control device that achieves a HAP control efficiency ≥95 or 98 percent (depending on the vapor pressure of contained liquid and storage vessel size); or
3. A flare.

Some vessels must use a closed vent system and recovery or control device, based on vessel size dn the vapor pressure of the stored material.

Process vents from batch unit operations. Process vents from batch unit operations that emit 11,800 kilograms or more per year (kg/yr) of HAP, and that have a vent stream flow rate less than the cutoff flow rate, are required to control emissions from process vents by an aggregated 90 percent by weight or to a TOC concentration of 20 ppmv per batch cycle.

Wastewater treatment systems at existing sources. Process wastewater treatment systems with wastewater streams with an average HAP concentration ≥10,000 ppmw at any flow rate, or with an average annual HAP concentration ≥1,000 ppmw and an annual average flowrate ≥10 liters per minute would be required to control HAP emissions by covering (e.g., with a floating roof cover, or a floating membrane cover), and venting emissions through a closed vent system to one of the recovery or control devices specified for control of emissions from storage vessels. For individual drain systems, an owner or operator also has the option of using hard-piping to control HAP emissions.

Equipment leaks. For equipment containing or contacting HAP in amounts ≥5 percent, HAP emissions would be required to be controlled through the implementation of an LDAR program for affected equipment.

V. Summary of Environmental, Energy, Cost, and Economic Impacts

In the decision process for determining MACT for an individual source category, the EPA and stakeholder group members (as applicable) consider the cost of achieving MACT and associated emissions reductions, and any nonair quality health and environmental impacts and energy requirements.

Impacts are determined relative to the baseline that is set at the level of control in absence of the rule. Environmental impacts from the application of the control or recovery devices proposed for the subject source categories include the reduction of HAP and VOC emissions, increases in other air pollutants, and decreases or increases in water pollution and solid waste. Although the intent of the proposed standards is to reduce HAP emissions, the control of organic HAP emissions would also result in the control of non-HAP and HAP VOC for the AR production, AMF production, and PC production source categories. There is a potential for a slight increase in emissions of CO and NO_X resulting from the on-site combustion of fossil fuels as part of control device operations. Impacts for water pollution and solid waste, and increases in energy use from the use of control devices, would be negligible.

The EPA believes that there would be minimal, if any, adverse environmental or energy impacts associated with the proposed standards for the AR production, AMF production, HF production, or PC production source categories. This belief is supported by previous impacts analyses associated with the application of the control and recovery devices that would be required under the proposed standards, and by the fact that each of these source categories have only 5 or fewer major sources.

The cost and economic impacts of the proposed standards for the AR production, AMF production, HF production, and PC production source categories have been estimated by the EPA to be insignificant or minimal. The MACT cost and economic impacts supporting the EPA's conclusion for each of these source categories are presented in the economic analyses for each of these source categories. The economic analyses for each of these source categories can be obtained from the dockets established for these source categories (see **ADDRESSES**).

VI. Emission Point Common Control Requirements

The EPA promulgated standard requirements for selected emission points (i.e., containers, surface impoundments, oil-water separators and organic-water separators, tanks, individual drain systems) in individual subparts under the Off Site Waste and Recovery NESHAP. This was done for ease of reference, administrative convenience, and as a step towards assuring consistency in the technical requirements of the air emission control requirements applied to similar emission points under different regulations. These subparts do not specify emissions reduction performance requirements or applicability cutoffs. Emissions reduction performance requirements and applicability cutoffs would be specified in the subpart that references these subparts.

By establishing emission point and emissions control specific subparts, the generic MACT regulation (and other regulations) can reference a common set of design, operating, testing, inspection, monitoring, repair, recordkeeping, and reporting requirements for air emissions controls. This eliminates the potential for duplicative or conflicting technical requirements, and assures consistency of the air emission requirements applied to similar emission points. Creating emission point-specific subparts and a subpart for closed vent systems, control devices, and routing to a fuel gas system or process simplifies the amendment process and ensures that all regulations that cross reference the use of such subparts are amended in a consistent and timely manner. Additionally, a subset of these subparts can be cross referenced and exceptions can be made within the referencing subpart. Therefore, these subparts do not limit the flexibility to address source category-specific needs.

The EPA reviewed the MACT determinations used for each of the NESHAP subparts promulgated for individual source categories prior to October 1996 under 40 CFR part 63. The

majority of these NESHAP regulate source categories having pollutant streams containing gaseous organic HAP. To date, NESHAP for a few source categories have been promulgated to control emissions of specific metals listed as HAP or particulate matter containing HAP. Thus, the EPA decided to focus initially on the selection of control requirements for source types emitting gaseous organic HAP.

In a number of cases, standards have been established by the EPA under NESHAP for different source categories that regulate organic HAP emissions from the same emission point type, such as storage vessels storing volatile organic liquids, process vent gas streams, leaks from equipment components used in organic liquid service. Thus, MACT determinations that the EPA has made for these NESHAP rulemakings can be grouped together by HAP emission point types having similar pollutant stream characteristics.

The EPA has identified the following individual emission point types for which specific standards have been established under more than one NESHAP: storage vessels, process vents, bulk organic liquid transfer loading operations, equipment leaks, and containers. In addition, a number of the existing NESHAP address organic HAP emissions from individual drain systems, wastewater storage vessels, oil and water separators, and surface impoundments collectively under standards related to the collection and treatment of wastewater containing organics. Therefore, the EPA decided that it is appropriate to group these emission points together in a single emission point category called ''organic wastewater treatment facilities.''

Common control requirements selected by the EPA for specific organic HAP emission point types and individual subparts are presented in table 1. Note that clarifying additions or improvements to previously-promulgated standards were made when developing the common control requirements. For example, 40 CFR Part 63, Subpart WW (National Emission Standards for Storage Vessels—Control Level 2) includes options for controlling emissions for slotted guidepoles. A complete description of the information upon which these common control requirement selections are based is presented in a technical memorandum available in the docket for this rulemaking No. A–97–17, Item No. II–B–8).

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TABLE 1. HAZARDOUS AIR POLLUTANT STREAM COMMON CONTROL REQUIREMENTS CONTROL LEVELS

Emission Point	Hazardous Air Pollutant Stream Control Requirements		
Storage vessels (or tanks) managing organic materials	Control Level 1	Use fixed-roof tank	Subpart OO Subpart SS
	Control Level 2	Option 1: Use external floating roof equipped with specified primary and secondary seals, or Option 2: Use fixed roof with internal floating roof equipped with specified seals, or Option 3: Cover and vent through closed vent system to one of the following control devices: 1. Recovery control device that achieves a HAP control efficiency ≥ 95% 2. Enclosed combustion control device that achieves HAP control efficiency ≥ 98% 3. Flare meeting EPA specifications	
Process vents emitting organic vapors	Route process vent vapors through closed vent system to one of the following control devices: 1. Recovery control device that achieves a HAP control efficiency ≥ 95%; 2. Enclosed combustion control device that achieves a HAP control efficiency ≥ 98%, or 20 ppmv; or 3. Flare meeting EPA specifications.		Subpart SS
Bulk organic liquid transfer loading racks	Route displaced vapors from cargo tank through closed vent system to one of the following control devices: 1. Recovery control device that achieves a HAP control efficiency ≥ 95%; 2. Enclosed combustion control device that achieves a HAP control efficiency ≥ 98%, or 20 ppmv; 3. Flare meeting EPA specifications.		Subpart SS

Emission Point		Hazardous Air Pollutant Stream Control Requirements	
Organic wastewater treatment facilities	Storage vessels (or tanks)	see MACT for "storage vessels" emission point bin	
	Oil/water separators	Option 1: Use floating roof cover equipped with specified primary and secondary seals, or Option 2: Cover and vent through closed vent system to one of the following control devices: 1. Recovery control device that achieves a HAP control efficiency ≥ 95%; 2. Enclosed combustion control device that achieves HAP control efficiency ≥ 98%; or 3. Flare meeting EPA specifications.	Subpart VV Subpart SS
	Surface impoundments	Option 1: Use floating membrane cover, or Option 2: Cover and vent through closed vent system to one of the following control devices: 1. Recovery control device that achieves a HAP control efficiency ≥ 95%; 2. Enclosed combustion control device that achieves a HAP control efficiency ≥ 98%; or 3. Flare meeting EPA specifications.	Subpart QQ Subpart SS
	Individual drain system	Option 1: Install and operate covers, water seals and other required emission control equipment on drains, junction boxes, and sewer lines, or Option 2: Use hard-piping, or Option 3: Cover and vent through closed vent system to one of the following control devices: 1. Recovery control device that achieves HAP control efficiency ≥ 95%; 2. Enclosed combustion control device that achieves HAP control efficiency ≥ 98%; or 3. Flare meeting EPA specifications.	Subpart RR Subpart SS

Emission Point		Hazardous Air Pollutant Stream Control Requirements	
Leaks from equipment [a] containing or contacting organic materials	Control Level 1	1. Implement leak detection and repair program for affected pumps, valves, and connectors. Monitoring all affected equipment at regular periodic interval. 2. Standards for compressors, open-ended lines, pressure relief devices, and sampling connections same as in 40 CFR 61 subpart V. 3. Alternative standards for batch processes and for equipment inside an enclosed building.	Subpart TT
	Control Level 2	1. Implement leak detection and repair program for affected pumps, valves, and connectors. Monitoring interval established by performance requirements for a maximum allowable percentage of leaking components. 2. Standards for compressors, open-ended lines, pressure relief devices, and sampling connections same as in 40 CFR 61 subpart V. 3. Alternative standards for batch processes and for equipment inside an enclosed building.	Subpart UU
Containers managing organic materials	Control Level 1	Use one of the following: 1. Container equipped with tight-fitting cover (i.e., no visible gaps, spaces, etc.); 2. Cover material in open container with vapor-suppression barrier; or 3. Container that meets U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation.	Subpart PP Subpart SS
	Control Level 2	1. Use one of the following: a. Container demonstrated to operate with no detectable emissions using Method 21; b. Container demonstrated to be leak-tight using Method 27; or c. Container that meets U.S. Department of Transportation (DOT) regulations on packaging hazardous materials for transportation. 2. Load material in container to minimize exposure of material to atmosphere.	
	Control Level 3	1. Directly vent container or place container in enclosure vented through closed vent system to one of the following control devices: a. Recovery control device that achieves a HAP control efficiency ≥ 95%; b. Enclosed combustion control device that achieves HAP control efficiency ≥ 98%; or c. Flare meeting EPA specifications.	

[a] Affected equipment is pumps, compressors, agitators pressure relief devices, sampling connections, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, and instrumentation systems.

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Today's document proposes additional standard requirement subparts for equipment leaks (40 CFR part 63, subparts TT and UU), storage vessels (40 CFR part 63, subpart WW), and closed vent systems, control devices, recovery devices and routing to a fuel gas system or process (40 CFR part 63, subpart SS). As with the common control requirement subparts previously promulgated together with the Off Site Waste NESHAP, these subparts provide technical requirements only and do not specify applicability cutoffs or emissions reduction performance requirements. The EPA is soliciting comment on the proposed emission point-specific subparts, and closed vent system, control devices, and routing to a fuel gas system or process subpart with this proposal (see section XII.B of the preamble).

VII. Selection of MACT for Proposed Standards

The MACT selection rationale for the AMF production, HF production, PC production, and AR production source categories is presented in the following sections. The control component of MACT for the AMF production source category affected source emission points was determined based on the generic MACT approach. The control component of MACT for the HF production source category affected source emission points was determined using the EPA's traditional MACT floor approach. The control component of MACT for the AR production source category affected source emission points was determined using the EPA's traditional MACT floor approach for front end process vents from continuous unit operations, and the generic MACT approach was used for determining MACT for back end process vents from continuous unit operations, wastewater facilities, and equipment leaks. The control component of MACT for the PC production source category affected source emission points was determined using the EPA's traditional MACT floor approach for storage vessels and process vents from continuous unit operations, and the generic MACT approach was used for determining MACT for process vents from batch unit operations, wastewater facilities, and equipment leaks.

A. MACT for Acrylic and Modacrylic Fiber Production

The AMF fibers production source category consists of facilities engaged in the production of synthetic fibers composed of AN. Acrylic fibers are defined as a manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85 percent by weight of AN units. Modacrylic fibers are composed of less than 85 percent but at least 35 percent by weight of AN units. Acrylic and modacrylic fibers are used to produce textile products and some types of carbon fibers.

Four companies operate AMF production facilities in the United States. These facilities are located in Alabama, Florida, and South Carolina. Two of the AMF production facilities are part of textile manufacturing plants. The manufacture of textile products using AMF has undergone considerable contraction in the past decade (i.e., plant closings). The other two facilities are integrated with carbon fiber manufacturing plants. Carbon fiber manufacturing is a relatively new industry, having only been developed during the past decade, and appears to be an expanding industry.

The principal HAP associated with the existing AMF plants is AN. Other HAP such as dimethylformamide, cyanide compounds, vinyl chloride, vinyl bromide, vinylidine chloride, or vinyl acetate may also be present in small quantities. These HAP are typically the comonomers used in the manufacture of acrylic polymer. Some of these pollutants are considered to be known or probable human carcinogens when inhaled, and can cause irreversible toxic effects following exposure. These effects include respiratory and skin irritation, various systemic effects including damage to the liver, blood, reproductive organs, and central nervous system, and in extreme cases, death.

Acute (short-term) exposure to AN can cause low-grade anemia with elevated white blood cell counts, bluish skin color, kidney irritation, and severe burns to the skin from dermal exposure. Chronic exposure to AN can result in headaches, fatigue, nausea, and muscle weakness. AN has also been classified as a probable human carcinogen.

Acute exposure to vinyl chloride through the air can result in affects to the central nervous system such as dizziness, headaches, and giddiness. Chronic exposure to vinyl chloride through inhalation and ingestion can cause ''vinyl chloride disease,'' which is characterized by liver damage, effects on the lungs, poor circulation in the fingers, changes in the bones at the end of the fingers, thickening of the skin, and changes in the blood. Vinyl chloride is classified as a human carcinogen.

Acute exposure to vinyl acetate by inhalation leads to irritation of the eyes and upper respiratory tract. Chronic exposure to vinyl acetate through inhalation may result in respiratory irritation, cough, and hoarseness. The EPA has classified vinyl acetate as a possible human carcinogen.

The production of AMF involves polymerization reaction processes (either solution or suspension polymerization), wet or dry solvent spinning, solvent recovery, and fiber processing (such as washing, stretching, crimping, drying). The sources of HAP emissions from these operations include: (1) Storage vessels used to store AN monomer and comonomers; (2) process vents on reactors, vessels, and storage vessels used for acrylic polymerization, monomer recovery, fiber spinning, and solvent recovery operations; (3) AMF spinning lines that are sources of process fugitive emissions from spinning or fiber processing operations; (4) wastewater treatment systems used to manage the wastewater containing AN generated by the AMF production process; and (5) leaks from equipment components used to handle AN monomer and comonomers.

The EPA chose to determine MACT for AMF production facilities based on the control of pollutant streams containing AN. This pollutant is the principal HAP associated with and emitted from AMF production facilities. Other organic HAP constituents, if present, would only be associated with those pollutant streams containing AN with the exception of raw material storage. The EPA expects that control of sources emitting AN will also achieve comparable levels of control for other organic HAP emitted from AMF production facilities.

1. *AN storage vessels.* The capacities of the storage vessels associated with AMF fibers production at textile plants typically are greater than 100,000 gallons for AN monomer and 20,000 gallons for comonomers. At carbon fiber plants, use of storage vessel sizes in the range of 25,000 gallons for AN storage is typical. All of these storage vessels are used strictly for monomer or comonomer feedstock storage with no mixing, blending, or heating of the material contained in the storage vessel. During summer months under typical AN storage conditions at the existing facilities, the maximum vapor pressure of AN can exceed 20 kPa.

The characteristics of storage vessels used in the AMF industry are not unique. The AN storage vessel capacities and vapor pressures are similar to storage vessel characteristics for which the EPA has already determined MACT to be the level of control that would be achieved by applying Control Level 2 storage vessel

common control requirements (described in section VI of this notice). Because of these similarities, the EPA concluded that the Control Level 2 storage vessel common control requirements are appropriate to use as MACT for AN storage vessels at AMF production facilities (see Docket No. A–97–17, Item No. II-B–8).

2. *AN process vents.* At AMF production plants there are a number of process vent streams containing AN. Within suspension polymerization and fiber production, there are two general process vent types: (1) vents associated with the monomer recovery system (i.e., the vacuum flash vent or the slurry stripper condenser vent), and (2) vents associated with polymer filtering, dewatering, and drying operations (i.e., the vacuum pump filter vents and the polymer dryer exhausts). Solvent recovery operations utilizing distillation operations have associated process vents, typically the condenser exhaust. Some polymerization reactors have vents which are potential organic HAP emission points.

The properties of the continuous process vent streams containing AN are similar to the process stream characteristics for which the EPA has already determined MACT to be the level of control that would be achieved by applying the process vent common control requirements described in section V.D of today's notice. Because of these similarities, the EPA concluded that the process vent common control requirements are appropriate to use as MACT for process vents on equipment used for acrylic polymerization, monomer recovery, fiber spinning, and solvent recovery operations at AMF production facilities. (see Docket No. A–97–17, Item No. II-B–8).

3. *AN fiber spinning lines.* During the spinning process, unreacted monomer and the organic solvent used to dissolve the polymer are volatilized into room air and vented to the atmosphere. Major process fugitive emission points include the filtering, spinning, washing, drying, and crimping steps.

The EPA considered several alternative control approaches as MACT for the fiber spinning lines. Emissions of AN from a fiber spinning line could be controlled by capture and subsequent routing to an incinerator. One option is to require an overall reduction of AN emissions without specifying an individual capture efficiency and/or control device performance level. A second option is to specify both capture efficiency and control device performance level. Both of these options require an enclosure over the spinning and washing areas of the spinning line and venting the enclosure to an appropriate control device. This is the technical basis for the acrylic and modacrylic fiber new source performance standards (NSPS) in 40 CFR 60, subpart HHH. However, while technically feasible, some owners and operators would prefer not to enclose their fiber spinning lines. Therefore, a third option is to use process modifications to reduce the amount of residual AN monomer available for volatilization during spinning operations. Considerable efforts have been made on the part of some plants to significantly reduce the amount of residual AN monomer in the fiber spinning solution. By reducing the AN content prior to spinning and fiber processing, this source reduction technique reduces the amount of AN that is ultimately volatilized into the room air and emitted to the atmosphere. The alternative to this is to not enclose the spinning lines and to vent the very low concentration AN exhaust air to a control device that is capable of adequately handling the high volume, low concentration gas stream.

The properties of the spinning line exhaust streams containing AN are similar to the process vent stream characteristics for which the EPA has already determined MACT to be the level of control that is achieved by applying the process vent common control requirements (described in section V.D of this notice). Because of these similarities, the EPA concluded that MACT for fiber spinning lines using a spinning solution or spin dope having a total organic HAP concentration equal to or greater than 100 ppmw is use of an enclosure around the spinning and washing areas of the spinning line and venting of the enclosure to an appropriate control device to achieve an overall AN emission reduction greater than or equal to 85 percent by weight (see Docket No. A–97–17, Item No. II–B–8). This value is based on the assumption that the enclosure achieves a minimum capture efficiency of 90 percent by weight and the captured vapor stream is routed to an organic recovery or destruction control device that achieves a total HAP reduction of 95 percent by weight or greater. The alternative means of emission limitation option allows owners or operators the flexibility to establish an alternative (e.g., a maximum limit on the AN content of the spinning monomer which would provide a comparable level of AN emission control) to enclosing their spinning lines and venting to a control device.

4. *AN wastewater facilities.* At the acrylic and modacrylic textile fiber plants, significant quantities of wastewater containing AN are generated (i.e., millions of gallons per day). Major points of wastewater generation are the polymer washing, filtering, and dewatering steps and the monomer recovery unit separation storage vessels. All of these emission sources are associated with the suspension polymerization process. Solution polymerization does not generate comparable quantities of wastewater because there are no slurry stripping and polymer washing steps. Potential emission points related to wastewater treatment, storage, and collection include the individual drain systems, open surface impoundments (equalization basin), bio-treatment units, and wastewater filter system.

The AN concentration, flow rates and other properties of the wastewater streams containing AN from acrylic or modacrylic fiber production processes are similar to the wastewater streams containing organic HAP in other source categories for which the EPA has already determined MACT to be the level of control that is achieved by applying the wastewater treatment facility common control requirements described in section VI of this preamble. Because of these similarities, the EPA concluded that the wastewater treatment facility common control requirements are appropriate to use as MACT for wastewater treatment systems used to manage the wastewater containing AN generated by the acrylic or modacrylic fiber production process (see Docket No. A–97–17, Item No. II–B–8).

5. *AN equipment leaks.* Fugitive AN emissions from equipment leaks (e.g., pump shafts and valve stems) also occur during production of AMF. The equipment components and the properties of the AN equipment leak emissions are similar to the equipment component characteristics in other source categories for which the EPA has already determined MACT to be the level of control that is achieved by applying the equipment leak common control requirements described in section V.D of this preamble. Because of these similarities, the EPA concluded that the equipment leak common control requirements under 40 CFR part 63, subparts TT or UU are appropriate to use as MACT for leaks from equipment components used to handle AN monomer and comonomers at AMF production facilities (see Docket No. A–97–17, Item No. II–B–8).

B. MACT for Hydrogen Fluoride Production

The HF production source category consists of facilities engaged in the production and recovery of HF by reacting calcium fluoride with sulfuric acid. Three companies own HF production facilities in the United States. These facilities are located in Kentucky, Louisiana, and Texas. Currently, two of the facilities are producing HF and the third facility (in Kentucky) is temporarily shutdown but may resume production in the future.

The only HAP emitted from the process is HF. Exposure to HF can cause injury through inhalation, direct contact, or ingestion. Acute exposure to HF will result in irritation, burns, ulcerous lesions, and localized destruction of the tissues (necrosis) of the eyes, skin, and mucous membranes.

The potential sources of HF emissions at these facilities are: 1) process vents on HF recovery and refining equipment, 2) storage vessels used to store HF, 3) bulk loading of tank trucks and tank rail cars, 4) leaks from HF handling equipment, and 5) reaction kiln seal leaks.

Owners and operators of HF production facilities have strong worker safety and economic incentives to prevent or control HF emissions from these sources. At all facilities, comprehensive worker safety programs are implemented to prevent any exposure of plant personnel to HF because even mild exposure to HF vapor can cause eye and respiratory system irritation. Furthermore, prevention of HF losses provides increased revenue from maximizing the recovery of a salable product and cost savings from minimizing the damage to process equipment due to HF corrosion. Consequently, all of the HF production facilities in the United States currently are well controlled for HF emissions, and MACT is inherently defined by these air emission control measures.

The MACT for this source category was selected for each type of emission point by identifying the best emission control currently used in the industry, obviating the need for any floor determination. In addition, the EPA knows of no other air emission control measures in the industry or alternative HF production processes that would result in lower HF emissions, and thus other alternatives were not considered.

1. *Hydrogen fluoride process vents.* At all three existing facilities, refrigerated condensers and caustic scrubbers are used to remove HF from the reaction kiln overhead gas stream as part of the crude HF recovery and refining operations. The HF gases exhausted from process vents on HF recovery and refining equipment are routed to wet scrubbers. Because HF is very water soluble, HF gases are effectively controlled by scrubbing. Each of the existing wet scrubbers achieves an HF emission reduction of at least 99 percent. Therefore, the EPA selected MACT for process vents to be the routing of the HF gases exhausted from process vents on HF recovery and refining equipment to a wet scrubber achieving a HF removal efficiency of 99 percent or more.

2. *Hydrogen fluoride storage vessels.* Storage vessels used to store HF are currently controlled for HF emissions at all three existing facilities. At two of these facilities, HF gases from the storage vessels are routed to either the same or identical wet scrubbers that are used to control the process vent emissions. At the third plant, the storage vessels are equipped with pressure relief devices vented to a wet scrubber that achieves an HF emission reduction of at least 80 percent. The EPA selected MACT for storage vessels to be venting of each storage vessel to a wet scrubber achieving a HF removal efficiency of 99 percent or more.

3. *Hydrogen fluoride product bulk transfer racks.* The HF is shipped from each facility either in bulk tank trucks or tank rail cars. At each facility HF emissions from transfer loading racks to rail cars and tank trucks are vented to either the wet scrubber used to control storage vessel emissions or to the wet scrubber used to control process vent emissions. At the completion of the loading process, the loading line is purged with nitrogen either back to the wet scrubber or into the loaded cargo storage vessel. Consequently, there are no fugitive HF emissions when the loading line is disconnected. The EPA selected MACT for HF product bulking transfer loading racks to be venting HF emissions during loading to a wet scrubber achieving a HF removal efficiency of 99 percent or more.

4. *Hydrogen fluoride equipment leaks.* Unlike leaks of organic vapors, even very small HF leaks from equipment are readily visible (a leak produces a visible white plume or corrosion at the leakage point). Furthermore, there are strong incentives to detect and repair leaks (to prevent the loss of valuable product, prevent corrosion, and avoid personnel exposure), the workers at each plant are attentive to preventing equipment leaks. Upon detection of a HF leak, the leak is repaired as soon as possible. Each plant has frequent visual inspection procedures in place. The EPA selected MACT to be implementation of a visual and olfactory LDAR program that entails inspection each working shift. If a leak is found, repair or component replacement must be initiated within 1 hour, and completed as soon as possible, but no later than within 15 days. Equipment containing or contacting any HF is affected.

5. *Kiln seals.* During normal operation, HF reaction kilns are maintained under negative pressure and there are no HF emissions through the kiln seals. The primary purpose of the seals is to prevent infiltration of air and water to the process. Any HF emissions from the kiln seals only occur during process upsets when back pressure builds. In the event of a back pressure excursion, the kiln seal emissions at two of the facilities are vented to an emergency wet scrubber system. In addition, standard operating practice at all of the facilities is to immediately shut down kiln operations when a back pressure excursion occurs. Based on the ability of other wet scrubbers in these facilities to achieve 99 percent reduction efficiency, the EPA has selected MACT to be venting kiln seal emissions to a wet scrubber that can achieve at least a 99 percent HF removal efficiency, and immediate shutdown of kiln operations during a back pressure event. It should be noted that neither facility has experienced a back pressure event since the emergency systems were installed because of improvements in operating procedures.

To provide flexibility to owners and operators, the EPA allows an owner or operator to request an alternative means of emission limitation (e.g., use of leakless seals, emergency vacuum boost system). The use of leakless seals or an emergency vacuum boost system could provide 100 percent control of kiln HF emissions, however, neither of these leak prevention technologies have been demonstrated in the industry.

C. MACT for Polycarbonates Production

The PC production source category consists of facilities engaged in the production of a special class of polyester formed from dihydroxy compound and carbonate diester or by ester interchange. Polycarbonates commonly are produced by solution or emulsion polymerization, although other methods may be used. All PC production in the United States is currently based on the polymerization reaction of bisphenols with phosgene in the presence of catalysts and other additives. Methylene chloride is used as the solvent in this polymerization process.

All phosgene used as a feedstock for PC production is produced onsite to reduce potential hazards associated with transporting and storing this material. The phosgene is fed directly from dedicated phosgene production equipment to PC polymerization process equipment. Consequently, phosgene production is integrated with PC production; the production of one cannot occur without the other process operating. Since dedicated phosgene production units are integral to the PC production process, the EPA considers such phosgene production units to be part of the PC production source category. Phosgene production units that are not dedicated to PC production are subject to 40 CFR part 63, subpart F, National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry.

Three companies operate five PC production plants in the United States. These facilities are located in Alabama, Massachusetts, Indiana, and Texas. Four of these facilities produce PC resin. The fifth plant produces a family of PC polysiloxane copolymers.

The principal HAP associated with PC production facilities are phosgene and methylene chloride. Phosgene is a highly toxic material which can cause adverse health effects from both acute (short-term) and chronic (long-term) exposure. Acute exposure by inhalation of phosgene may result in pulmonary edema, pulmonary emphysema, and death. Other symptoms include choking, chest constriction, coughing, painful breathing, and bloody sputum. Acute phosgene poisoning may also adversely affect the brain, heart, and blood. Chronic exposure to phosgene through inhalation may cause emphysema and pulmonary fibrosis. Due to lack of animal and human data, the EPA has been unable to classify phosgene as a human carcinogen. Acute exposure to high levels of methylene chloride affects the central nervous system and can impair vision and hearing. These effects are reversible once exposure ceases. Chronic methylene chloride exposure adversely affects the central nervous system and causes headaches, dizziness, nausea, and memory loss. The EPA has classified methylene chloride as a probable human carcinogen. Other HAP may be present in catalysts, solvents, and polymer washing agents used for the process.

Polycarbonates are produced using continuous and batch processes. At the four plants producing PC resin, reactors operate either as a continuous process or by sequentially operating multiple batch reactors such that at least one reactor is always producing PC resin. At the plant producing PC polysiloxanes copolymers, reactors are operated on an intermittent batch basis.

To minimize the potential for an accidental release of phosgene to the atmosphere, the phosgene production process at existing facilities is well controlled. All phosgene production equipment is located inside enclosures which are maintained at a slightly negative pressure. Air vented from the enclosures is routed to a caustic scrubber to control and neutralize any phosgene which may have been released from equipment leaks inside an enclosure.

The sources of HAP emissions from PC production process are: (1) Storage vessels used to store methlylene chloride and other organic solvents; (2) process vents on polymerization, polymer solution purification, and solvent recovery equipment; and (3) wastewater treatment systems used to manage the wastewater containing HAP generated by the polycarbonate process; and (4) equipment leaks.

1. *Polycarbonate solvent storage vessels.* The storage vessels associated with PC production are primarily used for storage of methylene chloride and other solvents. Under typical storage conditions at the existing facilities, the vapor pressure of the solvents stored in the storage vessels range from approximately 2 kPa to more than 90 kPa.

The EPA had sufficient information to determine a MACT floor and evaluate the technological and economic feasibility of options more stringent than the floor when determining MACT (for both the applicability and control components) for solvent storage vessels at PC production facilities. Based on the EPA's analysis, it was determined that MACT for solvent storage vessels at PC production facilities reflected the level of control required under the HON.

2. *Polycarbonate process vents (from continuous and batch unit operations).* Polycarbonate production facilities reduce their emissions from continuous and batch process vents using both control and recovery device systems. The EPA determined that MACT was the MACT floor for continuous process vents at PC production facilities. The EPA established the proposed MACT for process vents based on the level of control present after recovery.

The EPA used data on HAP flow and air flow emission rates obtained during the development of the HON, and combustion total resource effectiveness (TRE) indices for PC streams. The HON total resource effectiveness TRE equation and coefficients were used to calculate TRE indices for use as applicability criteria. TRE indices are indicators of the cost-effectiveness of controlling a gas stream; the higher the index, the higher the cost of controlling the stream. The proposed MACT for continuous process vents would require that all existing vents with TRE indices less than or equal to 2.7 be controlled to 98 percent or greater. For new sources, the proposed MACT would require vents with TRE indices less than or equal to 9.6 be controlled to 98 percent or greater.

Insufficient data was available to do a MACT floor analysis for batch process vents. Therefore, for batch process vents, the EPA is proposing that if a batch process vent emits organic HAP emissions greater than 225 kg/yr, an owner or operator needs to apply MACT. The proposed MACT for batch process vents is to control HAP emissions from each batch process vent for the batch cycle by 90 weight percent using a control device. This proposal is consistent with what was promulgated for the polymer and resins I and IV NESHAP source categories. (Docket No. A–97–17), Item No. II–B–8). These standards have been challenged in litigation. In the event that the EPA makes or is directed to make any changes in these standards in connection with that litigation prior to promulgation of this standard, the EPA will evaluate the appropriateness of making conforming changes in the PC standard.

3. *Polycarbonate wastewater facilities.* Existing polycarbonate production facilities typically strip their wastewater streams and either recover or destroy the stripped organics. Potential emission points related to wastewater treatment, storage, and collection include the individual drain systems, open surface impoundments (equalization basin), bio-treatment units, and wastewater filter systems.

The HAP concentration, flow rates and other properties of the wastewater streams containing HAP from PC production processes are similar to the wastewater streams containing organic HAP in other source categories for which the EPA has already determined MACT to be the level of control that is achieved by applying the wastewater treatment facility common control requirements described in section VI of this preamble. Because of these similarities, the EPA concluded that the wastewater treatment facility common control requirements are appropriate to use as MACT for wastewater treatment systems used to manage the wastewater

containing HAP generated by the PC production process.

4. *Polycarbonates equipment leaks.* Fugitive HAP emissions from equipment leaks (e.g., pump shafts and valve stems) also occur during production of PC. The properties of these HAP equipment leak emissions are similar to the equipment component characteristics in other source categories for which the EPA has already determined MACT to be the level of control that is achieved by applying the equipment leak common control requirements described in section VI of this preamble. Because of these similarities, the EPA concluded that the equipment leak common control requirements under 40 CFR part 63, subparts TT or UU are appropriate to use as MACT for leaks from equipment components used to handle HAP at polycarbonate production facilities (see Docket No. A–97–17, Item No. II–B–8).

D. MACT for Acetal Resins Production.

The AR production source category consists of facilities engaged in the manufacture of homopolymers and/or copolymers of alternating oxymethylene units. Three companies operate three facilities in the United States that produce AR. These facilities are located in Texas, Alabama, and West Virginia. Two of the AR production facilities produce an acetal copolymer and one facility produces an acetal homopolymer. Acetal resins are produced in a continuous process.

Acetal copolymers are formed by the polymerization of trioxane, which is formed by the trimerization of formaldehyde, with a copolymer, which is typically a cyclic ether such as ethylene oxide. Acetal homopolymers are formed by reacting anhydrous formaldehyde to form a polymer. Trioxane is manufactured in a separate unit by the trimerization of formaldehyde. The trioxane is then stored in storage vessels until needed for the resins production process. All trioxane is produced on site at acetal resins plants. The production of trioxane is not being regulated by this action because it is covered under another rulemaking. Homopolymers use anhydrous formaldehyde which means a formaldehyde-water solution from which the water has been removed. For the homopolymers process, aqueous formaldehyde is stored in a feedstock storage vessel. The formaldehyde-water solution is then drawn into the process as needed. Prior to being sent to the reactor the water is removed in a separate process unit. Process vents from this process unit are referred to as front end process vents while all other acetal resin production process vents are referred to as back end process vents.

The principal HAP associated with the existing AR plants include formaldehyde and ethylene oxide. Both acute (short-term) and chronic (long-term) exposure of humans to formaldehyde irritates the eyes, nose, and throat and may cause coughing, chest pains, and bronchitis. The EPA has classified formaldehyde as a probable human carcinogen. Methanol also exhibits acute and chronic health effects. Acute effects include visual disturbances such as blurred or dimmed vision. Neurological damage, specifically motor dysfunction may also result. Chronic effects from inhalation or oral exposure may result in conjunctivitis, headache, giddiness, insomnia, gastric disturbances, and blindness. The EPA has not classified methanol with respect to carcinogenicity.

1. *Acetal resins storage vessels.* The storage vessels associated with AR production are primarily used for storage of solvents. Under typical storage conditions at the existing facilities, the vapor pressure of the reactants and solvents stored in the storage vessels range from approximately 8 kPa to more than 50 kPa.

The AR storage vessel capacities and HAP type (i.e., organic HAP) are similar to storage vessel characteristics for which the EPA has already determined MACT to be the level of control that would be achieved by applying the Control Level 2 storage vessel common control requirements under 40 CFR part 63, subpart WW. Because of these similarities, the EPA concluded that the Control Level 2 storage vessel common control requirements are appropriate to use as MACT for solvent storage vessels at AR production facilities. The vapor pressure applicability cutoffs were determined based on the average vapor pressure of solvents stored for existing controlled facilities. The cutoffs are much higher than for the Hazardous Organic NESHAP due to the lower volatility of chemicals being stored (see Docket No. A–97–17, Item No. II–B–8).

2. *Acetal resins process vents. Front end process vents.* The homopolymer process utilizes a unique step not found in the copolymer process. This step is the purification of formaldehyde for use as a feedstock. The copolymer process uses trioxane that is produced from formaldehyde in a separate unit. The tioxane process would not be regulated by this action. Because the purification step is unique to the copolymer process and results in different emission characteristics than the homopolymer processes, an emission plank for front end process vents was developed. Front end process vents are limited to those vents that (1) occur prior to the polymer reactor, and (2) are used to produce purified formaldehyde for the reaction process. Emissions data indicate that all front end process vents are controlled at 60 percent HAP reduction by weight. Therefore, the MACT floor for front end process vents is 60 percent reduction by weight in HAP. Since all process vents are controlled there is no applicability cutoff.

Back end process vents. Back end process vents can be defined as any process vent that is not a front end process vent. Back end process vent emissions occur from reactor units, mixing vessels, solvent recovery operations, and other operations. All three facilities surveyed by the EPA used scrubbers to recover methanol and formaldehyde from emission streams. The majority of the recovered monomer is recycled back to the process. One facility uses an incinerator that is 98 percent effective to control back end process vent streams after the streams have been sent through scrubbers being used as recovery devices. Insufficient information was available to do a rigorous analysis. Information was available to determine that all process vent emission streams are continuous and contain either methanol or formaldehyde. The vent streams in their composition are very similar to those streams regulated by the HON. Due to these similarities it was determined to use the HON total resource effectiveness equation indices for AR streams. The TRE for all process vents after recovery devices was set at 1.0 as it is in the HON. Therefore, all back end process vents with TRE index values greater than 1.0 will be required to control to 98 percent by weight or greater.

3. *Acetal resins wastewater.* Existing wastewater streams from AR resin plants contain formaldehyde and methanol. The flow rates and other properties of the wastewater streams containing HAP from existing AR production processes are similar to the wastewater streams containing organic HAP in other source categories for which the EPA has already determined MACT. Two facilities treat their wastewater by hardpiping the water to a biotreatment facility. The wastewater streams contain mostly methanol. In addition, the third facility's wastewater streams are not controlled and are composed predominately of formaldehyde. Formaldehyde is not required to be controlled in EPA wastewater provisions for similar

organic chemical processes. Because of these similarities, the EPA concluded that the wastewater treatment system facility common control requirements are appropriate to use as MACT for wastewater treatment systems used to manage the wastewater containing HAP generated by the AR production process (Docket No. A–97–17, Item No. II–B–8).

4. *Acetal resins equipment leaks.* Fugitive HAP emissions from equipment leaks also occur during the production of AR. The properties of these HAP equipment leak emissions are similar to the equipment component characteristics in other source categories for which the EPA has already determined MACT to be the level of control that is achieved by applying the equipment leak common control requirements described in section VI of this preamble. In fact, all of the existing AR production facilities already operate an LDAR program similar to those prescribed by the equipment leak common control requirements. Because of these similarities, the EPA is proposing that the equipment leak common control requirements under 40 CFR part 63, subparts TT or UU are appropriate to use as MACT for leaks from equipment components used to handle HAP at AR facilities (see Docket No. A–97–17, Item No. II–B–8).

VII. Selection of Format

Section 112(d) of the Act requires that emission standards for control of HAP be prescribed unless, in the judgement of the Administrator, it is not feasible to prescribe or enforce emission standards. Section 112(h) identifies two conditions under which it is not considered feasible to prescribe or enforce emission standards. These conditions include: (1) If the HAP cannot be emitted through a conveyance device, or (2) if the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations. If emission standards are not feasible to prescribe or enforce, then the Administrator may instead promulgate equipment, work practice, design or operational standards, or a combination thereof.

Formats for emission standards include (1) percent reduction, (2) concentration limits, or (3) a mass emission limit. In some instances, adoption of an emission standard may be feasible for certain sources within a category or subcategory and not for other sources within the same category or subcategory. In such cases, the EPA may adopt both an emission standard and an alternative equipment, design, work practice, or operational standard, but only one type of standard will apply to a given source depending on the nature and configuration of that source. The proposed generic MACT standards for equipment leaks, process vents and transfer from continuous unit operations, and storage vessels, and transfer racks consist of a combination of (1) emission standards, and (2) equipment, design, work practice, and operational requirements consistent with requirements promulgated for similar emission points and emission characteristics (i.e., similar emission points and emission characteristics to that of the Hazardous Organic NESHAP (57 FR 62608, December 31, 1992), or Off-Site Waste NESHAP (59 FR 51913, October 13, 1994).

Selection of Format for Process Vents From Continuous Unit Operations

The format chosen for process vent streams is dependent on the control method chosen. For vent streams controlled by control devices other than flares, the format is a combination of a weight-percent reduction and an outlet concentration. A weight-percent reduction format is appropriate for streams with HAP concentrations above 1000 ppmv because such a format ensures that the stream will meet the weight-percent reduction. For process vents with concentrations below 1000 parts per million by volume, a 20 ppmv outlet concentration was selected because a weight-percent reduction may not be achievable (57 FR 62608, December 31, 1992).

The combustion of vent streams containing halogenated organic compounds can produce emissions of halogens and hydrogen halides, some of which are HAP's, such as hydrogen chloride, chlorine, and hydrogen fluoride. To reduce these emissions, the proposed standards required the use of a scrubber after the combustion device for halogenated process vent streams. The format of the standard for such scrubbers is a percent reduction or outlet concentration of those halogens and hydrogen halides that can be measured using the EPA Method 26 or 26A. A percent reduction format ensures that most streams will meet the MACT requirements. However, an alternative outlet concentration level is needed for low concentration streams where the specified percent reduction would result in outlet levels too low to measure.

For vent streams controlled by a flare, the proposal includes equipment and operating specifications because it is very difficult to measure the emissions from a flare to determine its efficiency.

Selection of Format for Storage Vessel Provisions

The storage vessel provisions require control by (1) tank improvements (internal or external roofs with proper seals and fittings) or (2) a closed vent system and control device depending on the type of storage vessel. The format for the storage vessel provisions is dependent on the type of storage vessel and control methodology selected. For storage vessels controlled with internal or external floating roofs, the format is a combination of design, equipment, work practice, and operational standards. This format is the only practicable control strategy compatible with these type of storage vessels. Other control strategies are available but require the conversion of the storage vessel to another type of vessel. The EPA chose not to propose an emission limit format for all types of storage vessels because that would require equipping non-fixed roof storage vessels with a capture system, which would be cost-prohibitive (57 FR 62608, December 31, 1992).

The design requirements for vessels controlled with vessel improvements are specified in subpart WW of this part. Additional operational and work practice requirements, which consist of inspection and repair requirements are also specified to ensure the continued integrity of the control equipment.

For vessels controlled by a closed vent system and control device, the EPA is proposing a design and equipment format. This format accounts for the wide variation in emissions and flow rates being vented from the vessel, and requires that the closed vent system and control device meet a specified weight-percent requirement. The closed vent system must be capable of collecting HAP vapors and gases discharged from the storage vessel. The control device must reduce the HAP emissions discharged into it at a specified efficiency for the source category and must be operated to achieve the specified level of emission reduction. Operational requirements, which consist of, among other things, inspection, repair, and work practice requirements, are necessary to ensure the proper operation and integrity of control equipment meeting a design and equipment standard.

Selection of Format for Wastewater Management Units Provisions

The provisions for controlling air emissions from wastewater streams are a combination of equipment, operational, work practice, and emission standards. It was determined

that a numerical standard would not be feasible because it would be difficult to capture and measure emissions from wastewater management units for the purpose of evaluating compliance (59 FR 51913, October 13, 1994).

Selection of Format for Equipment Leaks

The provisions of subparts TT and UU of this part for controlling emissions from equipment leaks are in the format of work practice and equipment specifications. It was determined that it is not feasible to prescribe or enforce emission standards because emissions cannot be emitted through a conveyance device and the application of a measurement methodology is not practicable due to technological or economic limitations (57 FR 62608, December 31, 1992).

VIII. Selection of Test Methods and Procedures

Test methods and procedures specified in the proposed standards would be used to demonstrate compliance. Procedures and methods included in the proposed standards are, where appropriate, based on procedures and methods previously developed by the EPA for use in implementing standards for sources similar to those being proposed for regulation today.

IX. Selection of Monitoring, Inspection, Recordkeeping and Reporting Requirements

Monitoring, inspection, recordkeeping, and reporting requirements specified in the proposed standards would be used to assure and document compliance with the proposed standards. Monitoring, inspection, recordkeeping and reporting requirements included in the proposed standards are, where appropriate, based on monitoring, inspection, recordkeeping and reporting requirements previously developed by the EPA for use in implementing standards for sources similar to those being proposed for regulation today.

Additionally, the generic MACT standards subpart cross-references §§ 63.1 through 63.5, and §§ 63.12 through 63.15 of the General Provisions for this part, and has pulled some of the regulatory text contained in §§ 63.6 through 63.11 into the rule. The General Provisions have been challenged in litigation. In the event that the EPA makes or is directed to make any changes in these standards in connection with that litigation prior to promulgation of the standard, the EPA will evaluate the appropriateness of making conforming changes in the Generic MACT Standards subpart. The EPA has also recently published a direct final notice to amend the General Provisions flare specifications by adding specifications for hydrogen-fueled flares (63 FR 24436). It is the EPA's intent to add these changes in specifications (once finalized) to the proposed flare specifications of 40 CFR part 63, subpart SS (Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process) at promulgation.

X. Relationship to other Standards and Programs Under the Act

A. Relationship to the Part 70 and Part 71 Permit Programs

Under title V of the Act, the EPA established a permitting program (part 70 and part 71 permitting program) that requires all owners and operators of HAP-emitting sources to obtain an operating permit (57 FR 32251, July 21, 1992). Sources subject (i.e., affected sources subject to the generic MACT standards) to the permitting program are required to submit complete permit applications within a year after a State program is approved by the EPA or, where a State program is not approved, within a year after a program is promulgated by the EPA. If the State where the facility is located does not have an approved permitting program, the owner or operator of a facility must submit the application to the EPA Regional Office in accordance with the requirements of the part 63 General Provisions (40 CFR 63 subpart A).

B. Overlapping Federal Regulations

The EPA recognizes that the potential exists for regulatory overlap between the proposed air emission standards and other standards developed under the Act. Therefore, the EPA has clarified the applicability of requirements under subpart YY as it relates to other NSPS and parts 61 and 63 NESHAP that apply to the same source in the applicability section of the rule.

XI. Solicitation of Comments

Comments are specifically requested on several aspects of the proposed standards. These topics are summarized below.

A. Proposed Generic MACT Approach

The EPA is proposing use of an alternative methodology for determining MACT and MACT floor compliance in appropriate instances where a source category has five or fewer sources and the sources in question are demonstrably similar to larger groups of sources regulated in prior MACT standards. Under this approach, individual source categories will be assimilated into a generic MACT structure and control requirements for the source category will be established by utilizing common control requirements established for particular types of emission points. EPA believes that this approach will conserve resources, encourage consistency and uniformity in standard setting, and assure conformity to applicable statutory requirements. (See section III. of this preamble for the basis for and summary of the EPA's proposed generic MACT approach). The EPA solicits comment on the feasibility and legality of the proposed generic MACT approach. EPA requests that, if any commenter asserts that this approach is unreasonable, the commenter provide specific examples where the proposed approach would yield an unacceptable outcome.

B. Emission Point General Control Requirement Subparts

The EPA promulgated air emission control requirements for selected emission points (i.e., containers, surface impoundments, oil-water separators and organic-water separators, tanks, individual drain systems) in individual subparts with the Off Site Waste and Recovery NESHAP.

Today's notice proposes additional air emission control requirement subparts for equipment leaks (40 CFR part 63, subparts TT and UU), storage vessels (40 CFR part 63, subpart WW), and closed vent systems and control and recovery devices (40 CFR part 63, subpart SS)(see section VI. Emission Point Common Control Requirements of today's notice for a description of, and rationale for, the proposed common control requirements). The EPA is soliciting comment on these emission point-specific subparts with this proposal. Specifically, the EPA soliciting comment on their content and application usefulness for source categories with similar emission points and emission characteristics.

XII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standard in accordance with section 307(d)(5) of the Act. Persons wishing to make oral presentation on the proposed standards for AR production, AMF production, HF production, or PC production; the proposed alternative MACT determination approach for source categories with a limited population of major sources; or the reference control requirement subparts

(i.e., subparts SS, TT, UU, WW) for closed vent systems, control devices, recovery devices and routing to a fuel gas system or process, control levels 1 and 2 for equipment leaks, and storage vessels; should contact the EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. If a hearing is held, interested persons may submit their statements in a written form, and the record will remain open for 30 days following the hearing for submission of rebuttal or supplementary information. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section of this preamble and should refer to Docket No. A–97–17.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized file of basic underlying information utilized by the EPA, and all comments and other information submitted to the EPA, during the rulemaking process. The principal purposes of the docket are:

1. To allow interested parties to readily identify and locate basic underlying documents so that they can intelligently and effectively participate in the rulemaking process; and

2. To serve as the record in case of judicial review (except for interagency review materials (section 307(d)(7)(A)).

The docket for today's proposed standards is A–97–17. Dockets established for each of the source categories with proposed standards with this proposal include the following: (1) AR production (Docket No. A–97–19); AMF production (Docket No. A–97–18); HF production (Docket No. A–97–x); and PC production (Docket No. A–97–16). The source category-specific dockets contain source category-specific supporting information and are cross referenced in the generic MACT standards docket (Docket No. A–97–17).

The docket contains copies of proposed regulatory text, and technical memoranda documenting the information considered by the EPA in the development of the proposed standards. The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this notice.

C. Executive Order 12866

Under Executive Order (EO) 12866, [58 FR 51735 (October 4, 1993)] the EPA must submit significant regulatory actions to the Office of Management and Budget (OMB) for review. The EO defines ''significant regulatory action'' as one that OMB determines is likely to result in a rule that may:

(1) Have an annual effect of the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

In this instance, the OMB has agreed that the EPA need not submit this proposal for review under EO 12286.

D. Enhancing the Intergovernmental Partnership Under Executive Order 12875

In compliance with EO 12875, the EPA has involved State governments in the development of this rule. Although this proposal does not impose requirements on State, local, or tribal governments, these entities will be required to implement the rule by incorporating the rule into permits and enforcing the rule upon delegation. They will collect permit fees that will be used to offset the resource burden of implementing the rule.

Representatives of State governments are members of the MACT partnerships that were consulted during the development of the proposed standards for the AR production, AMF production, HF production, and PC production source categories. Partnership groups were consulted throughout the development of the proposed standards. In addition, all State, local, and tribal governments and other representatives are encouraged to comment on the proposed standards during the public comment period, and the EPA intends to fully consider these comments in the development of the final standards.

E. Paperwork Reduction Act

The information collection requirements in these proposed rules have been submitted for approval to the OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1871.01 and copies may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740.

Information is required to ensure compliance with the provisions of the proposed standards. If the relevant information were collected less frequently, the EPA would not be reasonably assured that a source is in compliance with the proposed standards. In addition, the EPA's authority to take administrative action would be reduced significantly.

The proposed standards would require owners or operators of affected sources to retain records for a period of 5 years. The 5 year retention period is consistent with the provisions of the General Provisions of 40 CFR Part 63, and with the 5 year record retention requirement in the operating permit program under title V of the Act.

All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the EPA policies set forth in title 40, chapter 1, part 2, subpart B, Confidentiality of Business Information. See 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 3999, September 8, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979. Even where the EPA has determined that data received in response to an ICR is eligible for confidential treatment under 40 CFR part 2, subpart B, the EPA may nonetheless disclose the information if it is relevant in any proceeding: under the statute (42 U.S.C. 7414 (C); 40 CFR 2.301 (g). This information collection complies with the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular 108.

The estimated annual average hour and annual average cost burden per respondent for the proposed standards for the AR production, AMF production, HF production, and PC production source categories are presented in table 2.

TABLE 2.—Estimated Annual Average Hour and Cost Burden per Respondent [a]

Source category	Annual average hours	Annual average cost ($)
AR Production ...	1,300	55,500
AMF Production	1,900	83,200

TABLE 2.—Estimated Annual Average Hour and Cost Burden per Respondent [a]—Continued

Source category	Annual average hours	Annual average cost ($)
HF Production ...	310	13,200
PC Production ...	3,200	138,600
Total	6,710	290,500

[a] Burden hour and cost estimates are aggregated for the affected sources and averaged over the first 3 years of the rule.

The EPA projects that a maximum of 50 sources will be assimilated under the generic MACT standards. Assuming a future-looking burden scenario (i.e., the burden associated with the monitoring, recordkeeping, and reporting requirements for the PC production source category), the estimated annual average hour and annual average cost burden for the generic MACT standards inclusive of all source categories that could be assimilated in the future would be 32,300 and $1.4 million, respectively. Note that these burden estimates reflect a maximum future-looking burden scenario and would be spread over a minimum of 10 source categories with 5 or fewer facilities or respondents. The burden for a source category with 5 facilities or respondents would be an estimated 3,230 hours and $140 thousand per year. The burden per facility or respondent would be an estimated 646 hours and $28 thousand per year.

The future-looking burden estimates assume that reports are required on a semi-annual and annual basis (depending on the reports) and as required, as in the case of startup, shutdown, and malfunction reports. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICRs to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number(s) in any correspondence. Since OMB is required to make a decision concerning the ICR's between 30 and 60 days after October 14, 1998, a comment to OMB is best assured of having its full effect if OMB receives it by November 13, 1998. The final standards will respond to any OMB or public comments on the information collection requirements contained in this proposal.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment on rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because it would only apply to source categories with 5 or fewer major sources. Therefore, the EPA certifies that today's action would not have a significant economic impact on a substantial number of small entities. Thus, the Agency did not prepare an initial regulatory flexibility analysis (IRFA).

Although the statute does not require the EPA to prepare an IRFA because the Administrator is certifying that the rule will not have a significant economic impact on a substantial number of small entities, the EPA did undertake a limited assessment of possible outcomes and the economic effect of these on small entities as part of the economic analysis conducted for each of the source categories for which standards are being proposed with today's notice. The economic analysis for each of the source categories for which standards are being proposed can be obtained from the source category-specific dockets established for each of the source categories (see *Docket* in **ADDRESSES** section for individual docket numbers).

G. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, requires that the EPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Section 203 requires the EPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Because this proposed rule, if promulgated, does not include a Federal mandate and is estimated to result in expenditures less than $100 million in any one year by State, local, and tribal governments, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments would not be significantly or uniquely affected by this rule, the EPA is not required to develop a plan with regard to small governments. Therefore, the requirements of the UMRA do not apply to this action.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), American Petroleum Institute (API), National Fire Protection Association (NFPA) and Society of Automotive Engineers (SAE). The NTTAA requires

Federal agencies like the EPA to provide Congress, through OMB, explanations when an agency decides not to use available an applicable voluntary consensus standards.

This action does not involve the proposal of any new technical standards. It does, however, incorporate by reference existing technical standards, including government-unique technical standards. The technical standards proposed with this notice are standards that have been proposed and promulgated under other rulemakings for similar source control applicability and compliance determinations. The EPA solicits comment on the identification of potentially-applicable voluntary consensus standards that could be used in lieu of standard proposed under today's action. The EPA request that submitted comments include an explanation why such standards should be used in lieu of those proposed.

As part of a larger effort, the EPA is undertaking a project to cross-reference existing voluntary consensus standards on testing, sampling, and analysis, with current and future EPA test methods. When completed, this project will assist the EPA in identifying potentially-applicable voluntary consensus standards that can then be evaluated for equivalency and applicability in determining compliance with future regulations.

I. Protection of Children From Environmental Health Risks and Safety Under Executive Order 13045

The EO 13045 applies to any rule that (1) OMB determines is ''economically significant'' as defined under EO 12866, and (2) the EPA determines the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety aspects of the planned rule on children; and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The proposed rule is not subject to EO 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

J. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Although this proposal does not impose requirements on tribal governments, these entities will be required to implement the rule by incorporating the rule into permits and enforcing the rule upon delegation. Accordingly, the requirements of section 3(c) of Executive Order 13084 do not apply to this rule.

XIII. Statutory Authority

The statutory authority for this proposal is provided by section 101, 112, 114, 116, and 302 of the Act, as amended; 42 U.S.C., 7401, 7412, 7414, 7416, and 7601.

List of Subjects in 40 CFR part 63

Environmental protection, Acetal resins production, Acrylic and modacrylic fiber production, Air emissions control, Equipment leaks, Hazardous air pollutants, Hydrogen fluoride production, Kilns, Fiber spinning lines, Polycarbonates production, Process vents, Storage vessels, Transfer racks, Wastewater treatment units.

Dated: September 15, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations are proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. Part 63 is amended by adding subpart SS to read as follows:

Subpart SS—National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process

Sec.

63.980 Applicability.
63.981 Definitions.
63.982 Requirements.
63.983 Closed vent systems.
63.984 Fuel gas systems and processes to which storage vessel, transfer rack, or equipment leak regulated materials emissions are routed.
63.985 Nonflare control devices used to control emissions from storage vessels and low throughput transfer racks.
63.986 Nonflare control devices used for equipment leaks only.
63.987 Flare requirements.
63.988 Incinerators.
63.989 Boilers and process heaters.
63.990 Absorbers used as control devices.
63.991 Condensers used as control devices.
63.992 Carbon adsorbers used as control devices.
63.993 Absorbers, condensers, carbon adsorbers and other recovery devices used as final recovery devices.
63.994 Halogen scrubbers and other halogen reduction devices.
63.995 Other control devices.
63.996 General monitoring requirements for control and recovery devices.
63.997 Performance test and flare compliance determination requirements.
63.998 Recordkeeping requirements.
63.999 Notifications and other reports.

§ 63.980 Applicability.

(a) The provisions of this subpart include requirements for closed vent systems, control devices and routing of air emissions to a fuel gas system or process. These provisions apply when another subpart references the use of this subpart for such air emission control. These air emission standards are placed here for administrative convenience and only apply to those owners and operators of facilities subject to a referencing subpart. The provisions of 40 CFR part 63, subpart A (General Provisions) do not apply to this subpart except as specified in a referencing subpart.

§ 63.981 Definitions.

Alternative test method means any method of sampling and analyzing for an air pollutant that is not a reference test or equivalent method, and that has been demonstrated to the

Administrator's satisfaction, using Method 301 in appendix A of 40 CFR part 63, or previously approved by the Administrator prior to the promulgation date of standards for an affected source or affected facility under a referencing subpart, to produce results adequate for the Administrator's determination that it may be used in place of a test method specified in this subpart.

Automated monitoring and recording system means any means of measuring values of monitored parameters and creating a hard copy or computer record of the measured values that does not require manual reading of monitoring instruments and manual transcription of data values. Automated monitoring and recording systems include, but are not limited to, computerized systems and strip charts.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator or a process heater.

By compound means by individual stream components, not carbon equivalents.

Closed loop system means an enclosed system that returns process fluid to the process and is not vented to the atmosphere except through a closed vent system.

Closed vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device. Closed vent system does not include the vapor collection system that is part of any tank truck or railcar.

Closed vent system shutdown means a work practice or operational procedure that stops production from a process unit or part of a process unit during which it is technically feasible to clear process material from a closed vent system or part of a closed vent system consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a closed vent system shutdown. An unscheduled work practice or operational procedure that would stop production from a process unit or part of a process unit for a shorter period of time than would be required to clear the closed vent system or part of the closed vent system of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled closed vent system shutdown, is not a closed vent system shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not closed vent system shutdowns.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic emissions.

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

Continuous record means documentation, either in hard copy or computer readable form, of data values measured at least once every 15 minutes and recorded at the frequency specified in § 63.998(b).

Control device means any combustion device, recovery device, recapture device, or any combination of these devices used to comply with this subpart. Such equipment or devices include, but are not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents from continuous unit operations, recapture devices and combustion devices are considered control devices but recovery devices are not considered control devices. For process vents from batch unit operations, recapture devices, recovery devices, and combustion devices are considered control devices except for primary condensers. Primary condensers on stream strippers or fuel gas systems are not considered control devices.

Control system means the combination of the closed vent system and the control devices used to collect and control vapors or gases from a regulated emission source.

Ductwork means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

Flame zone means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

Flow indicator means a device which indicates whether gas flow is, or whether the valve position would allow gas flow to be, present in a line.

Fuel gas means gases that are combusted to derive useful work or heat.

Fuel gas system means the offsite and onsite piping and flow and pressure control system that gathers gaseous streams generated by onsite operations, may blend them with other sources of gas, and transports the gaseous streams for use as fuel gas in combustion devices or in-process combustion equipment such as furnaces and gas turbines, either singly or in combination.

Hard-piping means pipe or tubing that is manufactured and properly installed using good engineering judgment and standards, such as ANSI B31–3.

High-throughput transfer rack means those transfer racks that transfer a total of 11.8 million liters per year or greater of liquid containing regulated material.

Incinerator means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section present is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. The above energy recovery section limitation does not apply to an energy recovery section used solely to preheat the incoming vent stream or combustion air.

Low-throughput transfer rack means those transfer racks that transfer less than a total of 11.8 million liters per year of liquid containing regulated material.

Operating parameter value means a minimum or maximum value established for a control device parameter which, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limit or operating limit.

Organic monitoring device means a unit of equipment used to indicate the concentration level of organic compounds based on a detection principle such as infra-red, photo ionization, or thermal conductivity.

Owner or operator means any person who owns, leases, operates, controls, or supervises a regulated source or a stationary source of which a regulated source is a part.

Performance level means the level at which the regulated material in the gases or vapors vented to a control or recovery device are removed, recovered, or destroyed. Examples of control device performance levels include: achieving a minimum organic reduction efficiency expressed as a percentage of regulated material removed or destroyed in the control device inlet stream on a weight-basis; achieving an organic concentration in the control device

exhaust stream that is less than a maximum allowable limit expressed in parts per million by volume on a dry basis corrected to 3 percent oxygen; or maintaining appropriate control device operating parameters indicative of the device performance at specified values.

Performance test means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission limit as specified in the performance test section of this subpart or in the referencing subpart.

Primary fuel means the fuel that provides the principal heat input to a device. To be considered primary, the fuel must be able to sustain operation without the addition of other fuels.

Process heater means an enclosed combustion device that transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water. A process heater may, as a secondary function, heat water in unfired heat recovery sections.

Recapture device means an individual unit of equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse, or sale. For example, a recapture device may recover chemicals primarily for disposal. Recapture devices include, but are not limited to, absorbers, carbon adsorbers, and condensers. For purposes of the monitoring, recordkeeping and reporting requirements of this subpart, recapture devices are considered recovery devices.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. For purposes of the monitoring, recordkeeping, and reporting requirements of this subpart, recapture devices are considered recovery devices.

Reference method means any method of sampling and analyzing for a regulated material as specified in an applicable subpart, the appendices to 40 CFR parts 60 or 63, or in appendix B of 40 CFR part 61.

Referencing subpart means the subpart which refers an owner or operator to this subpart.

Regulated material, for purposes of this part, refers to vapors from volatile organic liquids (VOL), volatile organic compounds (VOC), or hazardous air pollutants (HAP), or other chemicals or groups of chemicals that are regulated by a referencing subpart.

Regulated source for the purposes of this subpart, means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant to a referencing subpart.

Routed to a process or route to a process means the gas streams are conveyed to any enclosed portion of a process unit where the emissions are recycled and/or consumed in the same manner as a material that fulfills the same function in the process; and/or transformed by chemical reaction into materials that are not regulated materials; and/or incorporated into a product; and/or recovered.

Run means one of a series of emission or other measurements needed to determine emissions for a representative operating period or cycle as specified in this subpart. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

Sampling connection system means an assembly of equipment within a process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

Secondary fuel means a fuel fired through a burner other than the primary fuel burner that provides supplementary heat in addition to the heat provided by the primary fuel.

Sensor means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

Set pressure means the pressure at which a properly operating pressure relief device begins to open to relieve atypical process system operating pressure.

Specific gravity monitoring device means a unit of equipment used to monitor specific gravity and having a minimum accuracy of ± 0.02 specific gravity units.

Temperature monitoring device means a unit of equipment used to monitor temperature and having a minimum accuracy of ± percent of the temperature being monitored expressed in degrees Celsius or ±1.2 degrees Celsius (°C), whichever is greater.

§ 63.982 Requirements.

(a) *Storage vessel requirements.* An owner or operator of a storage vessel that is referred to this subpart for controlling regulated material emissions by venting emissions through a closed vent system to a flare, nonflare control device or routing to a fuel gas system or process shall comply with the applicable requirements of paragraphs (a)(1) through (a)(3) of this section.

(1) *Closed vent system and flare.* Owners or operators that control emissions through a closed vent system to a flare shall meet the requirements in § 63.983 for closed vent systems; § 63.987 for flares; and § 63.997(a),(b) and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping and reporting requirements referenced therein. No other provisions of this subpart apply to storage vessel emissions through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device.* Owners or operators that control emissions through a closed vent system to a nonflare control device shall meet the requirements in § 63.983 for closed vent systems; and § 63.985 for nonflare control devices and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to storage vessel emissions vented through a closed vent system to a nonflare control device unless specifically required in the monitoring plan submitted under § 63.985(c).

(3) *Route to a fuel gas system or process.* Owners or operators that control emissions by routing storage vessel emissions to a fuel gas system or process shall meet the requirements in § 63.984 and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to storage vessel emissions being routed to a fuel gas system or a process.

(b) *Process vent requirements.* The owner or operator that is referred to this subpart for controlling regulated material emissions by venting emissions through a closed vent system to a flare, nonflare control device, or a final recovery device shall comply with the applicable requirements of paragraphs (b)(1) through (b)(3) of this section.

(1) *Closed vent system and flare.* Owners or operators that control emissions by venting emissions through a closed vent system to a flare shall meet the applicable requirements in § 63.983 for closed vent systems; § 63.987 for flares; and § 63.997(a), (b) and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced

therein. No other provisions of this subpart apply to process vent emissions routed through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device.* Owners or operators that control emissions by venting emissions through a closed vent system to a nonflare control device shall meet the applicable requirements in § 63.983 for closed vent systems; the requirements applicable to the control devices being used in §§ 63.988 through 63.992, or § 63.995; the applicable general monitoring requirements of § 63.996 and the applicable performance test requirements and procedures of § 63.997; and the monitoring, recordkeeping, and reporting requirements referenced therein. Owners or operators subject to halogen reduction device requirements under a referencing subpart must also comply with § 63.994 and the monitoring, recordkeeping and reporting requirements referenced therein. The requirements of §§ 63.984 through 63.986 do not apply to process vents.

(3) *Final recovery devices.* Owners or operators who use a final recovery device to control air emissions from process vents from continuous unit operations shall meet the requirements in § 63.993 and the monitoring, recordkeeping, and reporting requirements referenced therein that are applicable to the recovery device being used; and the applicable monitoring requirements in § 63.996 and the recordkeeping and reporting requirements referenced therein. No other provisions of this subpart apply to process vents.

(c) *Transfer rack requirements.* The owner or operator that is referred to this subpart for controlling regulated material emissions by venting emissions through a closed vent system to a flare, nonflare control device, or routing to a fuel gas system or process shall comply with the applicable requirements of paragraphs (c)(1) through (c)(4) of this section.

(1) *Closed vent system and flare.* Owners or operators who vent transfer rack emissions through a closed vent system to a flare shall meet the applicable requirements in § 63.983 for closed vent systems; § 63.987 for flares; and § 63.997(a), (b) and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to transfer rack emissions vented through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device for low-throughput transfer racks.* An owner or operator of a low-throughput transfer rack, as defined in § 63.981, that vents emissions through a closed vent system to a nonflare control device shall meet the applicable requirements in § 63.983 for closed vent systems and § 63.985 for nonflare control devices and the monitoring, recordkeeping, and reporting requirements referenced therein. The requirements of §§ 63.984 through 63.986 do not apply to high throughput transfer rack emissions routed through a closed vent system to a nonflare control device. No other provisions of this subpart apply to low-throughput transfer rack emissions being routed through a closed vent system to a nonflare control device.

(3) *Closed vent system and nonflare control devices for high throughput transfer racks.* Owners or operators of high throughput transfer racks that vent emissions through a closed vent system to a nonflare control device shall meet the applicable requirements in § 63.983 for closed vent systems; the requirements applicable to the control device being used in §§ 63.988 through 63.992, or 63.995; the applicable general monitoring requirements of § 63.996; and the applicable performance test requirements and procedures of § 63.997; and the monitoring, recordkeeping, and reporting requirements referenced therein. Owners or operators subject to halogenated stream requirements under a referencing subpart must also comply with § 63.994 and the monitoring, recordkeeping, and reporting requirements referenced therein. The requirements of §§ 63.984 through 63.986 do not apply to high throughput transfer rack emissions routed through a closed vent system to a nonflare control device.

(4) *Route to a fuel gas system or process.* Owners or operators that control air emissions by routing transfer rack emissions to a fuel gas system or to a process shall meet the applicable requirements in § 63.984 and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to transfer rack emissions being routed to a fuel gas system or process.

(d) *Equipment leak requirements.* The owner or operator that is referred to this subpart for controlling regulated material emissions from equipment leaks by venting emissions through a closed vent system to a flare, nonflare control device, or routing to a fuel gas system or process shall comply with the applicable requirements of paragraphs (d)(1) through (d)(3) of this section.

(1) *Closed vent system and flare.* Owners or operators that vent equipment leak emissions through a closed vent system to a flare shall meet the requirements in § 63.983 for closed vent systems; § 63.987 for flares; and § 63.997(a), (b) and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions vented through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device.* Owners or operators that vent equipment leak emissions through a closed vent system to a nonflare control device shall meet the requirements in § 63.983 for closed vent systems and § 63.986 for nonflare control devices used for equipment leak emissions and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions vented through a closed vent system to a nonflare control device.

(3) *Route to a fuel gas system or process.* Owners or operators that route equipment leak emissions to a fuel gas system or to a process shall meet the requirements in § 63.984 and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions being routed to a fuel gas system or process.

(e) *Combined emissions.* When emissions from different emission types (e.g., emissions from process vents, transfer racks, and/or storage vessels) are combined, an owner or operator shall comply with the requirements of either paragraph (e)(1) or (e)(2) of this section.

(1) Comply with the applicable requirements of this subpart for each kind of emissions in the stream (e.g., the requirements of § 63.982(b) for process vents, and the requirements of § 63.982(c) for transfer racks); or

(2) Comply with the first set of requirements identified in paragraphs (e)(2)(i) through (e)(2)(iii) of this section which applies to any individual emission stream that is included in the combined stream. Compliance with the first applicable set of requirements identified in paragraphs (e)(2)(i) through (e)(2)(iii) of this section constitutes compliance with all other emissions requirements for other emission streams.

(i) The requirements of § 63.982(b) for process vents, including applicable

monitoring, recordkeeping, and reporting;

(ii) The requirements of § 63.982(c) for high throughput transfer racks, including applicable monitoring, recordkeeping, and reporting;

(iii) The requirements of § 63.982(a) for control of emissions from storage vessels or low throughput transfer racks, including applicable monitoring, recordkeeping, and reporting.

§ 63.983 Closed vent systems.

(a) *Closed vent system equipment and operating requirements.* The provisions of this paragraph apply to closed vent systems collecting regulated material from a regulated source.

(1) *Collection of emissions.* Each closed vent system shall be designed and operated to collect the regulated material vapors from the emission point, and to route the collected vapors to a control device.

(2) *Period of operation.* Closed vent systems used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to, or collected by, them.

(3) *Bypass monitoring.* Except for equipment needed for safety purposes such as pressure relief devices, low leg drains, high point bleeds, analyzer vents, and open-ended valves or lines, the owner or operator shall comply with the provisions of either paragraphs (a)(3)(i) or (a)(3)(ii) of this section for each closed vent system that contains bypass lines that could divert a vent stream to the atmosphere.

(i) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. Records shall be generated as specified in § 63.998(d)(1)(ii)(B). The flow indicator shall be installed at the entrance to any bypass line.*ERR08*

(ii) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass line. Records shall be generated as specified in § 63.998(d)(1)(i)(B).

(4) *Loading arms at transfer racks.* Each closed vent system collecting regulated material from a transfer rack shall be designed and operated so that regulated material vapors collected at one loading arm will not pass through another loading arm in the rack to the atmosphere.

(5) The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the transfer rack's closed vent system shall open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to this paragraph.

(b) *Closed vent system inspection requirements.* The provisions of this subpart apply to closed vent systems collecting regulated material from a regulated source. Inspection records shall be generated as specified in § 63.998(d)(1)(iii) and (d)(1)(iv).

(1) Except for closed vent systems operated and maintained under negative pressure, and any closed vent systems that are designated as unsafe or difficult to inspect as provided in paragraphs (b)(2) and (b)(3) of this section, each closed vent system shall be inspected as specified in paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) If the closed vent system is constructed of hard-piping, the owner or operator shall comply with the requirements specified in paragraphs (b)(1)(i)(A) and (b)(1)(i)(B) of this section.

(A) Conduct an initial inspection according to the procedures in paragraph (c) of this section; and

(B) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(ii) If the closed vent system is constructed of ductwork, the owner or operator shall conduct an initial and annual inspection according to the procedures in paragraph (c) of this section.

(2) Any parts of the closed vent system that are designated, as described in § 63.998(d)(1)(i), as unsafe to inspect are exempt from the inspection requirements of paragraph (b)(1) of this section if the conditions of paragraphs (b)(2)(i) and (b)(2)(ii) of this section are met.

(i) The owner or operator determines that the equipment is unsafe-to-inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (b)(1) of this section; and

(ii) The owner or operator has a written plan that requires inspection of the equipment as frequently as practical during safe-to-inspect times. Inspection is not required more than once annually.

(3) Any parts of the closed vent system that are designated, as described in § 63.998(d)(1)(i), as difficult-to-inspect are exempt from the inspection requirements of paragraph (b)(1) of this section if the provisions of paragraphs (b)(3)(i) and (b)(3)(ii) of this section apply.

(i) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters (7 feet) above a support surface; and

(ii) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(c) *Closed vent system inspection procedures.* The provisions of this paragraph apply to closed vent systems collecting regulated material from a regulated source.

(1) Each closed vent system subject to this paragraph shall be inspected according to the procedures specified in paragraphs (c)(1)(i) through (c)(1)(vii) of this section.

(i) Inspections shall be conducted in accordance with Method 21 of 40 CFR part 60, appendix A, except as specified in this section.

(ii) Except as provided in (c)(1)(iii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the representative composition of the process fluid and not of each individual VOC in the stream. For process streams that contain nitrogen, air, or other inerts that are not organic HAP or VOC, the representative stream response factor shall be determined on an inert-free basis. The response factor may be determined at any concentration for which the monitoring for leaks will be conducted.

(iii) If no instrument is available at the plant site that will meet the performance criteria of Method 21 specified in paragraphs (c)(1)(ii) of this section, the instrument readings may be adjusted by multiplying by the representative response factor of the process fluid, calculated on an inert-free basis as described in paragraphs (c)(1)(ii) of this section.

(iv) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(v) Calibration gases shall be as specified in paragraphs (c)(1)(v)(A) through (c)(1)(v)(C) of this section.

(A) Zero air (less than 10 parts per million hydrocarbon in air); and

(B) Mixtures of methane in air at a concentration less than 10,000 parts per million. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (c)(1)(ii) of this section. In such cases, the calibration gas may be a

mixture of one or more of the compounds to be measured in air.

(C) If the detection instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,500 parts per million.

(vi) An owner or operator may elect to adjust or not adjust instrument readings for background. If an owner or operator elects not to adjust readings for background, all such instrument readings shall be compared directly to 500 parts per million to determine whether there is a leak. If an owner or operator elects to adjust instrument readings for background, the owner or operator shall measure background concentration using the procedures in this section. The owner or operator shall subtract the background reading from the maximum concentration indicated by the instrument.

(vii) If the owner or operator elects to adjust for background, the arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared with 500 parts per million for determining whether there is a leak.

(2) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21 of 40 CFR part 60, appendix A.

(3) Except as provided in paragraph (c)(4) of this section, inspections shall be performed when the equipment is in regulated material service, or in use with any other detectable gas or vapor.

(4) Inspections of the closed vent system collecting regulated material from a transfer rack shall be performed only while a tank truck or railcar is being loaded or is otherwise pressurized to normal operating conditions with regulated material or any other detectable gas or vapor.

(d) *Closed vent system leak repair provisions.* The provisions of this paragraph apply to closed vent systems collecting regulated material from a regulated source.

(1) If there are visible, audible, or olfactory indications of leaks at the time of the annual visual inspections required by paragraph (b)(1)(i)(B) of this section, the owner or operator shall follow the procedure specified in either paragraph (d)(1)(i) or (d)(1)(ii) of this section.

(i) The owner or operator shall eliminate the leak.

(ii) The owner or operator shall monitor the equipment according to the procedures in paragraph (c) of this section.

(2) Leaks, as indicated by an instrument reading greater than 500 parts per million by volume above background or by visual inspections, shall be repaired as soon as practical, except as provided in paragraph (d)(3) of this section. Records shall be generated as specified in § 63.998(d)(1)(iii) when a leak is detected.

(i) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(ii) Except as provided in paragraph (d)(2) of this section, repairs shall be completed no later than 15 calendar days after the leak is detected or at the beginning of the next introduction of vapors to the system, whichever is later.

(3) Delay of repair of a closed vent system for which leaks have been detected is allowed if the repair within 15 days after a leak is detected is technically infeasible without a closed vent system shutdown, as defined in the referencing subpart, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the emissions likely to result from delay of repair. Repair of such equipment shall be completed as soon as practical, but not later than the end of the next closed vent system shutdown.

§ 63.984 Fuel gas systems and processes to which storage vessel, transfer rack, or equipment leak regulated material emissions are routed.

(a) *Equipment and operating requirements for fuel gas systems and processes.* (1) Except as provided in the referencing subpart, the fuel gas system or process shall be operating at all times when regulated material emissions are routed to it.

(2) The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the transfer rack's system returning vapors to a fuel gas system or process shall open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to this paragraph.

(3) The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the transfer rack's system returning vapors to a fuel gas system or process shall open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to this paragraph.

(b) *Fuel gas system and process compliance determination.* (1) If emissions are routed to a fuel gas system, there is no requirement to conduct a performance test or design evaluation.

(2) If emissions are routed to a process, the regulated material in the emissions shall meet one or more of the conditions specified in paragraphs (b)(2)(i) through (b)(2)(iv) of this section. The owner or operator of storage vessels subject to this paragraph shall comply with the compliance demonstration requirements in paragraph (b)(3) of this section.

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not regulated materials;

(iii) Incorporated into a product; and/or

(iv) Recovered.

(3) To demonstrate compliance with paragraph (b)(2) of this section for a storage vessel, the owner or operator shall prepare a design evaluation (or engineering assessment) that demonstrates the extent to which one or more of the conditions specified in paragraphs (b)(2)(i) through (b)(2)(iv) of this section are being met. The owner or operator shall submit the design evaluation as specified in § 63.999(b)(3)(iii).

(c) *Statement of connection.* For storage vessels and transfer racks, the owner or operator shall submit the reports specified in § 63.999(b)(1)(ii) and/or (b)(1)(iii), as appropriate.

§ 63.985 Nonflare control devices used to control emissions from storage vessels and low throughput transfer racks.

(a) *Nonflare control device equipment and operating requirements.* The owner or operator shall operate and maintain the nonflare control device so that the monitored parameters defined as required in paragraph (c) of this section remain within the ranges specified in the Initial Compliance Status Report whenever emissions of regulated material are routed to the control device except during periods of startup, shutdown, and malfunction.

(b) *Nonflare control device design evaluation or performance test requirements.* When using a control device other than a flare, the owner or operator shall comply with the requirements in paragraphs (b)(1)(i), (b)(1)(ii), or (b)(1)(iii) of this section, except as provided in paragraph (b)(2) of this section.

(1) Unless a design evaluation or performance test is required in the referencing subpart or was previously conducted and submitted for a storage vessel or low-throughput transfer rack, the owner or operator shall either

prepare and submit with the Initial Compliance Status Report, as specified in § 63.999(b)(5), a design evaluation that includes the information specified in paragraph (b)(1)(i) of this section, or the results of the performance test as described in paragraph (b)(1)(ii) or (b)(1)(iii) of this section.

(i) *Design evaluation.* The design evaluation shall include documentation demonstrating that the control device being used achieves the required control efficiency during the reasonably expected maximum storage vessel filling or transfer loading rate. This documentation is to include a description of the gas stream that enters the control device, including flow and regulated material content, and additionally for storage vessels, under varying liquid level conditions, and the information specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(E) of this section, as applicable. This documentation shall be submitted with the Initial Compliance Status Report as specified in § 63.999(b)(2).

(A) The efficiency determination is to include consideration of all vapors, gases, and liquids, other than fuels, received by the control device.

(B) If an enclosed combustion device with a minimum residence time of 0.5 seconds and a minimum temperature of 760 °C is used to meet an emission reduction requirement specified in a referencing subpart for storage vessels and transfer racks, documentation that those conditions exist is sufficient to meet the requirements of paragraph (b)(1)(i) of this section.

(C) Except as provided in paragraph (b)(1)(i)(B) of this section, for enclosed combustion devices, the design evaluation shall include the estimated autoignition temperature of the stream being combusted, the flow rate of the stream, the combustion temperature, and the residence time at the combustion temperature.

(D) For carbon adsorbers, the design evaluation shall include the estimated affinity of the regulated material vapors for carbon, the amount of carbon in each bed, the number of beds, the humidity, the temperature, the flow rate of the inlet stream and, if applicable, the desorption schedule, the regeneration stream pressure or temperature, and the flow rate of the regeneration stream. For vacuum desorption, pressure drop shall be included.

(E) For condensers, the design evaluation shall include the final temperature of the stream vapors, the type of condenser, and the design flow rate of the emission stream.

(ii) *Performance test.* A performance test is acceptable to demonstrate compliance with emission reduction requirements for storage vessels and transfer racks. The owner or operator is not required to prepare a design evaluation for the control device as described in paragraph (b)(1)(i) of this section if a performance test will be performed that meets the criteria specified in paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section.

(A) The performance test will demonstrate that the control device achieves greater than or equal to the required control device performance level specified in a referencing subpart for storage vessels and transfer racks; and

(B) The performance test meets the applicable performance test requirements and the results are submitted as part of the Initial Compliance Status Report as specified in § 63.999(b)(2).

(iii) If the control device used to comply with storage vessel or with low-throughput transfer rack control requirements is also used to comply with process vent or nonlow throughput transfer rack control requirements, a performance test required by §§ 63.988(b), 63.989(b), 63.990(b), 63.991(b), 63.992(b), or 63.995(b) is acceptable to demonstrate compliance with storage vessel and low throughput transfer rack control requirements. The owner or operator is not required to prepare a design evaluation for the control device as described in paragraph (b)(1)(i) of this section, if a performance test will be performed that meets the criteria specified in paragraphs (b)(1)(iii)(A) and (b)(1)(iii)(B) of this section.

(A) The performance test demonstrates that the control device achieves greater than or equal to the required efficiency specified in the referencing subpart for storage vessels or transfer racks; and

(B) The performance test is submitted as part of the Initial Compliance Status Report as specified in § 63.999(b)(2).

(2) A design evaluation or performance test is not required if the owner or operator uses a combustion device meeting the criteria in paragraph (b)(2)(i), (b)(2)(ii), (b)(2)(iii), or (b)(2)(iv) of this section.

(i) A boiler or process heater with a design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater.

(ii) A boiler or process heater burning hazardous waste for which the owner or operator meets the requirements specified in paragraph (b)(2)(ii)(A) or (b)(2)(ii)(B) of this section.

(A) The boiler or process heater has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H, or

(B) The boiler or process heater has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(iii) A hazardous waste incinerator for which the owner or operator meets the requirements specified in paragraph (b)(2)(iii)(A) or (b)(2)(iii)(B) of this section.

(A) The incinerator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O; or

(B) Has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(iv) A boiler or process heater into which the vent stream is introduced with the primary fuel.

(c) *Nonflare control device monitoring requirements.* (1) The owner or operator shall submit with the Initial Compliance Status Report, a monitoring plan containing the information specified in § 63.999(b)(2) to identify the parameters that will be monitored to assure proper operation of the control device.

(2) The owner or operator shall monitor the parameters specified in the Initial Compliance Status Report, in the operating permit. Records shall be generated as specified in § 63.998(d)(2)(i).

§ 63.986 Nonflare control devices used for equipment leaks only.

(a) *Equipment and operating requirements.* (1) Owners or operators using a nonflare control device to meet the applicable requirements of a referencing subpart for equipment leaks shall meet the requirements of this section.

(2) Control devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Performance test requirements.* A performance test is not required for any control device used only to control emissions from equipment leaks.

(c) *Monitoring requirements.* Owners or operators of control devices that are used to comply only with the provisions of a referencing subpart for control of equipment leak emissions shall monitor these control devices to ensure that they are operated and maintained in conformance with their design. The owner or operator shall maintain the records as specified in § 63.998(d)(4).

§ 63.987 Flare requirements.

(a) *Flare equipment and operating requirements.* Flares subject to this subpart shall meet the performance

requirements of paragraphs (a)(1) through (a)(7) of this section.

(1) Flares shall be operated at all times when emissions are vented to them.

(2) Flares shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (b)(3)(i) of this section, except for periods not to exceed a total of 5 minutes during any two consecutive hours.

(3) Flares shall be operated with a flare flame or at least one pilot flame present at all times, as determined by the methods specified in paragraph (c) of this section.

(4) Flares shall be used only when the net heating value of the gas being combusted is 11.2 megajoules per standard cubic meter (300 British thermal units per standard cubic foot) or greater if the flare is steam-assisted or air-assisted; or when the net heating value of the gas being combusted is 7.45 megajoules per standard cubic meter (200 British thermal units per standard cubic foot) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (b)(3)(ii) of this section.

(5) Flares used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(6) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (b)(3)(iii) of this section, of less than 18.3 meters per second (60 feet per second), except as provided in paragraphs (a)(6)(i) and (a)(6)(ii) of this section, as applicable.

(i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (b)(3)(iii) of this section, equal to or less than 122 meters per second (400 feet per second) if the net heating value of the gas being combusted is greater than 37.3 megajoules per standard cubic meter (1,000 British thermal units per standard cubic foot).

(ii) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity, as determined by the methods specified in paragraph (b)(3)(iii) of this section, of less than the velocity, V_{max}, and less than 122 meters per second (400 feet per second), where the maximum permitted velocity, V_{max}, is determined by the following equation.

$$\mathrm{Log}_{10}\left(V_{max}\right) = \left(H_T + 28.8\right) / 31.7 \quad \text{[Eq. 1]}$$

Where:

V_{max} = Maximum permitted velocity, meters per second

28.8 = Constant

31.7 = Constant

H_T = The net heating value as determined in paragraph (b)(3)(ii) of this section.

(7) Air-assisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section less than the velocity, V_{max}, where the maximum permitted velocity, V_{max}, is determined by the following equation.

$$V_{max} = 8.706 + 0.7084\left(H_T\right) \quad \text{[Eq. 2]}$$

Where:

V_{max} = Maximum permitted velocity, meters per second

8.706 = Constant

0.7084 = Constant

H_T = The net heating value as determined in paragraph (b)(3)(ii) of his section.

(b) *Flare compliance determination.*

(1) The owner or operator shall conduct an initial flare compliance determination of any flare used to comply with the provisions of this subpart. Flare compliance determination records shall be kept as specified in § 63.998(a)(1) and a flare compliance determination report shall be submitted as specified in § 63.999(a)(2). An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet regulated material or total organic compound concentration when a flare is used.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a flare to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 63.999(b)(7) before implementing the change. Upon implementing the change, a flare compliance determination shall be performed using the methods specified in paragraph (b)(3) of this section within 180 days. The compliance determination report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 63.999(a)(2)(ii). If an owner or operator elects to use a flare to replace an existing final recovery device that is used on an applicable process vent, the owner or operator shall comply with the applicable provisions in referencing subpart.

(3) Flare compliance determinations shall meet the requirements specified in paragraphs (b)(3)(i) through (b)(3)(iv) of this section.

(i) Method 22 of appendix A of part 60 shall be used to determine the compliance of flares with the visible emission provisions of this subpart. The observation period is 2 hours, except for transfer racks as provided in (b)(3)(i)(A) or (b)(3)(i)(B) of this section.

(A) For transfer racks, if the loading cycle is less than 2 hours, then the observation period for that run shall be for the entire loading cycle.

(B) For transfer racks, if additional loading cycles are initiated within the 2-hour period, then visible emissions observations shall be conducted for the additional cycles.

(ii) The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$H_T = K_1 \sum_{j=1}^{n} D_j H_j \quad \text{[Eq. 3]}$$

Where:

H_T = Net heating value of the sample, megajoules per standard cubic meter; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 millimeters of mercury (30 inches of mercury), but the standard temperature for determining the volume corresponding to one mole is 20 °C;

$K_1 = 1.740 \times 10^{-7}$ (parts per million by volume) -1 (gram-mole per standard cubic meter) (megajoules per kilocalories), where the standard temperature for gram mole per standard cubic meter is 20 °C;

D_j = Concentration of sample component j, in parts per million by volume on a wet basis, as measured for organics by Method 18 of part 60, appendix A and measured for hydrogen and carbon monoxide by American Society for Testing and Materials (ASTM) D1946–77; and

H_j = Net heat of combustion of sample component j, kilocalories per gram mole at 25 °C and 760 millimeters of mercury (30 inches of mercury). The heat of combustion of stream components may be determined using ASTM D2382–76 if published values are not available or cannot be calculated.

(iii) The actual exit velocity of a flare shall be determined by dividing the volumetric flowrate (in units of standard temperature and pressure), as determined by Methods 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A as appropriate; by the unobstructed (free) cross sectional area of the flare tip.

(iv) Flare flame or pilot monitors, as applicable, shall be operated during any flare compliance determination.

(c) *Flare monitoring requirements.* Where a flare is used, the following monitoring equipment is required: a device (including but not limited to a thermocouple, ultra-violet beam sensor, or infrared sensor) capable of continuously detecting that at least one pilot flame or the flare flame is present. Flame monitoring and compliance records shall be kept as specified in § 63.998(a)(1).

§ 63.988 Incinerators.

(a) *Incinerator equipment and operating requirements.* (1) Owners or operators using incinerators to meet a weight-percent emission reduction or parts per million by volume outlet concentration requirement specified in a referencing subpart shall meet the requirements of this section.

(2) Incinerators used to comply with the provisions of a referencing subpart and this subpart shall be operated at all times when emissions are vented to them.

(b) *Incinerator performance test requirements.* (1) Except as specified in § 63.997(b), and paragraph (b)(2) of this section, the owner or operator shall conduct an initial performance test of any incinerator used to comply with the provisions of a referencing subpart and this subpart according to the procedures in §§ 63.997(a) through (e). Performance test records shall be kept as specified in § 63.998(a)(2)(i) and (a)(2)(ii) and a performance test report shall be submitted as specified in § 63.999(a). As provided in § 63.985(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low throughput transfer rack controls. As provided in § 63.986(b), no performance test is required for equipment leaks.

(2) An owner or operator is not required to conduct a performance test for a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(3) Unless already permitted by the applicable title V permit, if an owner or operator elects to use an incinerator to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 63.999(b)(7) before implementing the change. Upon implementing the change, an incinerator performance test shall be performed, using the methods specified in § 63.997(a) through (e) within 180 days, if required by paragraph (b)(1) of this section. The performance test report shall be submitted to the Administrator within 60 days of completing the determination, as provided in § 63.999(a)(1)(ii).

(c) *Incinerator monitoring requirements.* (1) Where an incinerator is used, a temperature monitoring device capable of providing a continuous record that meets the provisions specified in paragraph (c)(1)(i) or (c)(1)(ii) of this section is required. Monitoring results shall be recorded as specified in § 63.998(b). General requirements for monitoring and continuous parameter monitoring systems are contained in the referencing subpart and § 63.996.

(i) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the fire box or in the ductwork immediately downstream of the fire box in a position before any substantial heat exchange occurs.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) The owner or operator shall establish a range for monitored parameters that indicate proper operation of the incinerator. In order to establish the range, the information required in § 63.999(b)(3) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 63.997(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 63.989 Boilers and process heaters.

(a) *Boiler and process heater equipment and operating requirements.* (1) Owners or operators using boilers and process heaters to meet a weight-percent emission reduction or parts per million by volume outlet concentration requirement specified in a referencing subpart shall meet the requirements of this section.

(2) The vent stream shall be introduced into the flame zone of the boiler or process heater.

(3) Boilers and process heaters used to comply with the provisions of a referencing subpart and this subpart shall be operated at all times when emissions are vented to them.

(b) *Boiler and process heater performance test requirements.* (1) Except as specified in § 63.997(b), and paragraph (b)(2) of this section, the owner or operator shall conduct an initial performance test of any boiler or process heater used to comply with the provisions of a referencing subpart and this subpart according to the procedures in § 63.997(a) through (e). Performance test records shall be kept as specified in § 63.998(a)(2)(i) and (a)(2)(ii) and a performance test report shall be submitted as specified in § 63.999(a). As provided in § 63.985(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low throughput transfer rack control requirements. As provided in § 63.986(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) An owner or operator is not required to conduct a performance test when any of the control devices specified in paragraphs (b)(2)(i) through (b)(2)(iii) are used.

(i) A boiler or process heater with a design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater.

(ii) A boiler or process heater into which the vent stream is introduced with the primary fuel or is used as the primary fuel.

(iii) A boiler or process heater burning hazardous waste for which the owner or operator meets the requirements

specified in paragraph (b)(2)(iii)(A) or (b)(2)(iii)(B) of this section.

(A) The boiler or process heater has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(B) The boiler or process heater has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(3) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a boiler or process heater to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 63.999(b)(7) before implementing the change. Upon implementing the change, a boiler or process heater performance test shall be performed using the methods specified in § 63.997(a) through (e) within 180 days, if required by paragraph (b)(1) of this section. The performance test report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 63.999(a)(2)(ii).

(c) *Boiler and process heater monitoring requirements.* (1) Where a boiler or process heater of less than 44 megawatts (150 million British thermal units per hour) design heat input capacity is used and the regulated vent stream is not introduced as or with the primary fuel, a temperature monitoring device in the fire box capable of providing a continuous record is required. Any boiler or process heater in which all vent streams are introduced with primary fuel or are used as the primary fuel is exempt from monitoring. Monitoring results shall be recorded as specified in § 63.998(b). General requirements for monitoring and continuous parameter monitoring systems are contained in the referencing subpart and § 63.996.

(2) Where monitoring is required, the owner or operator shall establish a range for monitored parameters that indicates proper operation of the boiler or process heater. In order to establish the range, the information required in § 63.999(b)(3) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 63.997(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 63.990 Absorbers used as control devices.

(a) *Absorber equipment and operating requirements.* (1) Owners or operators using absorbers to meet a weight-percent or parts per million by volume outlet concentration requirement specified in a referencing subpart shall meet the requirements of this section.

(2) Absorbers used to comply with the provisions of a referencing subpart and this subpart shall be operated at all times when emissions are vented to them.

(b) *Absorber performance test requirements.* (1) Except as specified in § 63.997(b), the owner or operator shall conduct an initial performance test of any absorber used as a recapture device to comply with the provisions of the referencing subpart and this subpart according to the procedures in § 63.997(a) through (e). Performance test records shall be kept as specified in § 63.998(a)(2)(i) and (a)(2)(ii) and a performance test report shall be submitted as specified in § 63.999(a). As provided in § 63.985(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low throughput transfer rack controls. As provided in § 63.986(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use an absorber to replace an existing recovery or control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 63.999(b)(7) before implementing the change. Upon implementing the change, the provisions specified in paragraphs (b)(2)(i) or (b)(2)(ii) as applicable shall be followed.

(i) *Replace final recovery device.* If an owner or operator elects to replace the final recovery device on a process vent with an absorber used as a control device, the owner or operator shall comply with the applicable applicability determination provisions of a referencing subpart.

(ii) *Replace control device.* If an owner or operator elects to replace a control device on a process vent or a transfer rack with an absorber used as a control device, the owner or operator shall perform a performance test using the methods specified in § 63.997(a) through (e) within 180 days. The performance test report shall be submitted to the Administrator within 60 days of completing the test as provided in § 63.999(a)(2)(ii).

(c) *Absorber monitoring requirements.* (1) Where an absorber is used as a control device, either an organic monitoring device capable of providing a continuous record or a scrubbing liquid temperature monitoring device and a specific gravity monitoring device, each capable of providing a continuous record, shall be used. Monitoring results shall be recorded as specified in § 63.998(b). General requirements for monitoring and continuous parameter monitoring systems are contained in a referencing subpart and § 63.996.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the absorber. In order to establish the range, the information required in § 63.999(b)(3) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 63.997(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 63.991 Condensers used as control devices.

(a) *Condenser equipment and operating requirements.* (1) Owners or operators using condensers to meet a weight-percent emission reduction or parts per million by volume outlet concentration requirement specified in a referencing subpart shall meet the requirements of this section.

(2) Condensers used to comply with the provisions of a referencing subpart and this subpart shall be operated at all times when emissions are vented to them.

(b) *Condenser performance test requirements.* (1) Except as specified in § 63.997(b), the owner or operator shall conduct an initial performance test of any condenser used as a recapture device to comply with the provisions of a referencing subpart and this subpart according to the procedures in § 63.997(a) through (e). Performance test records shall be kept as specified in § 63.998(a)(2)(i) and (a)(2)(ii) and a performance test report shall be submitted as specified in § 63.999(a). As provided in § 63.985(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low throughput transfer rack controls. As provided in § 63.986(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a condenser to replace an existing recovery or control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 63.999(b)(7) before implementing the change. Upon implementing the change, the provisions specified in paragraphs (b)(2)(i) or (b)(2)(ii) of this section, as applicable, shall be followed.

(i) *Replace final recovery device.* If an owner or operator elects to replace the final recovery device on a process vent with a condenser used as a control device, the owner or operator shall comply with the applicable applicability determination provisions of a referencing subpart.

(ii) *Replace control device.* If an owner or operator elects to replace a control device on a process vent or a transfer rack with a condenser used as a control device, the owner or operator shall perform a performance test using the methods specified in § 63.997(a) through (e) within 180 days. The performance test report shall be submitted to the Administrator within 60 days of completing the test as provided in § 63.999(a)(2)(ii).

(c) *Condenser monitoring requirements.* (1) Where a condenser is used as a control device, an organic monitoring device capable of providing a continuous record or a condenser exit (product side) temperature monitoring device capable of providing a continuous record shall be used. Monitoring results shall be recorded as specified in § 63.998(b). General requirements for monitoring and continuous parameter monitoring systems are contained in a referencing subpart and § 63.999(b)(iii).

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of a condenser. In order to establish the range, the information required in § 63.999(b)(5) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 63.997(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 63.992 Carbon adsorbers used as control devices.

(a) *Carbon adsorber equipment and operating requirements.* (1) Owners or operators using carbon adsorbers to meet a weight-percent emission reduction or parts per million by volume outlet concentration requirement specified in a referencing subpart shall meet the requirements of this section.

(2) Carbon adsorbers used to comply with the provisions of a referencing subpart and this subpart shall be operated at all times when emissions are vented to them.

(b) *Carbon adsorber performance test requirements.* (1) Except as specified in § 63.997(b), the owner or operator shall conduct an initial performance test of any carbon absorber used as a control device to comply with the provisions of a referencing subpart and this subpart according to the procedures in § 63.997(a) through (e). Performance test records shall be kept as specified in § 63.998(a)(1) and (a)(2) and a performance test report shall be submitted as specified in § 63.999(a). As provided in § 63.985(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 63.986(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a carbon adsorber to replace an existing recovery or control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 63.999(b)(7) before implementing the change. Upon implementing the change, the provisions specified in paragraphs (b)(2)(i) or (b)(2)(ii), as applicable, shall be followed.

(i) *Replace final recovery device.* If an owner or operator elects to replace the final recovery device on a process vent with a carbon adsorber used as a control device, the owner or operator shall comply with the applicable applicability determination provisions of a referencing subpart.

(ii) *Replace control device.* If an owner or operator elects to replace a control device on a process vent or transfer rack with a carbon adsorber used as a recapture device, the owner or operator shall perform a performance test using the methods specified in § 63.997 (a) through (e) within 180 days. The performance test report shall be submitted to the Administrator within 60 days of completing the test as provided in § 63.999(a)(2)(ii).

(c) *Carbon adsorber monitoring requirements.* (1) Where a carbon adsorber is used as a control device, an organic monitoring device capable of providing a continuous record or an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better, capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle shall be used. Monitoring results shall be recorded as specified in § 63.998(b). General requirements for monitoring and continuous parameter monitoring systems are contained in a referencing subpart and § 63.996.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the carbon adsorber. Where the regeneration stream flow and carbon-bed temperature are monitored, the range shall be in terms of the total regeneration stream flow per regeneration cycle and the temperature of the carbon bed determined within 15 minutes of the completion of the regeneration cooling cycle. In order to establish the range, the information required in § 63.999(b)(3) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 63.997(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 63.993 Absorbers, condensers, carbon adsorbers and other recovery devices used as final recovery.

(a) *Final recovery device equipment and operating requirements.* (1) Owners or operators using a recovery device to meet the requirement to operate to maintain a TRE above a level specified in a referencing subpart shall meet the requirements of this section.

(2) Recovery devices used to comply with the provisions of a referencing subpart and this subpart shall be operated at all times when emissions are vented to them.

(b) *Recovery device performance test requirements.* (1) There are no performance test requirements for recovery devices. TRE index value determination records shall be generated as specified in § 63.998(a)(3).

(2) *Replace a final recovery device or control device.* Unless already permitted by the applicable title V permit, if an owner or operator elects to use a recovery device to replace an existing final recovery or control device at a later

date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 63.999(d) before implementing the change. Upon implementing the change, the owner or operator shall comply with the applicable applicability determination provisions of a referencing subpart.

(c) *Recovery device monitoring requirements.* (1) Where an absorber is the final recovery device in the recovery system and the TRE index value is between the level specified in a referencing subpart and 4.0, either an organic monitoring device capable of providing a continuous record or a scrubbing liquid temperature monitoring device and a specific gravity monitoring device, each capable of providing a continuous record shall be used. General requirements for monitoring and continuous parameter monitoring systems are contained in § 63.996.

(2) Where a condenser is the final recovery device in the recovery system and the TRE index value is between the level specified in a referencing subpart and 4.0, an organic monitoring device capable of providing a continuous record or a condenser exit (product side) temperature monitoring device capable of providing a continuous record shall be used. General requirements for monitoring and continuous parameter monitoring systems are contained in a referencing subpart and § 63.996.

(3) Where a carbon adsorber is the final recovery device in the recovery system and the TRE index value is between the level specified in a referencing subpart and 4.0, an organic monitoring device capable of providing a continuous record or an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better, capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle; and a carbon-bed temperature monitoring device, capable of recording the carbon-bed temperature after each regeneration and within 15 minutes of completing any cooling cycle shall be used. Monitoring results shall be recorded as specified in § 63.998(b). General requirements for monitoring and continuous parameter monitoring systems are contained in a referencing subpart and § 63.996.

(4) If an owner or operator uses a recovery device other than those listed in this subpart, the owner or operator shall submit a description of planned monitoring, reporting and recordkeeping procedures as required under § 63.998(c)(5). The Administrator will approve or deny the proposed monitoring, reporting and recordkeeping requirements as part of the review of the submission or permit application or by other appropriate means.

(5) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the recovery device. In order to establish the range, the information required in § 63.999(b)(3) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 63.997(b)(1) or upon existing ranges or limits established under a referencing subpart. Where the regeneration stream flow and carbon-bed temperature are monitored, the range shall be in terms of the total regeneration stream flow per regeneration cycle and the temperature of the carbon-bed determined within 15 minutes of the completion of the regeneration cooling cycle.

§ 63.994 Halogen scrubbers and other halogen reduction devices.

(a) *Halogen scrubber and other halogen reduction device equipment and operating requirements.* (1) An owner or operator of a halogen scrubber or other halogen reduction device subject to this subpart shall reduce the overall emissions of hydrogen halides and halogens by the control device performance level specified in a referencing subpart.

(2) Halogen scrubbers and other halogen reduction devices used to comply with the provisions of a referencing subpart and this subpart shall be operated at all times when emissions are vented to them.

(b) *Halogen scrubber and other halogen reduction device performance test requirements.* (1) An owner or operator of a combustion device followed by a halogen scrubber or other halogen reduction device to control halogenated vent streams in accordance with a referencing subpart and this subpart shall conduct an initial performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens according to the procedures in § 63.997(a) through (e). Performance test records shall be kept as specified in § 63.998(a)(1) and (a)(2) and a performance test report shall be submitted as specified in § 63.999(a).

(2) An owner or operator of a halogen scrubber or other halogen reduction technique to reduce the vent stream halogen atom mass emission rate prior to a combustion device to comply with a performance level specified in a referencing subpart shall determine the halogen atom mass emission rate prior to the combustor according to the procedures specified in the referencing subpart. Records of the halogen concentration in the vent stream shall be generated as specified in § 63.998(a)(4).

(c) *Halogen scrubber and other halogen reduction device monitoring requirements.* (1) Where a halogen scrubber is used, the monitoring equipment specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section is required for the scrubber. Monitoring results shall be recorded as specified in § 63.998(b). General requirements for monitoring and continuous parameter monitoring systems are contained in a referencing subpart and § 63.996.

(i) A pH monitoring device capable of providing a continuous record shall be installed to monitor the pH of the scrubber effluent.

(ii) A flow meter capable of providing a continuous record shall be located at the scrubber influent for liquid flow. Gas stream flow shall be determined using one of the procedures specified in paragraphs (c)(1)(ii)(A) through (c)(1)(ii)(D) of this section.

(A) The owner or operator may determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) The owner or operator may measure the gas stream flow at the scrubber inlet.

(C) If the scrubber is subject to regulations in 40 CFR parts 264 through 266 that have required a determination of the liquid to gas (L/G) ratio prior to the applicable compliance date for the process unit of which it is part as specified in a referencing subpart, the owner or operator may determine gas stream flow by the method that had been utilized to comply with those regulations. A determination that was conducted prior to that compliance date may be utilized to comply with this subpart if it is still representative.

(D) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method that will be used to determine the gas stream flow. The plan shall require determination of gas stream flow by a method that will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than startups, shutdowns, or malfunctions. The plan shall include a

description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow, and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in a referencing subpart.

(2) Where a halogen reduction device other than a scrubber is used, the procedures in § 63.998(c)(5) shall be followed to establish monitoring parameters.

(3) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the scrubber or other halogen reduction device. In order to establish the range, the information required in § 63.999(b)(3) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 63.997(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 63.995 Other control devices.

(a) *Other control device equipment and operating requirements.* (1) Owners or operators using another control device other than one listed in §§ 63.987 through 63.992 to meet a weight-percent emission reduction or parts per million by volume outlet concentration requirement specified in a referencing subpart shall meet the requirements of this section.

(2) Other control devices used to comply with the provisions of a referencing subpart and this subpart shall be operated at all times when emissions are vented to them.

(b) *Other control device performance test requirements.* An owner or operator of a control device other than those specified in §§ 63.987 through 63.992, to comply with a performance level specified in a referencing subpart shall perform an initial performance test according to the procedures in § 63.997(a) through (e). Performance test records shall be kept as specified in § 63.998(a)(1) and (a)(2) and a performance test report shall be submitted as specified in § 63.999(a).

(c) *Other control device monitoring requirements.* (1) If an owner or operator uses a control device other than those listed in this subpart, the owner or operator shall submit a description of planned monitoring, recordkeeping and reporting procedures as required under § 63.998(c)(5). The Administrator will approve, deny, or modify based on the reasonableness of the proposed monitoring, reporting and recordkeeping requirements as part of the review of the submission or permit application or by other appropriate means.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the control device. To establish the range, the information required in § 63.999(b)(3) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 63.997(b)(1) or upon existing ranges or limits established under a referencing subpart.

§ 63.996 General monitoring requirements for control and recovery devices.

(a) *General monitoring requirement applicability.* (1) This section applies to the owner or operator of a regulated source required to monitor under this subpart.

(2) Flares subject to § 63.987(c) are not subject to the requirements of this section.

(3) Flow indicators are not subject to the requirements of this section.

(b) *Conduct of monitoring.* (1) Monitoring shall be conducted as set forth in this section and in the relevant sections of this subpart unless the provision in either paragraph (b)(1)(i) or (b)(1)(ii) of this section applies.

(i) The Administrator specifies or approves the use of minor changes in methodology for the specified monitoring requirements and procedures; or

(ii) The Administrator approves the use of alternatives to any monitoring requirements or procedures as provided in the referencing subpart.

(2) When one CPMS is used as a backup to another CPMS, the owner or operator shall report the results from the CPMS used to meet the monitoring requirements of this subpart. If both such CPMS's are used during a particular reporting period to meet the monitoring requirements of this part, then the owner or operator shall report the results from each CPMS for the relevant compliance period.

(c) *Operation and maintenance of continuous parameter monitoring systems.* (1) All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturers specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(2) The owner or operator of a regulated source shall maintain and operate each CPMS as specified in this section, or in a relevant subpart, and in a manner consistent with good air pollution control practices.

(i) The owner or operator of a regulated source shall ensure the immediate repair or replacement of CPMS parts to correct ''routine'' or otherwise predictable CPMS malfunctions. The necessary parts for routine repairs of the affected equipment shall be readily available.

(ii) If under the referencing subpart, an owner or operator has developed a startup, shutdown, and malfunction plan, the plan is followed, and the CPMS is repaired immediately, this action shall be reported in the semiannual startup, shutdown, and malfunction report.

(iii) The Administrator's determination of whether acceptable operation and maintenance procedures are being used for the CPMS will be based on information that may include, but is not limited to, review of operation and maintenance procedures, operation and maintenance records, manufacturer's recommendations and specifications, and inspection of the CPMS.

(3) All CPMS's shall be installed and operational, and the data verified as specified in this subpart either prior to or in conjunction with conducting performance tests. Verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(4) All CPMS's shall be installed such that representative measurements of parameters from the regulated source are obtained.

(5) In accordance with the referencing subpart, except for system breakdowns, repairs, maintenance periods, instrument adjustments, or checks to maintain precision and accuracy, calibration checks, and zero and span adjustments, all continuous parameter monitoring systems shall be in continuous operation when emissions are being routed to the monitored device.

(d) An owner or operator may request approval to monitor control, recovery, halogen scrubber, or halogen reduction device operating parameters other than those specified in this subpart by following the procedures specified in a referencing subpart.

§ 63.997 Performance test and compliance determination requirements for control devices.

(a) *Performance tests and flare compliance determinations.* Where §§ 63.985 through 63.995 require or the owner or operator elects to conduct a performance test of a control device or a halogen reduction device, or a compliance determination for a flare, the requirements of paragraphs (b) through (d) of this section apply.

(b) *Prior test results and waivers.* Initial performance tests and initial flare compliance determinations are required only as specified in this subpart.

(1) Unless requested by the Administrator, an owner or operator is not required to conduct a performance test or flare compliance determination under this subpart if a prior performance test or compliance determination was conducted using the same methods specified in § 63.997(e) and either no process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(2) Individual performance tests and flare compliance determinations may be waived upon written application to the Administrator, per § 63.999(a)(1)(iii), if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, the source is being operated under an extension or waiver of compliance, or the owner or operator has requested an extension or waiver of compliance and the Administrator is still considering that request.

(3) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notification is given to the owner or operator of the source.

(c) *Performance tests and flare compliance determinations schedule.* (1) Unless a waiver of performance testing or flare compliance determination is obtained under this section or the conditions of a referencing subpart, the owner or operator shall perform such tests as specified in paragraphs (c)(1)(i) through (c)(1)(vii) of this section.

(i) Within 180 days after the effective date of a relevant standard for a new source that has an initial startup date before the effective date of that standard; or

(ii) Within 180 days after initial startup for a new source that has an initial startup date after the effective date of a relevant standard; or

(iii) Within 180 days after the compliance date specified in a referencing subpart for an existing source, or within 180 days after startup of an existing source if the source begins operation after the effective date of the relevant emission standard; or

(iv) Within 180 days after the compliance date for an existing source subject to an emission standard established pursuant to section 112(f) of the Act; or

(v) Within 180 days after the termination date of the source's extension of compliance or a waiver of compliance for an existing source that obtains an extension of compliance under 40 CFR 63.6(i) of subpart A, or waiver of compliance under 40 CFR 61.11, subpart A; or

(vi) Within 180 days after the compliance date for a new source, subject to an emission standard established pursuant to section 112(f) of the Act, for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of the relevant standard established pursuant to section 112(f); or

(vii) When a referencing subpart promulgated emission standard is more stringent than the standard that was proposed, the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements within 180 days after the standard's effective date, or within 180 days after startup of the source, whichever is later. If a referencing subpart promulgated standard is more stringent than the proposed standard, the owner or operator may choose to demonstrate compliance with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator shall conduct a second performance test within 3 years and 180 days after the effective date of the standard, or after startup of the source, whichever is later, to demonstrate compliance with a referencing subpart promulgated standard.

(2) The Administrator may require an owner or operator to conduct performance tests and compliance determinations at the regulated source at any time when the action is authorized by section 114 of the Act.

(d) *Performance testing facilities.* If required to do performance testing, the owner or operator of each new regulated source and, at the request of the Administrator, the owner or operator of each existing regulated source, shall provide performance testing facilities as specified in paragraphs (d)(1) through (d)(5) of this section.

(1) Sampling ports adequate for test methods applicable to such source. This includes, as applicable, the requirements specified in (d)(1)(i) and (d)(1)(ii) of this section.

(i) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(ii) Providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures;

(2) Safe sampling platform(s);

(3) Safe access to sampling platform(s);

(4) Utilities for sampling and testing equipment; and

(5) Any other facilities that the Administrator deems necessary for safe and adequate testing of a source.

(e) *Performance test procedures.* Where §§ 63.985 through 63.995 require or the owner or operator elects to conduct a performance test of a control device or a halogen reduction device, an owner or operator shall follow the requirements of paragraphs (e)(1)(i) through (e)(1)(v) of this section, as applicable.

(1) *General procedures.*—(i) *Continuous unit operations.* For continuous unit operations, performance tests shall be conducted at maximum representative operating conditions for the process, unless the Administrator specifies or approves alternate operating conditions. During the performance test, an owner or operator may operate the control or halogen reduction device at maximum or minimum representative operating conditions for monitored control or halogen reduction device parameters, whichever results in lower emission reduction. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(ii) *Batch unit operations.* For batch unit operations, performance tests shall, at a minimum, include testing for peak emission episode(s). The peak emission episode shall be characterized by the criteria presented in paragraph (e)(ii)(A), (e)(1)(ii)(B), or (e)(1)(i)(C) of this section. For the purposes of testing the combustion, recovery, or recovery device the peak emission episode may

be simulated based on the emission profile described in paragraph (e)(1)(i)(D). A simulated peak emission episode must have a representative composition, HAP load, and duration that would be predicted from the emission profile.

(A) The period of combined batch cycles in which a process vent gas will contain at least 50 percent of the total regulated material load (in lb) from the batch cycle or combined batch cycles (if more than one cycle is vented through the same process vent) over a time duration that is sufficient to include all batch cycles routed to the common process vent. An emission profile as described in paragraph (e)(1)(ii)(D) of this section shall be used to identify the peak emission episode.

(B) A 1-hour period of time in which a process vent from the batch cycle or combination of batch cycles (if more than one cycle is vented through the same process vent) will contain the highest regulated material mass loading rate, in lb/hr, experienced over a time duration that is sufficient to include all batch cycles routed to the common process vent. An emission profile, as described in paragraph (e)(1)(ii)(D) of this section, shall be used to identify the peak emission episode.

(C) If a condenser is used to control the process vent stream(s), the peak emission episode(s) shall represent a 1-hour period of time in which a process vent from the batch cycle or combination of batch cycles (if more than one cycle is vented through the same process vent) will require the maximum heat removal capacity, in Btu/hr, to cool the process vent stream to a temperature that, upon calculation of regulated material concentration, will yield the required removal efficiency for the entire cycle. The calculation of maximum heat load shall be based on the emission profile described in paragraph (e)(1)(ii)(D) of this section and a concentration profile that will allow calculation of sensible and latent heat loads.

(D) *Emission profile.* For process vents from batch unit operations, the owner or operator may choose to perform tests only during those periods of the peak emission episode(s) that the owner or operator selects to control as part of achieving the required emission reduction. The owner or operator must develop an emission profile for the process vent, based on either process knowledge or test data collected, to demonstrate that test periods are representative. The emission profile must profile the regulated organic regulated material loading rate (in lb/hr) versus time for all emission episodes contributing to the process vent stack for a period of time that is sufficient to include all batch cycles venting to the stack. Examples of information that could constitute process knowledge include calculations based on material balances, and process stoichiometry. Previous test results may be used to develop an emission profile, provided the results are still representative of the current process vent stream conditions.

(iii) *Combination of both continuous and batch unit operations.* For a combination of both continuous and batch unit operations, performance tests shall be conducted both at maximum representative operating conditions for the process for continuous unit operations as specified in paragraph (e)(1)(i) of this section, and at peak emission episode(s) for batch unit operations as specified in paragraph (e)(1)(ii) of this section.

(iv) Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this subpart, in each relevant standard, and, if required, in applicable appendices of 40 CFR parts 51, 60, 61, and 63 unless the Administrator specifies one of the provisions in paragraphs (e)(1)(iv)(A) through (e)(1)(iv)(E) of this section.

(A) Specifies or approves, in specific cases, the use of a test method with minor changes in methodology; or

(B) Approves the use of an alternative test method, the results of which the Administrator has determined to be adequate for indicating whether a specific regulated source is in compliance. The alternate method or data shall be validated using the applicable procedures of Method 301 of appendix A of 40 CFR part 63; or

(C) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors; or

(D) Waives the requirement for the performance test as specified in paragraph (b)(2) of this section because the owner or operator of a regulated source has demonstrated by other means to the Administrator's satisfaction that the regulated source is in compliance with the relevant standard; or

(E) Approves the use of an equivalent method.

(v) Except as provided in paragraphs (e)(1)(v)(A) through (e)(1)(v)(C) of this section, each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for at least 1 hour and under the conditions specified in this section. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's control, compliance may, upon the Administrator's approval, be determined using the arithmetic mean of the results of the two other runs.

(A) For control devices, used to control emissions from transfer racks except low throughput transfer racks, that are capable of continuous vapor processing but do not handle continuous emissions or multiple loading arms of a transfer rack that load simultaneously, each run shall represent at least one complete tank truck or tank car loading period, during which regulated materials are loaded, and samples shall be collected using integrated sampling or grab samples taken at least four times per hour at approximately equal intervals of time, such as 15-minute intervals.

(B) For intermittent vapor processing systems used for controlling transfer rack emissions except low throughput transfer racks that do not handle continuous emissions or multiple loading arms of a transfer rack that load simultaneously, each run shall represent at least one complete control device cycle, and samples shall be collected using integrated sampling or grab samples taken at least four times per hour at approximately equal intervals of time, such as 15-minute intervals.

(C) For batch unit operations, testing of peak emission episodes less than or equal to 1 hour, testing shall include three runs, each of a duration not less than the duration of the peak emission episode.

(*1*) For testing of batch emission episodes of greater than 1 hour, the emission rate from a single test run may be used to determine compliance.

(*2*) For testing of batch emission episodes of duration greater than 8 hours, the owner or operator shall perform at least 8 hours of testing. The test period must include the period of time in which the peak emission episode(s) is predicted by the emission profile.

(*3*) For process vents from batch unit operations, the owner or operator may choose to perform tests only during those periods of peak emission episode(s) that the owner or operator selects to control as part of achieving the required emission reduction. The owner or operator must develop an emission profile for the process vent,

based on either process knowledge or test data collected, to demonstrate that test periods are representative. The emission profile must profile regulated material loading rate (in lb/hr) versus time for all emission episodes contributing to the process vent stack for a period of time that is sufficient to include all batch cycles venting to the stack. Examples of information that could constitute process knowledge include calculations based on material balances, and process stoichiometry. Previous test results may be used to develop an emissions profile, provided the results are still representative of the current process vent stream conditions.

(2) *Specific procedures.* Where §§ 63.985 through 63.995 require or the owner or operator elects to conduct a performance test of a control device, or a halogen reduction device, an owner or operator shall conduct that performance test using the procedures in paragraphs (e)(2)(i) through (e)(2)(iv) of this section, as applicable. The regulated material concentration and percent reduction may be measured as either total organic regulated material or as TOC minus methane and ethane according to the procedures specified.

(i) *Selection of sampling sites.* Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites.

(A) For determination of compliance with a percent reduction requirement of total organic regulated material or TOC, sampling sites shall be located as specified in paragraphs (e)(2)(i)(A)(*1*) and (e)(2)(i)(A)(*2*) of this section, and at the outlet of the control device.

(*1*) For process vents from continuous unit operations, the control device inlet sampling site shall be located after the final product recovery device.

(*2*) If a vent stream is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total organic regulated material or TOC (minus methane and ethane) concentrations, as applicable, in all vent streams and primary and secondary fuels introduced into the boiler or process heater.

(*3*) For process vents from batch unit operations, the inlet sampling site shall be located at the exit from the batch unit operation before any recovery device.

(B) For determination of compliance with a parts per million by volume total regulated material or TOC limit in a referencing subpart, the sampling site shall be located at the outlet of the control device.

(ii) *Gas volumetric flow rate.* The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate. For batch unit operations, gas stream volumetric flow rates shall be measured at 15-minute intervals, or at least once during the peak emission episode(s).

(iii) *Total organic regulated material or TOC concentration.* To determine compliance with a parts per million by volume total organic regulated material or TOC (minus methane and ethane) limit, the owner or operator shall use method 18 of 40 CFR part 60, appendix A, to measure either TOC minus methane and ethane or total organic regulated material, as applicable. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63, may be used. Method 25A of 40 CFR part 60, appendix A may be used for transfer racks as detailed in paragraph (e)(2)(iii)(D) of this section. The procedures specified in paragraphs (e)(2)(iii)(A) through (e)(2)(iii)(D) of this section shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen.

(A) *Sampling time.*—(*1*) *Continuous unit operations and a combination of both continuous and batch unit operations.* For continuous unit operations and for a combination of both continuous and batch unit operations, the minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(*2*) *Batch unit operations.* For batch unit operations, the organic regulated material concentration shall be determined from samples collected in an integrated sample over the duration of the peak emission episode(s) characterized by the criteria presented in paragraph, or from grab samples collected simultaneously with flow rate measurements (at approximately equal intervals of about 15 minutes). If an integrated sample is collected for laboratory analysis, the sampling rate shall be adjusted proportionally to reflect variations in flow rate.

(B) *Concentration calculation.* The concentration of either TOC (minus methane or ethane) or total organic regulated material shall be calculated according to paragraph (e)(2)(iii)(B)(*1*) or (e)(2)(iii)(B)(*2*) of this section.

(*1*) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using equation 4.

$$C_{TOC} = \sum_{i=1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad \text{[Eq. 4]}$$

Where:

C_{TOC}=Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

x=Number of samples in the sample run.

n=Number of components in the sample.

C_{ji}=Concentration of sample components j of sample i, dry basis, parts per million by volume.

(*2*) The total organic regulated material (C_{REG}) shall be computed according to the equation in paragraph (e)(2)(iii)(B)(*1*) of this section except that only the regulated species shall be summed.

(C) *Concentration correction calculation.* The concentration of TOC or total organic regulated material, as applicable, shall be corrected to 3 percent oxygen if a combustion device is the control device.

(*1*) The emission rate correction factor (or excess air), integrated sampling and analysis procedures of Method 3B of 40 CFR part 60, appendix A, shall be used to determine the oxygen concentration. The sampling site shall be the same as that of the organic regulated material or organic compound samples, and the samples shall be taken during the same time that the organic regulated material or organic compound samples are taken.

(*2*) The concentration corrected to 3 percent oxygen (C_c) shall be computed using equation 5.

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O2_d}\right) \qquad \text{[Eq. 5]}$$

where:

C_c=Concentration of TOC or organic regulated material corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = Concentration of TOC (minus methane and ethane) or organic regulated material, dry basis, parts per million by volume.

$\%O2_d$ = Concentration of oxygen, dry basis, percentage by volume.

(D) Method 25A of 40 CFR part 60, appendix A may be used for the purpose of determining compliance with a parts per million by volume limit for transfer racks. If Method 25A of 40 CFR part 60, appendix A is used, the procedures specified in paragraphs (e)(2)(iii)(D)(*1*) through (e)(2)(iii)(D)(*4*) of this section

shall be used to calculate the concentration of organic compounds (C_{TOC}):

(*1*) The principal organic regulated material in the vent stream shall be used as the calibration gas.

(*2*) The span value for Method 25A of 40 CFR part 60, appendix A, shall be between 1.5 and 2.5 times the concentration being measured.

(*3*) Use of Method 25A of 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(*4*) The concentration of TOC shall be corrected to 3 percent oxygen using the procedures and equation in paragraph (e)(2)(iii)(C) of this section.

(iv) To determine compliance with a percent reduction requirement, the owner or operator shall use Method 18 of 40 CFR part 60, appendix A; alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. Method 25A or 25B of 40 CFR part 60, appendix A may be used for transfer racks as detailed in paragraph (e)(2)(iv)(E) of this section. Procedures specified in paragraphs (e)(2)(iv)(A) through (e)(2)(iv)(E) of this section shall be used to calculate percent reduction efficiency.

(A) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(B) The mass rate of either TOC (minus methane and ethane) or total organic regulated material (E_i, E_o) shall be computed as applicable.

(*1*) Equations 6 and 7 shall be used.

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i \qquad \text{[Eq. 6]}$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o \qquad \text{[Eq. 7]}$$

Where:

E_i, E_o = Emission rate of TOC (minus methane and ethane) (E_{TOC}) or emission rate of total organic regulated material (E_{RM}) in the sample at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

K_2 = Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram per gram) (minute per hour), where standard temperature (gram-mole per standard cubic meter) is 20 °C.

n = Number of components in the sample.

C_{ij}, C_oj = Concentration on a dry basis of organic compound j in parts per million by volume of the gas stream at the inlet and outlet of the control device, respectively. If the TOC emission rate is being calculated, C_{ij} and C_o include all organic compounds measured minus methane and ethane; if the total organic regulated material emissions rate is being calculated, only organic regulated material are included.

M_{ij}, M_oj = Molecular weight of organic compound j, gram per gram-mole, of the gas stream at the inlet and outlet of the control device, respectively.

Q_i, Q_o = Process vent flow rate, dry standard cubic meter per minute, at a temperature of 20°C, at the inlet and outlet of the control device, respectively.

(*2*) Where the mass rate of TOC is being calculated, all organic compounds (minus methane and ethane) measured by method 18 of 40 CFR part 60, appendix A, are summed using the equation in paragraph (e)(2)(iv)(B)(*1*) of this section.

(*3*) Where the mass rate of total organic regulated material is being calculated, only the species comprising the regulated material shall be summed using the equation in paragraph (e)(2)(iv)(B)(*1*) of this section.

(C) *Percent reduction in TOC or total organic regulated material—(1) Continuous unit operations and a combination of both continuous and batch unit operations.* For continuous unit operations and for a combination of both continuous and batch unit operations, the percent reduction in TOC (minus methane and ethane) or total organic regulated material shall be calculated using Equation 8.

$$R = \frac{E_i - E_o}{E_i}(100) \qquad \text{[Eq. 8]}$$

where:

R = Control efficiency of control device, percent.

E_i = Mass rate of TOC (minus methane and ethane) or total organic regulated material at the inlet to the control device as calculated under paragraph (e)(2)(iv)(B) of this section, kilograms TOC per hour or kilograms organic regulated material per hour.

E_o = Mass rate of TOC (minus methane and ethane) or total organic regulated material at the outlet of the control device, as calculated under paragraph (e)(2)(iv)(B) of this section, kilograms TOC per hour or kilograms total organic regulated material per hour.

(*2*) *Batch unit operations.* For process vents from batch unit operations, the owner shall determine the organic regulated material emission reduction for process vents from batch unit operations using Equation 9.

$$RED_{PPU} = \left(\frac{\sum_{i=1}^{n}(E_{unc,i})(R_i)}{\sum_{i=1}^{n}(E_{unc,i}) + \sum_{j=1}^{m}(E_{unc,i})}\right) * 100 \qquad \text{[Eq. 9]}$$

Where:

RED_{PPU} = Organic regulated material emission reduction for the group of process vents from batch unit operations in the process unit, percent

$E_{unc,i}$ = Uncontrolled organic regulated material emissions from process vent i that is controlled using a combustion, recovery, or recapture device, kilograms per batch cycle for process vents from batch unit operations.

n = Number of process vents from batch unit operations in the applicable production process unit and controlled using a combustion, recovery, or recapture device

R_i = Control efficiency of the combustion, recovery, or recapture device used to control organic regulated material emissions from vent i, determined in accordance with paragraph (e)(2)(iv)(C)(3) of this section.

$E_{unc,j}$ = Uncontrolled organic regulated material emissions from process vent j that is not controlled using a combustion, recovery, or recapture device, kilograms per batch cycle for process vents from batch unit operations, kilograms per hour for process vents from continuous unit operations.

m = Number of process vents in the applicable production process unit that are subject to the same requirements of a referencing subpart and that are not controlled using a combustion, recovery, or recapture device.

(*3*) *Batch unit operations—control efficiency.* The control efficiency, R_i, shall be assigned as specified below in (e)(2)(iv)(C)(*3*)(*i*) or (e)(2)(iv)(C)(*3*)(*ii*)of this section.

(*i*) If the process vent is controlled using a flare, or a combustion device as specified in this subpart and a

performance test has not been conducted, the control efficiency shall be assumed to be 98 percent.

(*ii*) If the process vent is controlled using a combustion, recovery, or recapture device for which a performance test has been conducted in accordance with the provisions of this section, the control efficiency shall be the efficiency determined by the performance test.

(D) If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total organic regulated material or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total organic regulated material in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total organic regulated material exiting the combustion device, respectively.

(E) Method 25A of 40 CFR part 60, appendix A, may also be used for the purpose of determining compliance with the percent reduction requirement for transfer racks.

(*i*) If Method 25A of 40 CFR part 60, appendix A, is used to measure the concentration of organic compounds (C_{TOC}), the principal organic regulated material in the vent stream shall be used as the calibration gas.

(*ii*) An emission testing interval shall consist of each 15-minute period during the performance test. For each interval, a reading from each measurement shall be recorded.

(*iii*) The average organic compound concentration and the volume measurement shall correspond to the same emissions testing interval.

(*iv*) The mass at the inlet and outlet of the control device during each testing interval shall be calculated using equation 10.

$$M_j = FKV_sC_t \qquad \text{[Eq. 10]}$$

Where:

M_j = Mass of organic compounds emitted during testing interval j, kilograms.

F = 10^{-6} = Conversion factor, (cubic meters regulated material per cubic meters air) * (parts per million by volume)$^{-1}$.

K = Density, kilograms per standard cubic meter organic regulated material; 659 kilograms per standard cubic meter organic regulated material.

(**NOTE:** The density term cancels out when the percent reduction is calculated. Therefore, the density used has no effect. The density of hexane is given so that it can be used to maintain the units of M_j.)

V_s = Volume of air-vapor mixture exhausted at standard conditions, 20 °C and 760 millimeters mercury, standard cubic meters.

C_t = Total concentration of organic compounds (as measured) at the exhaust vent, parts per million by volume, dry basis.

(*v*) The organic compound mass emission rates at the inlet and outlet of the control device shall be calculated as follows:

$$E_i = \frac{\sum_{j=1}^{n} M_{ij}}{T} \qquad \text{[Eq. 11]}$$

$$E_o = \frac{\sum_{j=1}^{n} M_{oj}}{T} \qquad \text{[Eq. 12]}$$

Where:

E_i, E_o = Mass flow rate of organic compounds at the inlet (i) and outlet (o) of the control device, kilograms per hour.

n = Number of testing intervals.

M_{ij}, M_oj = Mass of organic compounds at the inlet (i) or outlet (o) during testing interval j, kilograms.

T = Total time of all testing intervals, hours.

(3) An owner or operator using a halogen scrubber or other halogen reduction device to control process vent and transfer rack halogenated vent streams in compliance with a referencing subpart, who is required to conduct a performance test to determine compliance with a control efficiency or emission limit for hydrogen halides and halogens, shall follow the procedures specified in paragraphs (e)(3)(i) through (e)(3)(iv) of this section.

(i) For an owner or operator determining compliance with the percent reduction of total hydrogen halides and halogens, sampling sites shall be located at the inlet and outlet of the scrubber or other halogen reduction device used to reduce halogen emissions. For an owner or operator determining compliance with a kilogram per hour outlet emission limit for total hydrogen halides and halogens, the sampling site shall be located at the outlet of the scrubber or other halogen reduction device and prior to any releases to the atmosphere.

(ii) Except as provided in paragraph (e)(1)(ii) of this section, Method 26 or Method 26A of 40 CFR part 60, appendix A, shall be used to determine the concentration, in milligrams per dry standard cubic meter, of total hydrogen halides and halogens that may be present in the vent stream. The mass emissions of each hydrogen halide and halogen compound shall be calculated from the measured concentrations and the gas stream flow rate.

(iii) To determine compliance with the percent removal efficiency, the mass emissions for any hydrogen halides and halogens present at the inlet of the halogen reduction device shall be summed together. The mass emissions of the compounds present at the outlet of the scrubber or other halogen reduction device shall be summed together. Percent reduction shall be determined by comparison of the summed inlet and outlet measurements.

(iv) To demonstrate compliance with a kilogram per hour outlet emission limit, the test results must show that the mass emission rate of total hydrogen halides and halogens measured at the outlet of the scrubber or other halogen reduction device is below the kilogram per hour outlet emission limit specified in a referencing subpart.

§ 63.998 Recordkeeping requirements.

(a) *Compliance determination, monitoring, and compliance records*—(1) *Conditions of flare compliance determination, monitoring, and compliance records.* Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of flare compliance determinations performed pursuant to § 63.987(b).

(i) *Flare compliance determination records.* When using a flare to comply with this subpart, record the information specified in paragraphs (a)(1)(i)(A) through (a)(1)(i)(C) of this section for each flare compliance determination performed pursuant to § 63.987(b). As specified in § 63.999(a)(1)(i), the owner or operator shall include this information in the flare compliance determination report.

(A) Flare design (i.e., steam-assisted, air-assisted, or non-assisted);

(B) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the flare compliance determination; and

(C) All periods during the flare compliance determination when all pilot flames are absent or, if only the flare flame is monitored, all periods when the flare flame is absent.

(ii) *Monitoring records.* Each owner or operator shall keep up to date and readily accessible hourly records of

whether the monitor is continuously operating and whether the flare flame or at least one pilot flame is continuously present. For transfer racks, hourly records are required only while the transfer rack vent stream is being vented.

(iii) *Compliance records.* (A) Each owner or operator shall keep records of the times and duration of all periods during which the flare flame or all the pilot flames are absent. This record shall be submitted in the periodic reports as specified in § 63.999(b)(9).

(B) Each owner or operator shall keep records of the times and durations of all periods during which the monitor is not operating.

(2) *Performance test and TRE index value determination records for process vents and transfer racks except low throughput transfer racks*—(i) *Conditions of performance tests records.* Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests performed pursuant to §§ 63.988(b), 63.989(b), 63.990(b), 63.991(b), 63.992(b), 63.994(b), or 63.995(b).

(ii) *Nonflare combustion control device and halogen reduction device performance test records.* (A) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible continuous records of the data specified in (a)(2)(ii)(B)(*1*) through (a)(2)(ii)(B)(*3*) of this section, as applicable, measured during each performance test performed pursuant to §§ 63.988(b), 63.989(b), 63.990(b), 63.991(b), 63.992(b), 63.994(b), or 63.995(b), and also include that data in the Initial Compliance Status Report required under § 63.999(a)(1). The same data specified in this section shall be submitted in the reports of all subsequently required performance tests where either the emission control efficiency of a combustion device, or the outlet concentration of TOC or regulated material is determined.

(B) *Nonflare combustion device.* Where an owner or operator subject to the provisions of this paragraph seeks to demonstrate compliance with a percent reduction requirement or a parts per million by volume requirement using a nonflare combustion device the information specified in (a)(2)(ii)(B)(*1*) through (a)(2)(ii)(B)(*6*) of this section shall be recorded.

(*1*) For thermal incinerators, record the fire box temperature averaged over the full period of the performance test.

(*2*) For catalytic incinerators, record the upstream and downstream temperatures and the temperature difference across the catalyst bed averaged over the full period of the performance test.

(*3*) For a boiler or process heater with a design heat input capacity less than 44 megawatts and a vent stream that is not introduced with or as the primary fuel, record the fire box temperature averaged over the full period of the performance test.

(*4*) For an incinerator, record the percent reduction of organic regulated material, if applicable, or TOC achieved by the incinerator determined as specified in § 63.997 (e)(2)(i) and (e)(2)(ii), as applicable, or the concentration of organic regulated material (parts per million by volume, by compound) determined as specified in § 63.997 (e)(2)(iii)(B)(*1*) and (e)(2)(iii)(B)(*2*) at the outlet of the incinerator.

(*5*) For a boiler or process heater, record a description of the location at which the vent stream is introduced into the boiler or process heater.

(*6*) For a boiler or process heater with a design heat input capacity of less than 44 megawatts and where the process vent stream is introduced with combustion air or used as a secondary fuel and is not mixed with the primary fuel, record the percent reduction of organic regulated material or TOC, or the concentration of regulated material or TOC (parts per million by volume, by compound) determined as specified in § 63.997(e)(2) at the outlet of the combustion device.

(C) *Other nonflare control devices.* Where an owner or operator seeks to use an absorber, condenser, or carbon adsorber as a control device, the information specified in paragraphs (a)(2)(ii)(C)(*1*) through (a)(2)(ii)(C)(*5*) shall be recorded, as applicable.

(*1*) Where an absorber is used as the control device, the exit specific gravity and average exit temperature of the absorbing liquid averaged over the same time period as the performance test (both measured while the vent stream is normally routed and constituted); or

(*2*) Where a condenser is used as the control device, the average exit (product side) temperature averaged over the same time period as the performance test while the vent stream is routed and constituted normally; or

(*3*) Where a carbon adsorber is used as the control device, the total regeneration stream mass flow during each carbon-bed regeneration cycle during the period of the performance test, and temperature of the carbon-bed after each regeneration during the period of the performance test (and within 15 minutes of completion of any cooling cycle or cycles; or

(*4*) As an alternative to paragraph (a)(2)(ii)(B)(*1*), (a)(2)(ii)(B)(*2*), or (a)(2)(ii)(B)(*3*) of this section, the concentration level or reading indicated by an organics monitoring device at the outlet of the absorber, condenser, or carbon adsorber averaged over the same time period as the TRE determination while the vent stream is normally routed and constituted.

(*5*) For an absorber, condenser, or carbon adsorber used as a control device, the percent reduction of regulated material achieved by the control device or concentration of regulated material (parts per million by volume, by compound) at the outlet of the control device.

(D) *Halogen reduction devices.* When using a scrubber following a combustion device to control a halogenated vent stream, record the information specified in paragraphs (a)(2)(ii)(D)(*1*) through (a)(2)(ii)(D)(*3*) of this section.

(*1*) The percent reduction or scrubber outlet mass emission rate of total hydrogen halides and halogens as specified in § 63.997(e)(3).

(*2*) The pH of the scrubber effluent averaged over the time period of the performance test; and

(*3*) The scrubber liquid-to-gas ratio averaged over the time period of the performance test.

(3) *Recovery device monitoring records during TRE index value determination.* For process vents that require control of emissions under a referencing subpart shall maintain the continuous records specified in paragraph (a)(3)(i) through (a)(3)(v) of this section, as applicable.

(i) Where an absorber is the final recovery device in the recovery system, the exit specific gravity (or alternative parameter that is a measure of the degree of absorbing liquid saturation if approved by the Administrator) and average exit temperature of the absorbing liquid averaged over the same time period as the TRE index value determination (both measured while the vent stream is normally routed and constituted); or

(ii) Where a condenser is the final recovery device in the recovery system, the average exit (product side) temperature averaged over the same time period as the TRE index value determination while the vent stream is routed and constituted normally; or

(iii) Where a carbon adsorber is the final recovery device in the recovery system, the total regeneration stream mass flow during each carbon-bed regeneration cycle during the period of the TRE index value determination, and

temperature of the carbon-bed after each regeneration during the period of the TRE index value determination (and within 15 minutes of completion of any cooling cycle or cycles; or

(iv) As an alternative to paragraph (a)(3)(i), (a)(3)(ii), or (a)(3)(iii) of this section, the concentration level or reading indicated by an organics monitoring device at the outlet of the absorber, condenser, or carbon adsorber averaged over the same time period as the TRE index value determination while the vent stream is normally routed and constituted.

(v) All measurements and calculations performed to determine the TRE index value of the vent stream as specified in a referencing subpart.

(4) *Halogen concentration records.* Record the halogen concentration in the vent stream determined according to the procedures specified in a referencing subpart. Submit this record in the Initial Compliance Status Report, as specified in § 63.999(b)(8).

(b) *Continuous records and monitoring system data handling.*

(1) Where this subpart requires a continuous record, the owner or operator shall maintain the record specified in paragraphs (b)(1)(i) or (b)(1)(ii) of this section, as applicable:

(i) A record of values measured at least once every 15 minutes or each measured value for systems which measure more frequently than once every 15 minutes; or

(ii) A record of block average values for 15-minutes or shorter periods calculated from all measured data values during each period or at least one measured data value per minute if measured more frequently than once per minute.

(iii) The owner or operator may calculate and retain block hourly average values from each 15 minute block averages period or from at least one measured value per minute if measured more frequently than once per minute, and discard all but the most recent three valid hours of continuous (15-minute or shorter) records.

(iv) A record as required by an alternative approved under paragraph (c)(5) of this section.

(2) Monitoring data recorded during periods identified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, shall not be included in any average computed to determine compliance under this subpart.

(i) Monitoring system breakdowns, repairs, preventive maintenance, calibration checks, and zero (low-level) and high-level adjustments;

(ii) Periods of non-operation of the process unit (or portion thereof), resulting in cessation of the emissions to which the monitoring applies; and

(iii) Startups, shutdowns, and malfunctions.

(3) Owners or operators shall also keep records as specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this section, unless an alternative monitoring or recordkeeping system has been requested and approved under paragraph (c)(5) of this section.

(i) Except as specified in paragraph (b)(3)(ii) of this section, 3-hour average values of each continuously monitored parameter shall be calculated from data meeting the specifications of paragraph (b)(2) of this section for each 3-hour period of operation, and retained for 5 years.

(A) The 3-hour average shall be calculated as the average of all values for a monitored parameter recorded during 3-hours of operation. The average shall cover a 3-hour period if operation is continuous, or the period of operation per 3 hours if operation is not continuous (e.g., for transfer racks the average shall cover periods of loading). If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the 3-hour average instead of all measured values.

(B) The 3-hour periods of operation that are to be included in the 3-hour averages shall be defined in the operating permit or the Initial Compliance Status Report.

(ii) If all recorded values for a monitored parameter during a 3-hour period are within the range established in the Initial Compliance Status Report or in the operating permit, the owner or operator may record that all values were within the range and retain this record for 5 years rather than calculating and recording a 3-hour average for that 3-hour period.

(4) Unless determined otherwise according to paragraph (b)(5) of this section, the data collected pursuant to paragraphs (b)(1) through (b)(3) of this section shall be considered valid.

(5) For any parameter with respect to any item of equipment associated with a process vent or transfer rack (except low throughput transfer loading racks), the owner or operator may implement the recordkeeping requirements in paragraphs (b)(5)(i) or (b)(5)(ii) of this section as alternatives to the continuous parameter monitoring and recordkeeping provisions listed in paragraphs (b)(1) through (b)(3) of this section. The owner or operator shall retain each record required by paragraphs (b)(5)(i) or (b)(5)(ii) of this section as provided in a referencing subpart, except as provided otherwise in paragraphs (b)(5)(i) or (b)(5)(ii) of this section.

(i) The owner or operator may retain only the 3-hour average value, and is not required to retain more frequently monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (b)(5)(i)(A) through (b)(5)(i)(F) of this section are met. The owner or operator shall notify the Administrator in the Initial Compliance Status Report or, if the Initial Compliance Status Report has already been submitted in the Periodic Report immediately preceding implementation of the requirements of this paragraph.

(A) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation other than startups, shutdowns or malfunctions (e.g., a temperature reading of −200 °C on a boiler), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in a 3-hour period constitute a single occurrence.

(B) The monitoring system generates a running average of the monitoring values, updated at least hourly throughout each 3-hour period, that have been obtained during that 3-hour period, and the capability to observe this average is readily available to the Administrator on-site during the 3-hour period. The owner or operator shall record the occurrence of any period meeting the criteria in paragraphs (b)(5)(i)(B)(*1*) through (b)(5)(i)(B)(*2*) of this section. All instances in a 3-hour period constitute a single occurrence.

(*1*) The running average is above the maximum or below the minimum established limits;

(*2*) The running average is based on at least three one-hour average values; and

(*3*) The running average reflects a period of operation other than a startup, shutdown, or malfunction.

(C) The monitoring system is capable of detecting unchanging data during periods of operation other than startups, shutdowns or malfunctions, except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (e.g., pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in a 3-hour period constitute a single occurrence.

(D) The monitoring system will alert the owner or operator by an alarm, if the running average parameter value calculated under paragraph (b)(5)(i)(B)

of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

(E) The owner or operator shall verify the proper functioning of the monitoring system, including its ability to comply with the requirements of paragraph (b)(5)(i) of this section, at the times specified in paragraphs (b)(5)(i)(E)(*1*) through (b)(5)(i)(E)(*3*) of this section. The owner or operator shall document that the required verifications occurred.

(*1*) Upon initial installation.

(*2*) Annually after initial installation.

(*3*) After any change to the programming or equipment constituting the monitoring system, that might reasonably be expected to alter the monitoring system's ability to comply with the requirements of this section.

(F) The owner or operator shall retain the records identified in paragraphs (b)(5)(i)(F)(*1*) through (b)(5)(i)(F)(*3*) of this section.

(*1*) Identification of each parameter, for each item of equipment, for which the owner or operator has elected to comply with the requirements of paragraph (c)(5) of this section.

(*2*) A description of the applicable monitoring system(s), and of how compliance will be achieved with each requirement of paragraph (b)(5)(i)(A) through (b)(5)(i)(E) of this section. The description shall identify the location and format (e.g., on-line storage; log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description. The description, and the most recent superseded description, shall be retained as provided in the subpart that references this subpart, except as provided in paragraph (b)(5)(i)(F)(*1*) of this section.

(*3*) A description, and the date, of any change to the monitoring system that would reasonably be expected to affect its ability to comply with the requirements of paragraph (b)(5)(i) of this section.

(*4*) Owners and operators subject to paragraph (b)(5)(i)(F)(*2*) of this section shall retain the current description of the monitoring system as long as the description is current, but not less than 5 years from the date of its creation. The current description shall be retained on-site at all times or be accessible from a central location by computer or other means that provides access within 2 hours after a request. The owner or operator shall retain the most recent superseded description at least until 5 years from the date of its creation. The superseded description shall be retained on-site (or accessible from a central location by computer that provides access within 2 hours after a request) at least 6 months after being superseded. Thereafter, the superseded description may be stored off-site.

(ii) If an owner or operator has elected to implement the requirements of paragraph (b)(5)(i) of this section, and a period of 6 consecutive months has passed without an excursion as defined in paragraph (b)(5)(ii)(D) of this section, the owner or operator is no longer required to record the 3-hour average value for that parameter for that unit of equipment, for any 3-hour period when the 3-hour average value is less than the maximum, or greater than the minimum established limit. With approval by the Administrator, monitoring data generated prior to the compliance date of this subpart shall be credited toward the period of 6 consecutive months, if the parameter limit and the monitoring were required and/or approved by the Administrator.

(A) If the owner or operator elects not to retain the 3-hour average values, the owner or operator shall notify the Administrator in the next Periodic Report. The notification shall identify the parameter and unit of equipment.

(B) If there is an excursion as defined in paragraph (b)(5)(ii)(D) of this section in any 3-hour period after the owner or operator has ceased recording 3-hour averages as provided in paragraph (b)(5)(ii) of this section, the owner or operator shall immediately resume retaining the 3-hour average value for each 3-hour period, and shall notify the Administrator in the next Periodic Report. The owner or operator shall continue to retain each 3-hour average value until another period of 6 consecutive months has passed without an excursion as defined in paragraph (b)(5)(ii)(D) of this section.

(C) The owner or operator shall retain the records specified in paragraphs (b)(5)(i)(A) through (b)(5)(i)(F) of this section for the duration specified in a referencing subpart. For any calendar week, if compliance with paragraphs (b)(5)(i)(A) through (b)(5)(i)(D) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a startup, shutdown, or malfunction.

(D) For purposes of paragraph (b)(5)(ii) of this section, an excursion means that the 3-hour average value of monitoring data for a parameter is greater than the maximum, or less than the minimum established value, except as provided in paragraphs (b)(5)(ii)(D)(*1*) and (b)(5)(ii)(D)(*2*) of this section.

(*1*) The 3-hour average value during any startup, shutdown or malfunction shall not be considered an excursion for purposes of paragraph (b)(5)(ii), if the owner or operator follows the applicable provisions of the startup, shutdown, and malfunction plan required by a referencing subpart.

(*2*) An excused excursion, as described in paragraph (b)(5)(ii)(E), shall not be considered an excursion for purposes of this paragraph.

(E) One excused excursion for each control device or recovery device for each semiannual period is allowed. If a source has developed a startup, shutdown and malfunction plan, and a monitored parameter is outside its established range or monitoring data are not collected during periods of startup, shutdown, or malfunction (and the source is operated during such periods in accordance with the startup, shutdown, and malfunction plan) or during periods of nonoperation of the process unit or portion thereof (resulting in cessation of the emissions to which monitoring applies), then the excursion is not a violation and, in cases where continuous monitoring is required, the excursion does not count as the excused excursion for determining compliance.

(c) *Nonflare control and recovery device regulated source monitoring records*—(1) *Monitoring system records.* The owner or operator subject to this subpart shall keep the records specified in this paragraph, as well as records specified elsewhere in this part.

(i) For CPMS's used to comply with this part, a record of the procedure used for calibrating the CPMS.

(ii) For a CPMS used to comply with this subpart, records of the information specified in paragraphs (c)(1)(ii)(A) through (c)(1)(ii)(E) of this section, as indicated in a referencing subpart.

(A) The date and time of completion of calibration and preventive maintenance of the CPMS.

(B) The ''as found'' and ''as left'' CPMS readings, whenever an adjustment is made that affects the CPMS reading and a ''no adjustment'' statement otherwise.

(C) The start time and duration or start and stop times of any periods when the CPMS is inoperative.

(D) Records of the occurrence and duration of each startup, shutdown, and malfunction of CPMS used to comply with this subpart during which excess emissions (as defined in a referencing subpart).

(E) For each startup, shutdown, and malfunction during which excess emissions as defined in a referencing subpart occur, records that the procedures specified in the source's

startup, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. These records may take the form of a ''checklist,'' or other form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for the event.

(iii) *Batch unit operation compliance monitoring records.* If all recorded values for a monitored parameter during a 3-hour period are above the minimum or below the maximum level established in accordance with what is specified in the referencing subpart, the owner or operator may record that all values were above the minimum or below the maximum level established, rather than calculating and recording a 3-hour average or batch cycle 3-hour average for that 3-hour period. Monitoring data recorded during periods of non-operation of the process resulting in cessation of regulated material emissions shall not be included in computing the batch cycle 3-hour averages.

(2) *Combustion control and halogen reduction device monitoring records.*

(i) Each owner or operator using a combustion control or halogen reduction device to comply with this subpart shall keep the following records up-to-date and readily accessible, as applicable. Continuous records of the equipment operating parameters specified to be monitored under §§ 63.988(c) (incinerator monitoring), 63.989(c) (boiler and process heater monitoring), 63.994(c) (halogen reduction device monitoring), and 63.995(c) (other combustion systems used as a control device) or specified by the Administrator in accordance with paragraph (c)(5) of this section.

(ii) Each owner or operator shall keep records of the 3-hour average value of each continuously monitored parameter for each 3-hour period determined according to the procedures specified in paragraph (b)(3)(i) of this section. For catalytic incinerators, record the 3-hour average of the temperature upstream of the catalyst bed and the 3-hour average of the temperature differential across the bed. For halogen scrubbers record the pH and the liquid-to-gas ratio.

(iii) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of periods of operation during which the parameter boundaries are exceeded. The parameter boundaries are the 3-hour average values established pursuant to §§ 63.988(c)(2) (incinerator monitoring), 63.989(c)(2) (boiler and process heater monitoring), 63.994(c)(3) (halogen reduction device monitoring), or 63.995 (c)(2) (other combustion systems used as control devices monitoring), as applicable.

(3) *Monitoring records for recovery device process vents, and for absorbers, condensers, carbon adsorbers or other noncombustion systems used as control devices.*

(i) Each owner or operator using a recovery device to achieve and maintain a TRE index value greater than the control applicability level specified in the referencing subpart but less than 4.0 or using an absorber, condenser, carbon adsorber or other non-combustion system as a control device shall keep readily accessible, continuous records of the equipment operating parameters specified to be monitored under §§ 63.990(c) (absorber monitoring), 63.991(c) (condenser monitoring), 63.992(c) (carbon adsorber monitoring), or 63.995(c) (other noncombustion systems used as a control device monitoring) or specified by the Administrator in accordance with paragraph (c)(5) of this section. For transfer racks, continuous records are required while the transfer vent stream is being vented.

(ii) Each owner or operator shall keep records of the 3-hour average value of each continuously monitored parameter for each 3-hour period determined according to the procedures specified in § 63.998(b)(1)(iii)(A). If carbon adsorber regeneration stream flow and carbon bed regeneration temperature are monitored, the records specified in paragraphs (c)(3)(ii)(A) and (c)(3)(ii)(B) of this section shall be kept instead of the 3-hour averages.

(A) Records of total regeneration stream mass or volumetric flow for each carbon-bed regeneration cycle.

(B) Records of the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle.

(iii) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of periods of operation during which the parameter boundaries are exceeded. The parameter boundaries are the 3-hour average values established pursuant to §§ 63.990(c)(2) (absorber monitoring), 63.991(c)(2) (condenser monitoring), 63.992(c)(2) (carbon adsorber monitoring), or 63.995(c)(2) (other noncombustion systems used as control devices monitoring), as applicable.

(4) *Alternatives to the continuous operating parameter monitoring and recordkeeping provisions.* An owner or operator may request approval to use alternatives to the continuous operating parameter monitoring and recordkeeping provisions listed in §§ 63.988(c), 63.989(c), 63.990(c), 63.991(c), 63.992(c), 63.993(c), 63.994(c), 63.998(a)(2) through (a)(4), and paragraphs (c)(2) and (c)(3) of this section.

(i) Requests shall be included in the operating permit application or as otherwise specified by the permitting authority, and shall contain the information specified in paragraphs (c)(4)(iii) of this section.

(ii) The provisions specified in a referencing subpart will govern the review and approval of requests.

(iii) An owner or operator may request approval to use other alternative monitoring and recordkeeping systems as specified in a referencing subpart. The application shall contain a description of the proposed alternative system. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility, or the impracticality, of the regulated source using the required method.

(5) *Monitoring a different parameter than those listed.* The owner or operator who has been directed by any section of this subpart that expressly references this paragraph to set unique monitoring parameters or who requests, as allowed by § 63.996(d), approval to monitor a different parameter than those listed in §§ 63.988(c), 63.989(c), 63.990(c), 63.991(c), 63.992(c), 63.993(c), 63.994(c), 63.998(a)(2) through (a)(4), or paragraphs (c)(2) or (c)(3) of this section, or who has been directed by §§ 63.994(c)(2) or 63.995(c)(1) to set unique monitoring parameters shall submit the information specified in paragraphs (c)(5)(i) through (c)(5)(iii) of this section with the operating permit application or as otherwise specified by the permitting authority.

(i) A description of the parameter(s) to be monitored to ensure the control technology or pollution prevention measure is operated in conformance with its design and achieves the specified emission limit, percent reduction, or nominal efficiency, and an explanation of the criteria used to select the parameter(s).

(ii) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the control device, the schedule for this demonstration, and a statement that the owner or operator will establish a range for the monitored parameter as part of the Initial Compliance Status Report if required under a referencing subpart, unless this information has already been included in the operating permit application.

(iii) The frequency and content of monitoring, recording, and reporting if monitoring and recording is not continuous, or if reports of 3-hour average values when the monitored parameter value is outside the range established in the operating permit or Initial Compliance Status Report will not be included in Periodic Reports required under § 63.999(b)(6)(i). The rationale for the proposed monitoring, recording, and reporting system shall be included.

(d) *Other records.*—(1) *Closed vent system records.* For closed vent systems the owner or operator shall record the information specified in paragraphs (d)(1)(i) through (d)(1)(iv) of this section, as applicable.

(i) For closed vent systems collecting regulated material from a regulated source, the owner or operator shall record the identification of all parts of the closed vent system, that are designated as unsafe or difficult to inspect, an explanation of why the equipment is unsafe or difficult to inspect, and the plan for inspecting the equipment required by § 63.983(b)(2)(ii) or (b)(3)(ii).

(ii) For each closed vent system that contains bypass lines that could divert a vent stream away from the control device and to the atmosphere, the owner or operator shall keep a record of the information specified in either paragraph (d)(1)(ii)(A) or (d)(1)(ii)(B) of this section, as applicable.

(A) Hourly records of whether the flow indicator specified under § 63.983(a)(3)(i) was operating and whether a diversion was detected at any time during the hour, as well as records of the times of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(B) Where a seal mechanism is used to comply with § 63.983(a)(3)(ii), hourly records of flow are not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has been broken.

(iii) For a closed vent system collecting regulated material from a regulated source, when a leak is detected as specified in § 63.983(d)(1), the information specified in paragraphs (d)(1)(iii)(A) through (d)(1)(iii)(F) of this section shall be recorded and kept for 2 years.

(A) The instrument and the equipment identification number and the operator name, initials, or identification number.

(B) The date the leak was detected and the date of the first attempt to repair the leak.

(C) The date of successful repair of the leak.

(D) The maximum instrument reading measured by the procedures in § 63.983(c) after the leak is successfully repaired or determined to be nonrepairable.

(E) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak. The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(F) Copies of the periodic reports as specified in § 63.999(b), if records are not maintained on a computerized database capable of generating summary reports from the records.

(iv) For each instrumental or visual inspection conducted in accordance with § 63.983(b)(1) for closed vent systems collecting regulated material from a regulated source during which no leaks are detected, the owner or operator shall record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(2) *Storage vessel records.* An owner or operator shall keep readily accessible records of the information specified in paragraphs (d)(2)(i) through (d)(2)(iii) of this section, as applicable.

(i) A record of the measured values of the parameters monitored in accordance with § 63.985(c) or § 63.987(c).

(ii) A record of the planned routine maintenance performed on the control system during which the control system does not meet the applicable specifications of §§ 63.983(a), 63.985(a), or 63.987(a), as applicable, due to the planned routine maintenance. Such a record shall include the information specified in paragraphs (d)(2)(ii)(A) through (d)(2)(ii)(C) of this section. This information shall be submitted in the periodic reports as specified in § 63.999(b)(1)(i).

(A) The first time of day and date the requirements of §§ 63.983(a). § 63.985(a), or § 63.987(a), as applicable, were not met at the beginning of the planned routine maintenance, and

(B) The first time of day and date the requirements of §§ 63.983(a), 63.985(a), or 63.987(a), as applicable, were met at the conclusion of the planned routine maintenance.

(C) A description of the type of maintenance performed.

(iii) *Bypass records for storage vessel emissions routed to a process or fuel gas system.* An owner or operator who uses the bypass provisions of § 63.983(a)(3) shall keep in a readily accessible location the records specified in paragraphs (d)(2)(iii)(A) through (d)(2)(iii)(C) of this section.

(A) The reason it was necessary to bypass the process equipment or fuel gas system;

(B) The duration of the period when the process equipment or fuel gas system was bypassed;

(C) Documentation or certification of compliance with the applicable provisions of § 63.983(a)(3)(i) or (a)(3)(ii).

(3) *Regulated source and control equipment startup, shutdown and malfunction records.*

(i) Records of the occurrence and duration of each startup, shutdown, and malfunction of operation of process equipment or of air pollution control equipment used to comply with this part during which excess emissions (as defined in a referencing subpart) occur.

(ii) For each startup, shutdown, and malfunction during which excess emissions occur, records that the procedures specified in the source's startup, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. For example, if a startup, shutdown, and malfunction plan includes procedures for routing control device emissions to a backup control device (e.g., the incinerator for a halogenated stream could be routed to a flare during periods when the primary control device is out of service), records must be kept of whether the plan was followed. These records may take the form of a ''checklist,'' or other form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for the event.

(4) *Equipment leak records.* The owner or operator shall maintain records of the information specified in paragraphs (d)(4)(i) and (d)(4)(ii) of this section for closed vent systems and control devices if specified by the equipment leak provisions in a referencing subpart. The records specified in paragraph (d)(4)(i) of this section shall be retained for the life of the equipment. The records specified in paragraph (d)(4)(ii) of this section shall be retained for 2 years.

(i) The design specifications and performance demonstrations specified

in paragraphs (d)(4)(i)(A) through (d)(4)(i)(C) of this section.

(A) Detailed schematics, design specifications of the control device, and piping and instrumentation diagrams.

(B) The dates and descriptions of any changes in the design specifications.

(C) A description of the parameter or parameters monitored, as required in a referencing subpart, to ensure that control devices are operated and maintained in conformance with their design and an explanation of why that parameter (or parameters) was selected for the monitoring.

(ii) Records of operation of closed vent systems and control devices, as specified in paragraphs (d)(4)(ii)(A) through (d)(4)(ii)(C) of this section.

(A) Dates and durations when the closed vent systems and control devices required are not operated as designed as indicated by the monitored parameters, including periods when a flare pilot light system does not have a flame.

(B) Dates and durations during which the monitoring system or monitoring device is inoperative.

(C) Dates and durations of startups and shutdowns of control devices required in this subpart.

§ 63.999 Notifications and other reports.

(a) *Performance test and flare compliance determination notifications and reports.*

(1) *General requirements.* General requirements for performance test and flare compliance determination notifications and reports are specified in paragraphs (a)(1)(i) through (a)(1)(iii) of this section.

(i) The owner or operator shall notify the Administrator of the intention to conduct a performance test at least 30 calendar days before the performance test is scheduled to allow the Administrator the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the Administrator as soon as possible of any delay in the original test date. The owner or operator shall provide at least 7 days prior notice of the rescheduled date of the performance test, or arrange a rescheduled date with the Administrator by mutual agreement.

(ii) Unless specified differently in this subpart or a referencing subpart, performance test and flare compliance determination reports, not submitted as part of an Initial Compliance Status Report, shall be submitted to the Administrator within 60 days of completing the test or determination.

(iii) Any application for a waiver of an initial performance test or flare compliance determination, as allowed by § 63.997(b)(2), shall be submitted no later than 90 calendar days before the performance test or compliance determination is required. The application for a waiver shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the source performing the test.

(2) *Performance test and flare compliance determination report submittal and content requirements.* Performance test and flare compliance determination reports shall be submitted as specified in paragraphs (a)(2)(i) through (a)(2)(iii) of this section.

(i) For performance tests of flare compliance determinations, the Initial Compliance Status Report or performance test and flare compliance determination report shall include one complete test report as specified in paragraph (a)(2)(ii) of this section for each test method used for a particular kind of emission point and other applicable information specified in (a)(2)(iii) of this section. For additional tests performed for the same kind of emission point using the same method, the results and any other information required in applicable sections of this subpart shall be submitted, but a complete test report is not required.

(ii) A complete test report shall include a brief process description, sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(iii) The performance test or flare compliance determination report shall also include the information specified in (a)(2)(iii)(A) through (a)(2)(iii)(C), as applicable.

(A) For flare compliance determinations, the owner or operator shall submit the records specified in § 63.998(a)(1)(i).

(B) For nonflare combustion device and halogen reduction device performance tests as required under §§ 63.988(b), 63.989(b), 63.990(b), 63.991(b), 63.992(b), 63.994(b), or 63.995(b), also submit the records specified in § 63.998(a)(2)(ii), as applicable.

(C) For process vents also submit the records specified in § 63.998(a)(3), as applicable.

(b) *Control device monitoring reports.*

(1) *Control of emissions from storage vessels, periodic reports.* For storage vessels, the owner or operator shall include in each periodic report required the information specified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section.

(i) For the 6-month period covered by the periodic report, the information recorded in § 63.998(d)(2)(ii)(A) through (d)(2)(iii)(C).

(ii) For the time period covered by the periodic report and the previous periodic report, the total number of hours that the control system did not meet the requirements of §§ 63.983(a), 63.985(a), or 63.987(a) due to planned routine maintenance.

(iii) A description of the planned routine maintenance during the next 6-month periodic reporting period that is anticipated to be performed for the control system when it is not expected to meet the required control efficiency. This description shall include the type of maintenance necessary, planned frequency of maintenance, and expected lengths of maintenance periods.

(2) *Control of emissions from storage vessels and transfer racks through routing to a fuel gas system or process, Initial Compliance Status Report.* An owner or operator who elects to comply with § 63.984 by routing emissions from a storage vessel or transfer rack to a process or to a fuel gas system shall submit as part of the Initial Compliance Status Report the information specified in paragraphs (b)(2)(i) and (b)(2)(ii), or (b)(2)(iii) of this section, as applicable.

(i) *Storage vessels.* If storage vessels emissions are routed to a process, the owner or operator shall submit the information specified in § 63.984(b)(2).

(ii) *Storage vessels.* If storage vessels emissions are routed to a fuel gas system, the owner or operator shall submit a statement that the emission stream is connected to the fuel gas system and whether the conveyance system is subject to the requirements of § 63.983.

(iii) *Transfer racks.* Report that the transfer operation emission stream is being routed to a fuel gas system or process, when complying with a referencing subpart.

(3) *Control of emissions from storage vessels and low throughput transfer racks through a nonflare control device, Initial Compliance Status Report.* An owner or operator who elects to comply with § 63.985 by routing emissions from

a storage vessel or low throughput transfer rack to a nonflare control device shall submit, with the Initial Compliance Status Report required by a referencing subpart, the information specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this section, and in either paragraph (b)(3)(iii) or (b)(3)(iv) of this section; and paragraph (b)(3)(v), if applicable.

(i) A description of the parameter or parameters to be monitored to ensure that the control device is being properly operated and maintained, an explanation of the criteria used for selection of that parameter (or parameters), and the frequency with which monitoring will be performed (e.g., when the liquid level in the storage vessel is being raised). If continuous records are specified, whether the provisions of paragraphs (b)(6)(i) and (b)(6)(iii) of this section apply.

(ii) The information specified in paragraphs (b)(3)(ii)(A) and, if applicable, (b)(3)(ii)(B) of this section.

(A) The operating range for each monitoring parameter identified in the monitoring plan. The specified operating range shall represent the conditions for which the control device is being properly operated and maintained.

(B) Summary of the results of the performance test described in § 63.985(b)(1)(ii) or (b)(1)(iii), as applicable. If a performance test is conducted as provided in § 63.985(b)(1)(ii), submit the results of the performance test, including the information specified in § 63.999(a)(1)(i) and (a)(1)(ii).

(iii) The documentation specified in § 63.985(b)(1)(i), if the owner or operator elects to prepare a design evaluation; or

(iv) The information specified in paragraphs (b)(3)(iv)(A) and (b)(3)(iv)(B) of this section if the owner or operator elects to submit the results of a performance test as specified in § 63.985(b)(1)(ii) or (b)(1)(iii).

(A) Identification of the storage vessel or transfer rack and control device for which the performance test will be submitted, and

(B) Identification of the emission point(s), if any, that share the control device with the storage vessel or transfer rack and for which the performance test will be conducted.

(v) The provisions of paragraphs (b)(6)(i) and (b)(6)(ii) of this section do not apply to any low throughput transfer rack for which the owner or operator has elected to comply with § 63.985 or to any storage vessel for which the owner or operator is not required, by the applicable monitoring plan established under (b)(3)(i) and (b)(3)(ii) of this section to keep continuous records. If continuous records are required, the owner or operator shall specify in the monitoring plan whether the provisions of paragraphs (b)(6)(i) and (b)(6)(ii) of this section apply.

(4) *Control of emissions from storage vessels and low throughput transfer racks through a nonflare control device, periodic reports.* If a control device other than a flare is used to control emissions from storage vessels or low throughput transfer racks, the periodic report shall describe each occurrence when the monitored parameters were outside of the parameter ranges documented in the Initial Compliance Status Report in accordance with paragraph (b)(3) of this section. The description shall include the information specified in paragraphs (b)(4)(i) and (b)(4)(ii) of this section.

(i) Identification of the control device for which the measured parameters were outside of the established ranges, and

(ii) The cause for the measured parameters to be outside of the established ranges.

(5) *Control of emissions from process vents and transfer operations (except low throughput transfer racks), Initial Compliance Status Report.* The owner or operator shall submit as part of the Initial Compliance Status Report, the operating range for each monitoring parameter identified for each control, recovery, or halogen reduction device as determined in §§ 63.988(c)(2), 63.989(c)(2), 63.990(c)(2), 63.991(c)(2), 63.992(c)(2), 63.993(c)(5), 63.994(c)(3), and 63.995(c)(2). The specified operating range shall represent the conditions for which the control, recovery, or halogen reduction device is being properly operated and maintained. This report shall include the information in paragraphs (b)(5)(i) through (b)(5)(iii) of this section, as applicable, unless the range and the 3-hour periods have been established in the operating permit.

(i) The specific range of the monitored parameter(s) for each emission point;

(ii) The rationale for the specific range for each parameter for each emission point, including any data and calculations used to develop the range and a description of why the range indicates proper operation of the control, recovery, or halogen reduction device, as specified in paragraphs (b)(5)(ii)(A), (b)(5)(ii)(B), or (b)(5)(ii)(C) of this section, as applicable.

(A) If a performance test or TRE index value determination is required a referencing subpart for a control, recovery or halogen removal device, the range shall be based on the parameter values measured during the TRE index value determination or performance test and may be supplemented by engineering assessments and/or manufacturer's recommendations. TRE index value determinations and performance testing is not required to be conducted over the entire range of permitted parameter values.

(B) If a performance test or TRE index value determination is not required by a referencing subpart for a control, recovery, or halogen reduction device, the range may be based solely on engineering assessments and/or manufacturer's recommendations.

(C) The range may be based on ranges or limits previously established under a referencing subpart.

(iii) A definition of the source's 3-hour periods for purposes of determining 3-hour average values of monitored parameters. The definition shall specify the times at which a 3-hour period begins and ends.

(6) *Control of emissions from regulated sources, periodic reports.* (i) Periodic reports shall include the 3-hour average values of monitored parameters, calculated as specified in § 63.998(c)(1) for any days when the 3-hour average value is outside the bounds as defined in § 63.998(b)(2) or the data availability requirements defined in paragraphs (b)(6)(i)(A) through (b)(6)(i)(D) of this section are not met, whether these excursions are excused or unexcused excursions. For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be specified. An excursion means any of the three cases listed in paragraphs (b)(6)(i)(A) through (b)(6)(i)(C) of this section. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraphs (b)(6)(i)(A) through (b)(6)(i)(C) of this section, this is considered a single excursion for the control device.

(A) When the 3-hour average value of one or more monitored parameters is outside the permitted range.

(B) When the period of control or recovery device operation is 4 hours or greater in a 3-hour period and monitoring data are insufficient to constitute a valid hour of data for at least 75 percent of the operating hours.

(C) When the period of control or recovery device operation is less than 4 hours in a 3-hour period and more than one of the hours during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

(D) Monitoring data are insufficient to constitute a valid hour of data as used in paragraphs (b)(6)(i)(B) and (b)(6)(i)(C) of this section, if measured values are unavailable for any of the 15-minute periods within the hour.

(ii) Report all carbon-bed regeneration cycles during which the parameters recorded under § 63.998(a)(2)(ii)(C) were outside the ranges established in the Initial Compliance Status Report or in the operating permit.

(7) *Replacing an existing control or recovery device.* As specified in §§ 63.987(b)(2), 63.988(b)(3), 63.989(b)(3), 63.990(b)(2), 63.991(b)(2), 63.992(b)(2), or 63.993(b)(2), if an owner or operator at a facility not required to obtain a title V permit elects at a later date to use a different control or recovery device, then the Administrator shall be notified by the owner or operator before implementing the change. This notification may be included in the facility's periodic reporting.

(8) *Halogen reduction device.* The owner or operator shall submit as part of the Initial Compliance Status Report the information recorded pursuant to § 63.998(a)(4).

(9) *Flare compliance monitoring results.* The owner or operator shall submit as part of the periodic reports the information recorded pursuant to § 63.998(a)(1)(iii).

3. Part 63 is amended by adding subpart TT to read as follows:

Subpart TT—National Emission Standards for Equipment Leaks—Control Level 1

Sec.

63.1000 Applicability.
63.1001 Definitions.
63.1002 Compliance determination.
63.1003 Equipment identification.
63.1004 Instrument and sensory monitoring for leaks.
63.1005 Leak repair.
63.1006 Valves in gas and vapor service and in light liquid service standards.
63.1007 Pumps in light liquid service standards.
63.1008 Connectors in gas and vapor service and in light liquid service standards.
63.1009 Agitators in gas and vapor service and in light liquid service.
63.1010 Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in liquid service; and instrumentation systems standards.
63.1011 Pressure relief devices in gas and vapor service standards.
63.1012 Compressor standards.
63.1013 Sampling connection systems standards.
63.1014 Open-ended valves or lines standards.
63.1015 Closed vent systems and control devices; or emissions routed to a fuel gas system or process standards.
63.1016 Alternative means of emission limitation: Enclosed-vented process units and affected facilities.
63.1017 Recordkeeping requirements.
63.1018 Reporting requirements.

§ 63.1000 Applicability.

(a) The provisions of this subpart apply to the control of air emissions from equipment leaks for which another subpart references the use of this subpart for such air emission control. These air emission standards for equipment leaks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to the referencing subpart. The provisions of 40 CFR part 63 subpart A (General Provisions) do not apply to this subpart except as noted in the referencing subpart.

(b) *Equipment subject to this subpart.* This subpart applies to pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors and any closed vent systems and control devices used to meet the requirements of this subpart that contacts or services regulated material as specified in the referencing subpart.

(c) *Exemptions.* Paragraphs (c)(1) and (c)(2) delineate equipment that is excluded from the requirements of this subpart.

(1) *Equipment in vacuum service.* Equipment that is in vacuum service is excluded from the requirements of this subpart.

(2) *Equipment in service less than 300 hours per calendar year.*

(i) Equipment that is in regulated material service less than 300 hours per calendar year is excluded from the requirements of §§ 63.1006 through 63.1015 of this subpart if it is identified as required in paragraph (c)(2)(ii) of this section.

(ii) The identity, either by list, location (area or group), or other method, of equipment in regulated-material service less than 300 hours per calendar year within a process unit and affected facility subject to the provisions of this subpart shall be recorded.

(iii) *Lines and equipment not containing process fluids.* Except as provided in a referencing subpart, lines and equipment not containing process fluids are not subject to the provisions of this subpart. Utilities, and other nonprocess lines, such as heating and cooling systems which do not combine their materials with those in the processes they serve, are not considered to be part of a process unit or affected facility.

§ 63.1001 Definitions.

All terms used in this part shall have the meaning given them in the Act and in this section.

Connector means flanged, screwed, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation. For the purpose of reporting and recordkeeping, connector means joined fittings that are not inaccessible, ceramic, or ceramic-lined (e.g., porcelain, glass, or glass-lined) as described in § 63.1008(d)(2) of this subpart.

Distance piece means an open or enclosed casing through which the piston rod travels, separating the compressor cylinder from the crankcase.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Equipment means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in regulated-material service; and any control devices or systems used to comply with this subpart.

First attempt at repair, for the purposes of this subpart, means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in § 63.1004(b) of this subpart, as appropriate, to verify whether the leak is repaired, unless the owner or operator determines by other means that the leak is not repaired.

In gas or vapor service means that a piece of equipment in regulated material service contains a gas or vapor at operating conditions.

In heavy liquid service means that a piece of equipment in regulated-material service is not in gas or vapor service or in light liquid service.

In light liquid service means that a piece of equipment in regulated-material service contains a liquid that meets the following conditions:

(1) The vapor pressure of one or more of the organic compounds is greater than 0.3 kilopascals at 20 °C,

(2) The total concentration of the pure organic compounds constituents having a vapor pressure greater than 0.3 kilopascals at 20 °C is equal to or greater than 20 percent by weight of the total process stream, and

(3) The fluid is a liquid at operating conditions.

(**NOTE:** Vapor pressures may be determined by standard reference texts or ASTM D–2879.)

In liquid service means that a piece of equipment in regulated-material service is not in gas or vapor service.

In regulated-material service means, for the purposes of this subpart, equipment which meets the definition of ''in VOC service'', ''in VHAP service'', ''in organic hazardous air pollutant service,'' or ''in'' other chemicals or groups of chemicals ''service'' as defined in the referencing subpart.

In-situ sampling systems means nonextractive samplers or in-line samplers.

In vacuum service means that equipment is operating at an internal pressure which is at least 5 kilopascals below ambient pressure.

Instrumentation system means a group of equipment components used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (e.g., composition, pressure, flow, etc.). Valves and connectors are the predominant type of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems. Only valves nominally 1.27 centimeters (0.5 inches) and smaller, and connectors nominally 1.91 centimeters (0.75 inches) and smaller in diameter are considered instrumentation systems for the purposes of this subpart. Valves greater than nominally 1.27 centimeters (0.5 inches) and connectors greater than nominally 1.91 centimeters (0.75 inches) associated with instrumentation systems are not considered part of instrumentation systems and must be monitored individually.

Liquids dripping means any visible leakage from the seal including dripping, spraying, misting, clouding, and ice formation. Indications of liquids dripping include puddling or new stains that are indicative of an existing evaporated drip.

Nonrepairable means that it is technically infeasible to repair a piece of equipment from which a leak has been detected without a process unit or affected facility shutdown.

Open-ended valve or line means any valve, except relief valves, having one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.

Organic monitoring device means a unit of equipment used to indicate the concentration level of organic compounds based on a detection principle such as infra-red, photo ionization, or thermal conductivity.

Pressure relief device or valve means a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the relief device. This release can be one release or a series of releases over a short time period due to a malfunction in the process.

Referencing subpart means the subpart which refers an owner or operator to this subpart.

Regulated material, for purposes of this subpart, refers to gases from volatile organic liquids (VOL), volatile organic compounds (VOC), hazardous air pollutants (HAP), or other chemicals or groups of chemicals that are regulated by the referencing subpart.

Regulated source for the purposes of this subpart, means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a referencing subpart.

Relief device or valve means a valve used only to release an unplanned, nonroutine discharge. A relief valve discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

Repaired, for the purposes of this subpart and subpart SS of this part, means the following:

(1) Equipment is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable sections of this subpart, and

(2) Equipment, unless otherwise specified in applicable provisions of this subpart, is monitored as specified in § 63.1004(b) and subpart SS of this part, as appropriate, to verify that emissions from the equipment are below the applicable leak definition.

Sampling connection system means an assembly of equipment within a process unit or affected facility used during periods of representative operation to take samples of the process fluid. Equipment used to take nonroutine grab samples is not considered a sampling connection system.

Screwed (threaded) connector means a threaded pipe fitting where the threads are cut on the pipe wall and the fitting requires only two pieces to make the connection (i.e., the pipe and the fitting).

§ 63.1002 Compliance determination.

(a) *General procedures for compliance determination.* Compliance with this subpart will be determined by review of the records required by § 63.1017 and the reports required by § 63.1018, by review of performance test results, and by inspections.

(b) *Alternative means of emission limitation.* (1) An owner or operator may request a determination of alternative means of emission limitation to the requirements of §§ 63.1006 through 63.1015 as provided in paragraphs (b)(2) through (b)(6) of this section. If the Administrator makes a determination that an alternative means of emission limitation is a permissible alternative, the owner or operator shall comply with the alternative.

(2) Permission to use an alternative means of emission limitation shall be governed by the following procedures in paragraphs (b)(3) through (b)(6) of this section.

(3) Where the standard is an equipment, design, or operational requirement the criteria specified in paragraphs (b)(3)(i) and (b)(3)(ii) shall be met.

(i) Each owner or operator applying for permission to use an alternative means of emission limitation shall be responsible for collecting and verifying emission performance test data for an alternative means of emission limitation.

(ii) The Administrator will compare test data for the means of emission limitation to test data for the equipment, design, and operational requirements.

(4) Where the standard is a work practice the criteria specified in paragraphs (b)(4)(i) through (b)(4)(vi) shall be met.

(i) Each owner or operator applying for permission shall be responsible for collecting and verifying test data for an alternative means of emission limitation.

(ii) For each kind of equipment for which permission is requested, the emission reduction achieved by the required work practices shall be demonstrated for a minimum period of 12 months.

(iii) For each kind of equipment for which permission is requested, the emission reduction achieved by the alternative means of emission limitation shall be demonstrated.

(iv) Each owner or operator applying for permission shall commit, in writing, for each kind of equipment to work practices that provide for emission reductions equal to or greater than the emission reductions achieved by the required work practices.

(v) The Administrator will compare the demonstrated emission reduction for the alternative means of emission limitation to the demonstrated emission reduction for the required work practices and will consider the commitment in paragraph (b)(4)(iv) of this section.

(vi) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve the same or greater emission reduction as the required work practices of this subpart.

(5) An owner or operator may offer a unique approach to demonstrate the alternative means of emission limitation.

(6) If, in the judgement of the Administrator, an alternative means of emission limitation will be approved, the Administrator will publish a notice of the determination in the **Federal Register**.

(7)(i) Manufacturers of equipment used to control equipment leaks of a regulated material may apply to the Administrator for permission for an alternative means of emission limitation that achieves a reduction in emissions of the regulated material achieved by the equipment, design, and operational requirements of this subpart.

(ii) The Administrator will grant permission according to the provisions of paragraphs (b)(3), (b)(4), (b)(5) and (b)(6) of this section.

§ 63.1003 Equipment identification.

(a) *General equipment identification.* Equipment subject to this subpart shall be identified. Identification of the equipment does not require physical tagging of the equipment. For example, the equipment may be identified on a plant site plan, in log entries, by designation of process unit or affected facility boundaries by some form of weatherproof identification, or by other appropriate methods.

(b) *Additional equipment identification.* In addition to the general identification required by paragraph (a) of this section, equipment subject to any of the provisions in §§ 63.1006 to 63.1015 shall be specifically identified as required in paragraphs (b)(1) through (b)(6) of this section, as applicable.

(1) *Connectors.* Except for inaccessible, ceramic, or ceramic-lined connectors meeting the provisions of § 63.1108(e)(2) and instrumentation systems identified pursuant to paragraph (b)(4) of this section, identify the connectors subject to the requirements of this subpart. Connectors need not be individually identified if all connectors in a designated area or length of pipe subject to the provisions of this subpart are identified as a group, and the number of connectors subject is indicated. With respect to connectors, the identification shall be complete no later than the completion of the initial survey required by § 63.1008(a)(1)(i).

(2) *Routed to a process or fuel gas system or equipped with a closed vent system and control device.* Identify the equipment that the owner or operator elects to route to a process or fuel gas system or equip with a closed vent system and control device, under the provisions of § 63.1007(e)(3) (pumps in light liquid service), § 63.1009 (agitators in gas and vapor service and in light liquid service), § 63.1011(d) (pressure relief devices in gas and vapor service), § 63.1012(e) (compressors), or § 63.1016 (alternative means of emission limitation for enclosed vented process units) of this subpart.

(3) *Pressure relief devices.* Identify the pressure relief devices equipped with rupture disks, under the provisions of § 63.1011(e) of this subpart.

(4) *Instrumentation systems.* Identify instrumentation systems subject to the provisions of this subpart. Individual components in an instrumentation system need not be identified.

(5) *Equipment in service less than 300 hours per calendar year.* The identity, either by list, location (area or group), or other method, of equipment in regulated material service less than 300 hours per calendar year within a process unit or affected facilities subject to the provisions of this subpart shall be recorded.

(c) *Special equipment designations: Equipment that is unsafe or difficult-to-monitor.*

(1) *Designation and criteria for unsafe-to-monitor.* Valves meeting the provisions of § 63.1006(e)(1), pumps meeting the provisions of § 63.1007(e)(5), and connectors meeting the provisions of § 63.1008(d)(1) may be designated unsafe-to-monitor if the owner or operator determines that monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements of this subpart. Examples of an unsafe-to-monitor equipment include, but is not limited to, equipment under extreme pressure or heat.

(2) *Designation and criteria for difficult-to-monitor.* Valves meeting the provisions of § 63.1006(e)(2) of this subpart may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(i) of this section apply. Agitators meeting the provisions of § 63.1009(f)(5) may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(ii) apply.

(i) *Valves.*

(A) The owner or operator of the valve determines that the equipment cannot be monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface or it is not accessible in a safe manner when it is in regulated material service.

(B) The process unit or affected facility within which the valve is located is an existing source, or a new source for which the owner or operator designates less than 3 percent of the total number of valves as difficult-to-monitor.

(ii) *Agitators.* The owner or operator determines that the agitator cannot be monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface or it is not accessible in a safe manner when it is in regulated material service.

(3) *Identification of equipment.* The information specified in paragraphs (c)(3)(i) and (c)(3)(ii) pertaining to equipment designated as unsafe-to-monitor or difficult-to-monitor according to the provisions of paragraph (c)(1) of this section shall be recorded.

(i) The identity of equipment designated as unsafe-to-monitor or difficult-to-monitor and the plan for monitoring this equipment.

(ii) The identity of the equipment designated as difficult-to-monitor, an explanation why the equipment is difficult-to-monitor, and the planned schedule for monitoring this equipment.

(4) *Identification of unsafe or difficult-to-monitor equipment.* The owner or operator shall record the identity of equipment designated as unsafe-to-monitor or difficult-to-monitor according to the provisions of paragraphs (c)(1) or (c)(2) of this section, the planned schedule for monitoring this equipment, and an explanation why the equipment is unsafe or difficult-to-monitor, if applicable. This record must be kept at the plant and be available for review by an inspector.

(5) *Written plan requirements.* (i) The owner or operator of equipment designated as unsafe-to-monitor according to the provisions of paragraph (c)(1)(i) of this section shall have a written plan that requires monitoring of the equipment as frequently as practical during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable, and repair of the equipment

according to the procedures in § 63.1005 if a leak is detected.

(ii) The owner or operator of equipment designated as difficult-to-monitor according to the provisions of paragraph (c)(2) of this section shall have a written plan that requires monitoring of the equipment at least once per calendar year.

(d) *Special equipment designations: Unsafe-to-repair.*—(1) *Designation and criteria.* Connectors subject to the provisions of § 63.1005(e) may be considered unsafe-to-repair if the owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with the repair requirements of this subpart, and if the connector will be repaired before the end of the next process unit or affected facility shutdown as specified in § 63.1005(e) of this subpart.

(2) *Identification of equipment.* The identity of connectors designated as unsafe-to-repair and an explanation why the connector is unsafe-to-repair shall be recorded.

(e) *Special equipment designations: Equipment operating with no detectable emissions.*—(1) *Designation and criteria.* Equipment may be designated as having no detectable emissions if it has no external actuating mechanism in contact with the process fluid, and is operated with emissions less than 500 parts per million above background as determined by the method specified in § 63.1004(c).

(2) *Identification of equipment.* The identity of equipment designated as no detectable emissions shall be recorded.

(3) *Identification of compressors operating under no detectable emissions.* Identify the compressors that the owner or operator elects to designate as operating with an instrument reading of less than 500 parts per million above background, under the provisions of § 63.1012(f).

§ 63.1004 Instrument and sensory monitoring for leaks.

(a) *Monitoring for leaks.* The owner or operator of a regulated source subject to this subpart shall monitor all regulated equipment as specified in paragraph (a)(1) of this section for instrument monitoring and paragraph (a)(2) of this section for sensory monitoring.

(1) *Instrument monitoring for leaks.* (i) Valves in gas and vapor service and in light liquid service shall be monitored pursuant to § 63.1006(b).

(ii) Pumps in light liquid service shall be monitored pursuant to § 63.1007(b).

(iii) Connectors in gas and vapor service and in light liquid service shall be monitored pursuant to § 63.1008(b).

(iv) Agitators in gas and vapor service and in light liquid service shall be monitored pursuant to § 63.1009(b).

(v) Pressure relief devices in gas and vapor service shall be monitored pursuant to § 63.1011(b) and (c).

(vi) Compressors designated to operate with an instrument reading less than 500 parts per million as described in § 63.1003(e), shall be monitored pursuant to § 63.1012(f).

(2) *Sensory monitoring for leaks.* (i) Pumps in light liquid service shall be observed pursuant to § 63.1007(b)(4) and (e)(1).

(ii) Inaccessible, ceramic, or ceramic-lined connectors in gas and vapor service and in light liquid service shall be observed pursuant to § 63.1008(d)(2).

(iii) Agitators in gas and vapor service and in light liquid service shall be monitored pursuant to § 63.1009(b)(3) or (e)(1).

(iv) Pumps, valves, agitators, and connectors in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service shall be observed pursuant to § 63.1010(b)(1).

(b) *Instrument monitoring methods.* Instrument monitoring, as required under this subpart, shall comply with the requirements specified in paragraphs (b)(1) through (b)(6) of this section.

(1) *Monitoring method.* Monitoring shall comply with Method 21 of 40 CFR part 60, appendix A.

(2) *Detection instrument performance criteria.*

(i) Except as provided for in paragraph (b)(2)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the representative composition of the process fluid, and not for each individual HAP, VOC or other regulated material individual chemical compound in the stream. For process streams that contain nitrogen, air, or other inerts that are not regulated-materials, the representative stream response factor shall be calculated on an inert-free basis. The response factor may be determined at any concentration for which monitoring for leaks will be conducted.

(ii) If there is no instrument commercially available that will meet the performance criteria specified in paragraph (b)(2)(i) of this section, the instrument readings may be adjusted by multiplying by the representative response factor of the process fluid, calculated on an inert-free basis as described in paragraph (b)(2)(i) of this section.

(3) *Detection instrument calibration procedure.* The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(4) *Detection instrument calibration gas.* Calibration gases shall be zero air (less than 10 parts per million of hydrocarbon in air); and a mixture of methane in air at a concentration of approximately, but less than, 10,000 parts per million; or a mixture of n-hexane in air at a concentration of approximately, but less than, 10,000 parts per million. A calibration gas other then methane in air or n-hexane in air may be used if the instrument does not respond to methane or n-hexane or if the instrument does not meet the performance criteria specified in paragraph (b)(2)(i) of this section. In such cases, the calibration gas may be a mixture of one or more compounds to be measured in air.

(5) *Monitoring performance.* Monitoring shall be performed when the equipment is in regulated material service or is in use with any other detectable material.

(6) *Monitoring data.* Monitoring data obtained prior to the regulated source becoming subject to the referencing subpart that do not meet the criteria specified in paragraphs (b)(1) through (b)(5) of this section may still be used to initially qualify for less frequent monitoring under the provisions in § 63.1006(a)(2), (b)(3) or (b)(4) for valves or § 63.1008(b) for connectors provided the departures from the criteria specified or from the specified monitoring frequency of § 63.1006(b)(3) are minor and do not significantly affect the quality of the data. Examples of minor departures are monitoring at a slightly different frequency (such as every six weeks instead of monthly or quarterly), following the performance criteria of section 3.1.2(a) of Method 21 of Appendix A of 40 CFR part 60 instead of paragraph (b)(2) of this section, or monitoring at a different leak definition if the data would indicate the presence or absence of a leak at the concentration specified in the referencing subpart. Failure to use a calibrated instrument is not considered a minor departure.

(c) *Instrument monitoring using background adjustments.* The owner or operator may elect to adjust or not to adjust the instrument readings for background. If an owner or operator elects not to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (b)(1) through (b)(4) of this

section. In such case, all instrument readings shall be compared directly to the applicable leak definition for the monitored equipment to determine whether there is a leak or to determine compliance with § 63.1011(b) (pressure relief devices in gas and vapor service) or § 63.1012(f) (compressors). If an owner or operator elects to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (c)(1) through (c)(4) of this section.

(1) The requirements of paragraphs (b)(1) through (b)(4) of this section shall apply.

(2) The background level shall be determined, using the procedures in Method 21 of 40 CFR part 60, appendix A.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible (as described in Method 21 of 40 CFR part 60, appendix A).

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared to the applicable leak definitions for the monitored equipment to determine whether there is a leak or to determine compliance with § 63.1011(b) (pressure relief devices in gas and vapor service) or § 63.1012(f) (compressors).

(d) *Sensory monitoring methods.* Sensory monitoring, as required under this subpart, shall consist of detection of a potential leak to the atmosphere by visual, audible, olfactory, or any other detection method.

(e) *Leaking equipment identification and records.*

(1) When each leak is detected pursuant to the monitoring specified in paragraph (a) of this section, a weatherproof and readily visible identification, marked with the equipment identification, shall be attached to the leaking equipment.

(2) When each leak is detected, the information specified in paragraphs (e)(2)(i) and (e)(2)(ii) shall be recorded and kept pursuant to the referencing subpart.

(i) The instrument and the equipment identification and the operator name, initials, or identification number if a leak is detected or confirmed by instrument monitoring.

(ii) The date the leak was detected.

§ 63.1005 Leak repair.

(a) *Leak repair schedule.* The owner or operator shall repair each leak detected as soon as practical, but not later than 15 calendar days after it is detected, except as provided in paragraph (d) of this section. A first attempt at repair shall be made no later than 5 calendar days after the leak is detected. First attempt at repair for pumps includes, but is not limited to, tightening the packing gland nuts and/or ensuring that the seal flush is operating at design pressure and temperature. First attempt at repair for valves includes, but is not limited to, tightening the bonnet bolts, and/or replacing the bonnet bolts, and/or tightening the packing gland nuts, and/or injecting lubricant into the lubricated packing.

(b) *Leak identification removal*—(1) *Valves and connectors.* The leak identification on a valve may be removed after it has been monitored as specified in § 63.1006(b), and no leak has been detected during that monitoring. The leak identification on a connector may be removed after it has been monitored as specified in § 63.1008(b) and no leak has been detected during that monitoring.

(2) *Other equipment.* The identification that has been placed, pursuant to § 63.1004(e), on equipment determined to have a leak, except for a valve or for a connector that is subject to the provisions of § 63.1008(b), may be removed after it is repaired.

(c) *Delay of repair.* Delay of repair can be used as specified in any of paragraphs (c)(1) through (c)(5) of this section. The owner or operator shall maintain a record of the facts that explain any delay of repairs and, where appropriate, why the repair was technically infeasible without a process unit shutdown.

(1) Delay of repair of equipment for which leaks have been detected is allowed if the repair is technically infeasible without a process unit or affected facility shutdown within 15 days after a leak is detected. Repair of this equipment shall occur as soon as practical, but not later than by the end of the next process unit or affected facility shutdown, except as provided in paragraph (c)(5) of this section.

(2) Delay of repair of equipment for which leaks have been detected is allowed for equipment that is isolated from the process and that does not remain in regulated-material service.

(3) Delay of repair for valves, connectors, and agitators is also allowed if the criteria specified in paragraphs (c)(3)(i) and (c)(3)(ii) are met.

(i) The owner or operator determines that emissions of purged material resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair, and

(ii) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control or recovery device complying with subpart SS of this part.

(4) Delay of repair for pumps is allowed if the criteria specified in paragraphs (c)(4)(i) and (c)(4)(ii) are met.

(i) Repair requires replacing the existing seal design with a new system that the owner or operator has determined will provide better performance or one of the specifications of paragraphs (c)(4)(i)(A) through (c)(4)(i)(C) of this section are met.

(A) A dual mechanical seal system that meets the requirements of § 63.1007(e)(1) will be installed,

(B) A pump that meets the requirements of § 63.1007(e) will be installed; or

(C) A system that routes emissions to a process or a fuel gas system or a closed vent system and control device that meets the requirements of § 63.1007(e)(3) will be installed.

(ii) Repair is to be completed as soon as practical, but not later than 6 months after the leak was detected.

(5) Delay of repair beyond a process unit or affected facility shutdown will be allowed for a valve if valve assembly replacement is necessary during the process unit or affected facility shutdown, and valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the second process unit or affected facility shutdown will not be allowed unless the third process unit or affected facility shutdown occurs sooner than 6 months after the first process unit or affected facility shutdown.

(d) *Unsafe-to-repair connectors.* Any connector that is designated, as described in § 63.1003(d), as an unsafe-to-repair connector is exempt from the requirements of § 63.1008(b), and paragraph (a) of this section.

(1) The owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section; and

(2) The connector will be repaired before the end of the next scheduled process unit or affected facility shutdown.

(e) *Leak repair records.* For each leak detected, the information specified in paragraphs (e)(1) through (e)(5) of this section shall be recorded and maintained pursuant to the referencing subpart.

(1) The date of first attempt to repair the leak.

(2) The date of successful repair of the leak.

(3) Maximum instrument reading measured by Method 21 of 40 CFR part

60, appendix A at the time the leak is successfully repaired or determined to be nonrepairable.

(4) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak as specified in paragraphs (e)(4)(i) and (e)(4)(ii) of this section.

(i) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures may be included as part of the startup, shutdown, and malfunction plan, as required by the referencing subpart for the source, or may be part of a separate document that is maintained at the plant site. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(ii) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on site before depletion and the reason for depletion.

(5) Dates of process unit or affected facility shutdowns that occur while the equipment is unrepaired.

§ 63.1006 Valves in gas and vapor service and in light liquid service standards.

(a) *Compliance schedule.* (1) The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(2) The use of monitoring data generated before the regulated source became subject to the referencing subpart to initially qualify for less frequent monitoring is governed by the provisions of § 63.1004(b)(6).

(b) *Leak detection.* Unless otherwise specified in § 63.1002(b), or § 63.1005(c), or in paragraph (e) of this section, or the referencing subpart, the owner or operator shall monitor all valves at the intervals specified in paragraphs (b)(3) through (b)(6) of this section and shall comply with all other provisions of this section.

(1) *Monitoring method.* The valves shall be monitored to detect leaks by the method specified in § 63.1004(b) and (c).

(2) *Instrument reading that defines a leak.* The instrument reading that defines a leak is 10,000 parts per million or greater.

(3) *Monitoring period.* (i) Each valve shall be monitored monthly to detect leaks, except as provided in paragraphs (b)(3)(ii), (e)(1), (e)(2), and (e)(4) of this section. An owner or operator may otherwise elect to comply with one of the alternative standards in paragraphs (b)(5) or (b)(6) of this section as specified in paragraph (b)(4) of this section.

(ii)(A) Any valve for which a leak is not detected for 2 successive months may be monitored the same month (first, second, or third month) of every quarter, beginning with the next quarter, until a leak is detected. The first quarterly monitoring shall occur less than 3 months following the last monthly monitoring.

(B) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for 2 successive months.

(C) For purposes of paragraph (b) of this section, quarter means a 3-month period with the first quarter concluding on the last day of the last full month during the 180 days following initial startup.

(4) *Allowance of alternative standards.* An owner or operator may elect to comply with one of the alternatives specified in either paragraph (b)(5) or (b)(6) of this section if the percentage of valves leaking is equal to or less than 2.0 percent as determined by the procedure in paragraph (c) of this section. An owner or operator must notify the Administrator before implementing one of the alternatives specified in either paragraph (b)(5) or (b)(6) of this section.

(5) *Allowable percentage alternative.* An owner or operator choosing to comply with the allowable percentage alternative shall have an allowable percentage of leakers no greater than 2.0 percent for each affected facility or process unit and shall comply with paragraphs (b)(5)(i) and (b)(5)(ii) of this section.

(i) A compliance demonstration for each affected facility or process unit or affected facility complying with this alternative shall be conducted initially upon designation, annually, and at other times requested by the Administrator. For each such demonstration, all valves in gas and vapor and light liquid service within the affected facility or process unit shall be monitored within 1 week by the methods specified in § 63.1004(b). If an instrument reading exceeds the equipment leak level specified in the referencing subpart, a leak is detected. The leak percentage shall be calculated as specified in paragraph (c) of this section.

(ii) If an owner or operator decides no longer to comply with this alternative, the owner or operator must notify the Administrator in writing that the work practice standard described in paragraph (b)(3) of this section will be followed.

(6) *Skip period alternatives.* An owner or operator may elect to comply with one of the alternative work practices specified in paragraphs (b)(6)(i) or (b)(6)(ii) of this section. An owner or operator electing to use one of these skip period alternatives shall comply with paragraphs (b)(6)(iii) and (b)(6)(iv) of this section. Before using either skip period alternative, the owner or operator shall initially comply with the requirements of paragraph (b)(3) of this section. Monitoring data generated before the regulated source became subject to the referencing subpart that meets the criteria of either § 63.1004(b)(1) through (b)(5), or § 63.1004(b)(6), may be used to initially qualify for skip period alternatives.

(i) After 2 consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0 as determined by the procedure in paragraph (c) of this section, an owner or operator may begin to monitor for leaks once every 6 months.

(ii) After 5 consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0 as determined by the procedure in paragraph (c) of this section, an owner or operator may begin to monitor for leaks once every year.

(iii) If the percent of valves leaking is greater than 2.0, the owner or operator shall comply with paragraph (b)(3) of this section, but can elect to comply with paragraph (b)(6) of this section if future percent of valves leaking is again equal to or less than 2.0.

(iv) The owner or operator shall keep a record of the monitoring schedule and the percent of valves found leaking during each monitoring period.

(c) *Percent leaking valves calculation—calculation basis and procedures.* (1) The owner or operator shall decide no later than the compliance date of this subpart, or upon revision of an operating permit whether to calculate percent leaking valves on a process unit or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis and this shall be the basis used for comparison with the subgrouping criteria specified in paragraph (b)(4)(i) of this section.

(2) The percent of valves leaking shall be determined by dividing the sum of valves found leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements of this section.

(d) *Leak repair.* (1) If a leak is determined pursuant to paragraph (b), (e)(1), or (e)(2) of this section, then the leak shall be repaired using the procedures in § 63.1005, as applicable.

(2) When a leak has been repaired, the valve shall be monitored at least once within the first 3 months after its repair. The monitoring required by this paragraph is in addition to the monitoring required to satisfy the definition of repair.

(i) The monitoring shall be conducted as specified in § 63.1004(b) and (c), as appropriate, to determine whether the valve has resumed leaking.

(ii) Periodic monitoring required by paragraph (b) of this section may be used to satisfy the requirements of this paragraph, if the timing of the monitoring period coincides with the time specified in this paragraph. Alternatively, other monitoring may be performed to satisfy the requirements of this paragraph, regardless of whether the timing of the monitoring period for periodic monitoring coincides with the time specified in this paragraph.

(iii) If a leak is detected by monitoring that is conducted pursuant to this paragraph, the owner or operator shall follow the provisions of paragraphs (d)(2)(iii)(A) and (d)(2)(iii)(B) of this section, to determine whether that valve must be counted as a leaking valve for purposes of paragraph (c)(1)(ii) of this section.

(A) If the owner or operator elected to use periodic monitoring required by paragraph (b) of this section to satisfy the requirements of this paragraph, then the valve shall be counted as a leaking valve.

(B) If the owner or operator elected to use other monitoring, prior to the periodic monitoring required by paragraph (b) of this section, to satisfy the requirements of this paragraph, then the valve shall be counted as a leaking valve unless it is repaired and shown by periodic monitoring not to be leaking.

(e) *Special provisions for valves.*—(1) *Unsafe-to-monitor valves.* Any valve that is designated, as described in § 63.1003(c)(1), as an unsafe-to-monitor valve and the owner or operator monitors the valve according to the written plan specified in § 63.1003(c)(5), is exempt from the requirements of paragraph (b) of this section and the owner or operator shall monitor the valve according to the written plan specified in § 63.1003(c)(5).

(2) *Difficult-to-monitor.* Any valve that is designated, as described in § 63.1003(c)(2), as a difficult-to-monitor valve is exempt from the requirements of paragraph (b) of this section and the owner or operator shall monitor the valve according to the written plan specified in § 63.1003(c)(5).

(3) *Less than 250 valves.* Any equipment located at a plant site with fewer than 250 valves in regulated material service is exempt from the monthly monitoring specified in paragraph (b)(3)(i) of this section. Instead, the owner or operator shall monitor each valve in regulated material service for leaks once each quarter, or comply with paragraphs (b)(3)(ii)(A), (b)(3)(ii)(B), or (b)(3)(ii)(C) of this section except as provided in paragraphs (e)(1) and (e)(2) of this section.

(4) *No detectable emissions.* (i) Any valve that is designated, as described in § 63.1003(e), as having no detectable emissions is exempt from the requirements of paragraphs (b) through (c) of this section if the owner or operator meets the criteria specified in paragraphs (e)(4)(i)(*1*) and (e)(4)(i)(*2*) of this section.

(*1*) Tests the valve for operation with emissions less than 500 parts per million above background as determined by the method specified in § 63.1004(c) initially upon designation, annually, and at other times requested by the Administrator, and

(*2*) Records the dates of each compliance demonstration, the background level measured during each compliance test, and the maximum instrument reading measured at the equipment during each compliance test.

(ii) A valve may not be designated or operated for no detectable emissions, as described in § 63.1003(e), if the valve has a maximum instrument reading minus background greater than 500 parts per million.

§ 63.1007 Pumps in light liquid service standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance date specified in the referencing subpart.

(b) *Leak detection.* Unless otherwise specified in § 63.1003(c) of this subpart or paragraphs (e)(1) through (e)(5) of this section, the owner or operator shall monitor each pump monthly to detect leaks and shall comply with all other provisions of this section.

(1) *Monitoring method.* The pumps shall be monitored to detect leaks by the method specified in § 63.1004(b) of this subpart.

(2) *Instrument reading that defines a leak.* The instrument reading that defines a leak is 10,000 parts per million.

(3) *Visual inspection.* Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal, a leak is detected. Unless the owner or operator demonstrates (e.g., through instrument monitoring) that the indications of liquids dripping are due to a condition other than process fluid drips, the leak shall be repaired according to the procedures of paragraph (b)(4) of this section.

(4) *Visual inspection: Leak repair.* Where a leak is identified by visual indications of liquids dripping, repair shall mean that the visual indications of liquids dripping have been eliminated.

(c) *Percent leaking pumps calculation.*

(1) The owner or operator shall decide no later than the compliance date of this part or upon revision of an operating permit whether to calculate percent leaking pumps on a process unit basis or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis.

(2) The number of pumps at a process unit shall be the sum of all the pumps in regulated material service, except that pumps found leaking in a continuous process unit or within 1 month after startup of the pump shall not count in the percent leaking pumps calculation for that one monitoring period only.

(3) Percent leaking pumps shall be determined by the following equation:

$$\%P_L = \left((P_L - P_S)/(P_T - P_S)\right) \times 100 \quad \text{[Eq. 1]}$$

Where:

$\%P_L$ = Percent leaking pumps

P_L = Number of pumps found leaking as determined through monthly monitoring as required in paragraph (b) of this section.

P_T = Total pumps in regulated material service, including those meeting the criteria in paragraphs (e)(1) and (e)(2) of this section.

P_S = Number of pumps leaking within 1 month of start-up during the current monitoring period.

(d) *Leak repair.* If a leak is detected pursuant to paragraph (b) of this section, then the leak shall be repaired using the procedures in § 63.1005, as applicable, unless otherwise specified in paragraph (b)(4) of this section for leaks identified by visual indications of liquids dripping.

(e) *Special provisions for pumps.*—(1) *Dual mechanical seal pumps.* Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section, provided the requirements specified in paragraphs (e)(1)(i) through (e)(1)(viii) of this section are met.

(i) The owner or operator determines, based on design considerations and

operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both. The owner or operator shall keep records at the plant of the design criteria and an explanation of the design criteria, and any changes to these criteria and the reasons for the changes. This record must be available for review by an inspector.

(ii) Each dual mechanical seal system shall meet the requirements specified in paragraphs (e)(1)(ii)(A) through (e)(1)(ii)(C) of this section.

(A) Each dual mechanical seal system is operated with the barrier fluid at a pressure that is at all times (except periods of startup, shutdown, or malfunction) greater than the pump stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed vent system to a control device that complies with the requirements of subpart SS of this part; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(iii) The barrier fluid is not in light liquid service.

(iv) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(v) Each pump is checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in either paragraph (e)(1)(v)(A) or (e)(1)(v)(B) of this section.

(A) The owner or operator shall monitor the pump as specified in § 63.1004(b) to determine if there is a leak of regulated material in the barrier fluid.

(B) If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected and shall be repaired using the procedures in § 63.1005; or

(C) The owner or operator shall eliminate the visual indications of liquids dripping.

(vi) If indications of liquids dripping from the pump seal exceed the criteria established in paragraph (e)(1)(i) of this section, or if based on the criteria established in paragraph (e)(1)(i) of this section the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(vii) Each sensor as described in paragraph (e)(1)(iv) of this section is observed daily or is equipped with an alarm unless the pump is located within the boundary of an unmanned plant site.

(viii) When a leak is detected pursuant to paragraph (e)(1)(vi) of this section, it shall be repaired as specified in § 63.1005.

(2) *No external shaft.* Any pump that is designed with no externally actuated shaft penetrating the pump housing is exempt from the monitoring requirements of paragraph (b) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any pump that is routed to a process or a fuel gas system or equipped with a closed vent system that captures and transports leakage from the pump to a control device meeting the requirements of § 63.1015 is exempt from monitoring requirements of paragraph (b) of this section.

(4) *Unmanned plant site.* Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(3), and (e)(1)(v) of this section, and the daily requirements of paragraph (e)(1)(vii) of this section, provided that each pump is visually inspected as often as practical and at least monthly.

(5) *Unsafe-to-monitor pumps.* Any pump that is designated, as described in § 63.1003(c)(1), as an unsafe-to-monitor pump is exempt from the monitoring requirements of paragraph (b) of this section and the repair requirements of § 63.1005 and the owner or operator shall monitor the pump according to the written plan specified in § 63.1003(c)(5).

§ 63.1008 Connectors in gas and vapor service and in light liquid service standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Leak detection.* Connectors shall be monitored within 5 days by the method specified in § 63.1004(b) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method. No monitoring is required if the evidence of a potential leak is eliminated within 5 days. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected. If a leak is detected, it shall be identified and repaired pursuant to the provisions of § 63.1004(e) and § 63.1005, respectively.

(c) *Leak repair.* If a leak is detected pursuant to paragraph (b) of this section, then the leak shall be repaired using the procedures in § 63.1005, as applicable.

(d) *Special provisions for connectors.*—(1) *Unsafe-to-monitor connectors.* Any connector that is designated, as described in § 63.1003(c)(1), as an unsafe-to-monitor connector is exempt from the requirements of paragraph (b) of this section and the owner or operator shall monitor according to the written plan specified in § 63.1003(c)(5).

(2) *Inaccessible, ceramic, or ceramic-lined connectors.* (i) Any connector that is inaccessible or that is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined), is exempt from the monitoring requirements of paragraph (b) of this section and from the recordkeeping and reporting requirements of § 63.1017 and § 63.1018. An inaccessible connector is a connector that meets any of the provisions specified in paragraphs (d)(2)(i)(A) through (d)(2)(i)(F) of this section, as applicable.

(A) Buried;

(B) Insulated in a manner that prevents access to the connector by a monitor probe;

(C) Obstructed by equipment or piping that prevents access to the connector by a monitor probe; or

(D) Unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold that would allow access to connectors up to 7.6 meters (25 feet) above the ground.

(E) Inaccessible because it would require elevating the monitoring personnel more than 2 meters (7 feet) above a permanent support surface or would require the erection of scaffold;

(F) Not able to be accessed at any time in a safe manner to perform monitoring. Unsafe access includes, but is not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized man-lift basket in areas where an ignition potential exists, or access would require near proximity to hazards such as electrical lines, or would risk damage to equipment.

(ii) If any inaccessible ceramic or ceramic-lined connector is noted to have a leak by visual, audible, olfactory, or other means, the leak to the atmosphere shall be eliminated as soon as practical.

§ 63.1009 Agitators in gas and vapor service and in light liquid service standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance

dates specified in the referencing subpart.

(b) *Leak detection.* (1) *Monitoring method.* Each agitator seal shall be monitored monthly to detect leaks by the methods specified in § 63.1004(b), except as provided in § 63.1002(b).

(2) *Instrument reading that defines a leak.* If an instrument reading equivalent of 10,000 parts per million or greater is measured, a leak is detected.

(3) *Visual inspection.* Each agitator seal shall be checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal. If there are indications of liquids dripping from the agitator seal, the owner or operator shall follow the procedures specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(i) The owner or operator shall monitor the agitator seal as specified in § 63.1004(b) to determine if there is a leak of regulated material. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected, and it shall be repaired using the procedures in § 63.1005;

(ii) The owner or operator shall eliminate the indications of liquids dripping from the pump seal.

(c) [Reserved]

(d) *Leak repair.* If a leak is detected, then the leak shall be repaired using the procedures in § 63.1005(a).

(e) *Special provisions for agitators.*—(1) *Dual mechanical seal.* Each agitator equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section, provided the requirements specified in paragraphs (e)(1)(i) through (e)(1)(vi) of this section are met.

(i) Each dual mechanical seal system shall meet the applicable requirement specified in paragraphs (e)(1)(i)(A), (e)(1)(i)(B), or (e)(1)(i)(C) of this section.

(A) Operated with the barrier fluid at a pressure that is at all times (except during periods of startup, shutdown, or malfunction) greater than the agitator stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed vent system to a control device that meets the requirements of § 63.1015; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(ii) The barrier fluid is not in light liquid service.

(iii) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(iv) Each agitator seal is checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal. If there are indications of liquids dripping from the agitator seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in either paragraph (e)(1)(iv)(A) or (e)(1)(iv)(B) of this section.

(A) The owner or operator shall monitor the agitator seal shall as specified in § 63.1004(b) to determine the presence of regulated material in the barrier fluid. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected and it shall be repaired using the procedures in § 63.1005; or

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(v) Each sensor as described in paragraph (e)(1)(iii) of this section is observed daily or is equipped with an alarm unless the agitator seal is located within the boundary of an unmanned plant site.

(vi) The owner or operator of each dual mechanical seal system shall meet the requirements specified in paragraphs (e)(1)(vi)(A) through (e)(1)(vi)(D).

(A) The owner or operator shall determine, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both.

(B) The owner or operator shall keep records of the design criteria and an explanation of the design criteria; and any changes to these criteria and the reasons for the changes.

(C) If indications of liquids dripping from the agitator seal exceed the criteria established in paragraph (e)(1)(vi)(A) and (e)(1)(vi)(B) of this section, or if, based on the criteria established in paragraph (e)(1)(vi)(A) and (e)(1)(vi)(B) of this section, the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(D) When a leak is detected, it shall be repaired using the procedures in § 63.1005.

(2) *No external shaft.* Any agitator that is designed with no externally actuated shaft penetrating the agitator housing is exempt from the requirements of paragraphs (b) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any agitator that is routed to a process or fuel gas system or equipped with a closed vent system that captures and transports leakage from the agitator to a control device meeting the requirements of § 63.1015 is exempt from the monitoring requirements of paragraphs (b) of this section.

(4) *Unmanned plant site.* Any agitator that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(3) and (e)(1)(iv) of this section, and the daily requirements of paragraph (e)(1)(v) of this section, provided that each agitator is visually inspected as often as practical and at least monthly.

(5) *Difficult-to-monitor agitator seals.* Any agitator seal that is designated, as described in § 63.1003(c)(2), as a difficult-to-monitor agitator seal is exempt from the requirements of paragraph (b) of this section and the owner or operator shall monitor the agitator seal according to the written plan specified in § 63.1003(c)(5).

(6) *Equipment obstructions.* Any agitator seal that is obstructed by equipment or piping that prevents access to the agitator by a monitor probe is exempt from the monitoring requirements of paragraph (b) of this section.

(7) *Unsafe-to-monitor agitator seals.* Any agitator seal that is designated, as described in § 63.1003(c)(1), as an unsafe-to-monitor agitator seal is exempt from the requirements of paragraph (b) of this section and the owner or operator of the agitator seal monitors the agitator seal according to the written plan specified in § 63.1003(c)(5).

§ 63.1010 Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in liquid service; and instrumentation systems standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Leak detection*—(1) *Monitoring method.* Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems shall be monitored within 5 calendar days by the method specified in § 63.1004(b) if evidence of a potential leak to the atmosphere is found by visual, audible, olfactory, or any other detection method. If such a potential leak is repaired as required in paragraph (c) of this section, it is not necessary to monitor the system for leaks by the method specified in § 63.1004(b).

(2) *Instrument reading that defines a leak.* For systems monitored by the

method specified in § 63.1004(b), if an instrument reading of 10,000 parts per million or greater is measured, a leak is detected. If a leak is detected, it shall be repaired pursuant to § 63.1005.

(c) *Leak repair.* For equipment identified in paragraph (b) of this section that is not monitored by the method specified in § 63.1004(b), repaired shall mean that the visual, audible, olfactory, or other indications of a leak to the atmosphere have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

§ 63.1011 Pressure relief devices in gas and vapor service standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Compliance standard.* Except during pressure releases as provided for in paragraph (c) of this section, each pressure relief device in gas or vapor service shall be operated with an instrument reading of less than 500 parts per million as measured by the method specified in § 63.1004(c).

(c) *Pressure relief requirements.* (1) After each pressure release, the pressure relief device shall be returned to a condition indicated by an instrument reading of less than 500 parts per million, as soon as practical, but no later than 5 calendar days after each pressure release, except as provided in paragraph (d) of this section.

(2) The pressure relief device shall be monitored no later than five calendar days after the pressure release and being returned to regulated material service to confirm the condition indicated by an instrument reading of less than 500 parts per million, as measured by the method specified in § 63.1004(c).

(3) The owner or operator shall record the dates and results of the monitoring required by paragraph (c)(2) of this section following a pressure release including maximum instrument reading measured during the monitoring and the background level measured if the instrument reading is adjusted for background.

(d) *Pressure relief devices routed to a process or fuel gas system or equipped with a closed vent system and control device.* Any pressure relief device that is routed to a process or fuel gas system or equipped with a closed vent system that captures and transports leakage from the pressure relief device to a control device meeting the requirements of either § 63.1015 or § 63.1002(b), is exempt from the requirements of paragraphs (b) and (c) of this section.

(e) *Rupture disk exemption.* Any pressure relief device that is equipped with a rupture disk upstream of the pressure relief device is exempt from the requirements of paragraphs (b) and (c) of this section provided the owner or operator installs a replacement rupture disk upstream of the pressure relief device as soon as practical after each pressure release, but no later than 5 calendar days after each pressure release, except as provided in § 63.1005(d).

§ 63.1012 Compressor standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Seal system standard.* Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluid to the atmosphere, except as provided in § 63.1002(b) and paragraphs (e) and (f) of this section. Each compressor seal system shall meet the requirements specified in paragraphs (b)(1), (b)(2), or (b)(3) of this section.

(1) Operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure at all times (except during periods of startup, shutdown, or malfunction); or

(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that meets the requirements of § 63.1015; or

(3) Equipped with a closed-loop system that purges the barrier fluid directly into a process stream.

(c) *Barrier fluid system.* The barrier fluid shall not be in light liquid service. Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both. Each sensor shall be observed daily or shall be equipped with an alarm unless the compressor is located within the boundary of an unmanned plant site.

(d) *Failure criterion and leak detection.* (1) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both. If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion, a leak is detected and shall be repaired pursuant to § 63.1005, as applicable.

(2) The owner or operator shall keep records of the design criteria and an explanation of the design criteria; and any changes to these criteria and the reasons for the changes.

(e) *Routed to a process or fuel gas system or equipped with a closed vent system and control device.* A compressor is exempt from the requirements of paragraphs (b) through (d) of this section if it is equipped with a system to capture and transport leakage from the compressor drive shaft seal to a process or a fuel gas system or to a closed vent system that captures and transports leakage from the compressor to a control device meeting the requirements of § 63.1015.

(f) *Alternative compressor standard.* (1) Any compressor that is designated as described in § 63.1003(e) as operating with no detectable emissions shall operate at all times with an instrument reading of less than 500 parts per million. A compressor so designated is exempt from the requirements of paragraphs (b) through (d) of this section if the compressor is demonstrated initially upon designation, annually, and at other times requested by the Administrator to be operating with an instrument reading of less than 500 parts per million as measured by the method specified in § 63.1004(c). A compressor may not be designated or operated having an instrument reading of less than 500 parts per million as described in § 63.1003(e) if the compressor has a maximum instrument reading greater than 500 parts per million.

(2) The owner or operator shall record the dates and results of each compliance test including the background level measured and the maximum instrument reading measured during each compliance test.

(g) *Reciprocating compressor exemption.* Any existing reciprocating compressor in a process unit or affected facility that becomes an affected facility under provisions of 40 CFR 60.14 or 60.15 of subpart VV is exempt from paragraphs (b), (c), and (d) of this section provided the owner or operator demonstrates that recasting the distance piece or replacing the compressor are the only options available to bring the compressor into compliance with the provisions of the above exempted paragraphs of this section.

§ 63.1013 Sampling connection systems standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Equipment requirement.* Each sampling connection system shall be equipped with a closed purge, closed loop, or closed vent system, except as provided in paragraph (d) of this section. Gases displaced during filling of the sample container are not required to be collected or captured.

(c) *Equipment design and operation.* Each closed-purge, closed-loop, or closed vent system except as provided in paragraph (d) of this section shall meet the applicable requirements specified in paragraphs (c)(1) through (c)(5) of this section.

(1) The system shall return the purged process fluid directly to a process line or fuel gas system; or

(2) Collect and recycle the purged process fluid to a process; or

(3) Be designed and operated to capture and transport all the purged process fluid to a control device that meets the requirements of § 63.1015; or

(4) Collect, store, and transport the purged process fluid to a system or facility identified in paragraph (c)(4)(i), (c)(4)(ii), or (c)(4)(iii) of this section.

(i) A waste management unit as defined in 40 CFR 63.111 or 40 CFR part 63, subpart G, if the waste management unit is complying with the provisions of 40 CFR part 63, subpart G, applicable to group 1 wastewater streams. If the purged process fluid does not contain any organic HAP listed in table 9 of 40 CFR part 63, subpart G, the waste management unit need not be subject to, and operated in compliance with the requirements of 40 CFR part 63, subpart G, applicable to subject wastewater steams provided the facility has an National Pollution Discharge Elimination System (NPDES) permit or sends the wastewater to an NPDES-permitted facility.

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR parts 262, 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261.

(5) Containers that are part of a closed-purge system must be covered or closed when not being filled or emptied.

(d) *In-situ sampling systems.* In-situ sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (b) and (c) of this section.

§ 63.1014 Open-ended valves or lines standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Equipment and operational requirements.* (1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in § 63.1002(b) and paragraphs (c) and (d) of this section. The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line, or during maintenance. The operational provisions of paragraphs (b)(2) and (b)(3) of this section also apply.

(2) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(3) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (b)(1) of this section at all other times.

(c) *Emergency shutdown exemption.* Open-ended valves or lines in an emergency shutdown system that are designed to open automatically in the event of a process upset are exempt from the requirements of paragraph (b) of this section.

(d) *Polymerizing materials exemption.* Open-ended valves or lines containing materials that would autocatalytically polymerize or, would present an explosion, serious over pressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraph (b) of this section are exempt from the requirements of paragraph (b) of this section.

§ 63.1015 Closed vent systems and control devices; or emissions routed to a fuel gas system or process.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Compliance standard.* (1) Owners or operators of closed vent systems and nonflare control devices used to comply with provisions of this subpart shall design and operate the closed vent system and nonflare control devices to reduce emissions of regulated material with an efficiency of 95 percent or greater or to reduce emissions of regulated material to a concentration of 20 parts per million by volume or, for an enclosed combustion device, to provide a minimum of 760 °C (1400 °F). Owners and operators of closed vent systems and nonflare control devices used to comply with this subpart shall comply with the provisions of subpart SS of this part, except as provided in § 63.1002(b).

(2) Owners or operators of closed vent systems and flares used to comply with the provisions of this subpart shall design and operate the flare as specified in subpart SS of this part, except as provided in § 63.1002(b).

(3) Owners or operators routing emissions from equipment leaks to a fuel gas system or process shall comply with the provisions of subpart SS of this part, except as provided in § 63.1002(b).

§ 63.1016 Alternative means of emission limitation: Enclosed-vented process units.

(a) *Use of closed vent system and control device.* Process units or affected facilities enclosed in such a manner that all emissions from equipment leaks are vented through a closed vent system to a control device meeting the requirements of either subpart SS of this part or § 63.1002(b) are exempt from the requirements of §§ 63.1006 through 63.1015. The enclosure shall be maintained under a negative pressure at all times while the process unit or affected facility is in operation to ensure that all emissions are routed to a control device.

(b) *Recordkeeping.* Owners and operators choosing to comply with the requirements of this section shall maintain the records specified in paragraphs (b)(1) through (b)(3) of this section.

(1) Identification of the process unit(s) or affected facilities and the regulated-materials they handle.

(2) A schematic of the process unit or affected facility, enclosure, and closed vent system.

(3) A description of the system used to create a negative pressure in the enclosure to ensure that all emissions are routed to the control device.

§ 63.1017 Recordkeeping requirements.

(a) *Recordkeeping system.* An owner or operator of more than one regulated source subject to the provisions of this subpart may comply with the recordkeeping requirements for these regulated sources in one recordkeeping system. The recordkeeping system shall identify each record by regulated source and the type of program being implemented (e.g., quarterly monitoring) for each type of equipment. The records required by this subpart are summarized in paragraphs (b) and (c) of this section.

(b) *General equipment leak records.* (1) As specified in § 63.1003(a) through (c), the owner or operator shall keep

general and specific equipment identification if the equipment is not physically tagged and the owner or operator is electing to identify the equipment subject to this subpart through written documentation such as a log or other designation.

(2) The owner or operator shall keep a written plan as specified in § 63.1003(c)(5) for any equipment that is designated as unsafe or difficult-to-monitor.

(3) The owner or operator shall maintain the identity and an explanation as specified in § 63.1003(d)(1) for any equipment that is designated as unsafe-to-repair.

(4) As specified in § 63.1003(e), the owner or operator shall maintain the identity of compressors operating with an instrument reading of less than 500 parts per million.

(5) The owner or operator shall keep records for leaking equipment as specified in § 63.1004(e).

(6) The owner or operator shall keep records for leak repair as specified in § 63.1005(e) and records for delay of repair as specified in § 63.1005(c).

(c) *Specific equipment leak records.* (1) For valves, the owner or operator shall maintain the records specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(i) The monitoring schedule for each process unit as specified in § 63.1006(b).

(ii) If net credits for removed valves are used, a record of valves added to or removed from the process unit as specified in § 63.1006(b)(6)(iv).

(2) For pumps, the owner or operator shall maintain the records specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

(i) Documentation of pump visual inspections as specified in § 63.1007(b)(4).

(ii) Documentation of dual mechanical seal pump visual inspections as specified in § 63.1007(e)(1)(v).

(iii) For the criteria as to the presence and frequency of drips for dual mechanical seal pumps, records of the design criteria and explanations and any changes and the reason for the changes, as specified in § 63.1007(e)(1)(i).

(3) For connectors, the owner or operator shall maintain monitoring schedule for each process unit as specified in § 63.1008(b).

(4) For the criteria as to the presence and frequency of drips for agitators, the owner or operator shall keep records of the design criteria and explanations and any changes and the reason for the changes, as specified in § 63.1009(e)(1)(vi)(A).

(5) For pressure relief devices in gas and vapor or light liquid service, the owner or operator shall keep records of the dates and results of monitoring following a pressure release, as specified in § 63.1011(c)(3).

(6) For compressors, the owner or operator shall maintain the records specified in paragraphs (c)(6)(i) and (c)(6)(ii) of this section.

(i) For criteria as to failure of the seal system and/or the barrier fluid system, record the design criteria and explanations and any changes and the reason for the changes, as specified in § 63.1012(d)(2).

(ii) For compressors operating under the alternative compressor standard, record the dates and results of each compliance test as specified in § 63.1012(f)(2).

(7) For process units complying with the enclosed-vented process unit alternative, the owner or operator shall maintain the records for enclosed-vented process units as specified in § 63.1016(b).

§ 63.1018 Reporting requirements.

(a) *Periodic reports.* The owner or operator shall report the information specified in paragraphs (b)(1) through (b)(9) of this section, as applicable, in the periodic report specified in the referencing subpart.

(1) The initial Periodic Report shall include the information specified in paragraphs (a)(1)(i) through (a)(1)(iv) of this section in addition to the information listed in paragraph (a)(2) of this section.

(i) Process unit or affected facility identification.

(ii) Number of valves subject to the requirements of § 63.1006, excluding those valves designated for no detectable emissions under the provisions of § 63.1006(e)(4).

(iii) Number of pumps subject to the requirements of § 63.1007, excluding those pumps designated for no detectable emissions (e.g., no external shaft) under the provisions of § 63.1007(e)(2) and those pumps complying with the closed vent system provisions of § 63.1007(e)(3).

(iv) Number of compressors subject to the requirements of § 63.1012, excluding those compressors designated for no detectable emissions under the provisions of § 63.1012(f) and those compressors complying with the closed vent system provisions of § 63.1012(e).

(2) Each periodic report shall contain the information listed in paragraphs (a)(2)(i) through (a)(2)(iv) of this section, as applicable.

(i) Process unit identification.

(ii) For each month during the semiannual reporting period,

(A) Number of valves for which leaks were detected as described in § 63.1006(b),

(B) Number of valves for which leaks were not repaired as required in § 63.1006(d),

(C) Number of pumps for which leaks were detected as described in § 63.1007(b) and § 63.1007(e)(1)(vi),

(D) Number of pumps for which leaks were not repaired as required in §§ 63.1007(d) and (e)(5),

(E) Number of compressors for which leaks were detected as described in § 63.1012(d)(1),

(F) Number of compressors for which leaks were not repaired as required in § 63.1012(d)(1), and

(G) The facts that explain each delay of repair and, where appropriate, why the repair was technically infeasible without a process unit or affected facility shutdown.

(iii) Dates of process unit or affected facility shutdowns which occurred within the periodic report reporting period.

(iv) Revisions to items reported according to paragraph (a)(1) of this section if changes have occurred since the initial report or subsequent revisions to the initial report.

(b) *Special notifications.* An owner or operator electing to comply with either of the alternatives in § 63.1006(b)(5) or (6) shall notify the Administrator of the alternative standard selected before implementing either of the provisions.

4. Part 63 is amended by adding subpart UU as follows:

Subpart UU—National Emission Standards for Equipment Leaks—Control Level 2 Standards

Sec.

63.1019 Applicability.
63.1020 Definitions.
63.1021 Alternative means of emission limitation.
63.1022 Equipment identification.
63.1023 Instrument and sensory monitoring for leaks.
63.1024 Leak repair.
63.1025 Valves in gas and vapor service and in light liquid service standards.
63.1026 Pumps in light liquid service standards.
63.1027 Connectors in gas and vapor service and in light liquid service standards.
63.1028 Agitators in gas and vapor service and in light liquid service standards.
63.1029 Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in liquid service; and instrumentation systems standards.
63.1030 Pressure relief devices in gas and vapor service standards.
63.1031 Compressors standards.
63.1032 Sampling connection systems standards.

63.1033 Open-ended valves or lines standards.
63.1034 Closed vent systems and control devices; or emissions routed to a fuel gas system or process standards.
63.1035 Quality improvement program for pumps.
63.1036 Alternative means of emission limitation: Batch processes.
63.1037 Alternative means of emission limitation: Enclosed vented process units or affected facilities.
63.1038 Recordkeeping requirements.
63.1039 Reporting requirements.

§ 63.1019 Applicability.

(a) The provisions of this subpart apply to the control of air emissions from equipment leaks for which another subpart references the use of this subpart for such air emission control. These air emission standards for equipment leaks are placed here for administrative convenience and only apply to those owners and operators of facilities subject to a referencing subpart. The provisions of 40 CFR part 63, subpart A (General Provisions) do not apply to this subpart except as noted in the referencing subpart.

(b) *Equipment subject to this subpart.* The provisions of this subpart and the referencing subpart apply to equipment that contains or contacts regulated material. This subpart applies to pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and closed vent systems and control devices used to meet the requirements of this subpart.

(c) *Equipment in vacuum service.* Equipment in vacuum service is excluded from the requirements of this subpart.

(d) *Equipment in service less than 300 hours per calendar year.* Equipment intended to be in regulated material service less than 300 hours per calendar year is excluded from the requirements of §§ 63.1025 through 63.1034 and § 63.1036 if it is identified as required in § 63.1022(b)(5).

(e) *Lines and equipment not containing process fluids.* Lines and equipment not containing process fluids are not subject to the provisions of this subpart. Utilities, and other non-process lines, such as heating and cooling systems that do not combine their materials with those in the processes they serve, are not considered to be part of a process unit or affected facility.

§ 63.1020 Definitions.

All terms used in this part shall have the meaning given them in the Act and in this section.

Batch process means a process in which the equipment is fed intermittently or discontinuously. Processing then occurs in this equipment after which the equipment is generally emptied. Examples of industries that use batch processes include pharmaceutical production and pesticide production.

Batch product-process equipment train means the collection of equipment (e.g., connectors, reactors, valves, pumps, etc.) configured to produce a specific product or intermediate by a batch process.

Bottoms receiver means a tank that collects distillation bottoms before the stream is sent for storage or for further downstream processing.

Car-seal means a seal that is placed on a device that is used to change the position of a valve (e.g., from opened to closed) in such a way that the position of the valve cannot be changed without breaking the seal.

Connector means flanged, screwed, or other joined fittings used to connect two pipelines or a pipeline and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation. For the purpose of reporting and recordkeeping, connector means joined fittings that are not inaccessible, ceramic, or ceramic-lined (e.g., porcelain, glass, or glass-lined) as described in § 63.1027(e)(2).

Continuous parameter monitoring system (CPMS) means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

Distance piece means an open or enclosed casing through which the piston rod travels, separating the compressor cylinder from the crankcase.

Double block and bleed system means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

Equipment means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, surge control vessel, bottoms receiver, and instrumentation system in regulated material service; and any control devices or systems used to comply with this subpart.

First attempt at repair, for the purposes of this subpart, means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in § 63.1023(b) to verify whether the leak is repaired, unless the owner or operator determines by other means that the leak is not repaired.

In food and medical service means that a piece of equipment in regulated material service contacts a process stream used to manufacture a Food and Drug Administration regulated product where leakage of a barrier fluid into the process stream would cause any of the following:

(1) A dilution of product quality so that the product would not meet written specifications,

(2) An exothermic reaction which is a safety hazard,

(3) The intended reaction to be slowed down or stopped, or

(4) An undesired side reaction to occur.

In gas and vapor service means that a piece of equipment in regulated material service contains a gas or vapor at operating conditions.

In heavy liquid service means that a piece of equipment in regulated material service is not in gas and vapor service or in light liquid service.

In light liquid service means that a piece of equipment in regulated material service contains a liquid that meets the following conditions:

(1) The vapor pressure of one or more of the organic compounds is greater than 0.3 kilopascals at 20°C,

(2) The total concentration of the pure organic compounds constituents having a vapor pressure greater than 0.3 kilopascals at 20°C is equal to or greater than 20 percent by weight of the total process stream, and

(3) The fluid is a liquid at operating conditions.

(Note: Vapor pressures may be determined by standard reference texts or ASTM D–2879.)

In liquid service means that a piece of equipment in regulated material service is not in gas and vapor service.

In regulated material service means, for the purposes of this subpart, equipment which meets the definition of ''in VOC service,'' ''in VHAP service,'' ''in organic hazardous air pollutant service,'' or ''in'' other chemicals or groups of chemicals ''service'' as defined in the referencing subpart.

In-situ sampling systems means nonextractive samplers or in-line samplers.

In vacuum service means that equipment is operating at an internal pressure which is at least 5 kilopascals below ambient pressure.

Instrumentation system means a group of equipment components used to

condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (e.g., composition, pressure, flow, etc.). Valves and connectors are the predominant type of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems. Only valves nominally 1.27 centimeters (0.5 inches) and smaller, and connectors nominally 1.91 centimeters (0.75 inches) and smaller in diameter are considered instrumentation systems for the purposes of this subpart. Valves greater than nominally 1.27 centimeters (0.5 inches) and connectors greater than nominally 1.91 centimeters (0.75 inches) associated with instrumentation systems are not considered part of instrumentation systems and must be monitored individually.

Liquids dripping means any visible leakage from the seal including dripping, spraying, misting, clouding, and ice formation. Indications of liquids dripping include puddling or new stains that are indicative of an existing evaporated drip.

Nonrepairable means that it is technically infeasible to repair a piece of equipment from which a leak has been detected without a process unit or affected facility shutdown.

Open-ended valve or line means any valve, except relief valves, having one side of the valve seat in contact with process fluid and one side open to atmosphere, either directly or through open piping.

Organic monitoring device means a unit of equipment used to indicate the concentration level of organic compounds based on a detection principle such as infra-red, photoionization, or thermal conductivity.

Pressure relief device or valve means a safety device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices.

Pressure release means the emission of materials resulting from the system pressure being greater than the set pressure of the relief device. This release can be one release or a series of releases over a short time period due to a malfunction in the process.

Referencing subpart means the subpart that refers an owner or operator to this subpart.

Regulated material, for purposes of this part, refers to gas from volatile organic liquids (VOL), volatile organic compounds (VOC), hazardous air pollutants (HAP), or other chemicals or groups of chemicals that are regulated by the referencing subpart.

Regulated source for the purposes of this part, means the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a referencing subpart.

Relief device or valve means a valve used only to release an unplanned, nonroutine discharge. A relief valve discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

Repaired, for the purposes of this subpart, means that equipment (1) is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable sections of this subpart, and (2) unless otherwise specified in applicable provisions of this subpart, is monitored as specified in § 63.1023(b) to verify that emissions from the equipment are below the applicable leak definition.

Sampling connection system means an assembly of equipment within a process unit or affected facility used during periods of representative operation to take samples of the process fluid. Equipment used to take nonroutine grab samples is not considered a sampling connection system.

Screwed (threaded) connector means a threaded pipe fitting where the threads are cut on the pipe wall and the fitting requires only two pieces to make the connection (i.e., the pipe and the fitting).

Set pressure means for the purposes of subparts F and G of this part, the pressure at which a properly operating pressure relief device begins to open to relieve atypical process system operating pressure.

§ 63.1021 Alternative means of emission limitation.

(a) *Performance standard exemption.* The provisions of paragraph (b) of this section do not apply to the performance standards of § 63.1030(b) for pressure relief devices or § 63.1031(f) for compressors operating under the alternative compressor standard.

(b) *Requests by owners or operators.* An owner or operator may request a determination of alternative means of emission limitation to the requirements of §§ 63.1025 through 63.1034 as provided in paragraph (d) of this section. If the Administrator makes a determination that a means of emission limitation is a permissible alternative, the owner or operator shall either comply with the alternative or comply with the requirements of §§ 63.1025 through 63.1034.

(c) *Requests by manufacturers of equipment.* (1) Manufacturers of equipment used to control equipment leaks of the regulated material may apply to the Administrator for permission for an alternative means of emission limitation that achieves a reduction in emissions of the regulated material achieved by the equipment, design, and operational requirements of this subpart.

(2) The Administrator will grant permission according to the provisions of paragraphs (d) of this section.

(d) *Permission to use an alternative means of emission limitation.* Permission to use an alternative means of emission limitation shall be governed by the procedures in paragraphs (d)(1) through (d)(4) of this section.

(1) Where the standard is an equipment, design, or operational requirements, the requirements of paragraphs (d)(1)(i) through (d)(1)(iii) of this section apply.

(i) Each owner or operator applying for permission to use an alternative means of emission limitation shall be responsible for collecting and verifying emission performance test data for an alternative means of emission limitation.

(ii) The Administrator will compare test data for the means of emission limitation to test data for the equipment, design, and operational requirements.

(iii) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve at least the same emission reduction as the equipment, design, and operational requirements of this subpart.

(2) Where the standard is a work practice, the requirements of paragraphs (d)(2)(i) through (d)(2)(vi) of this section apply.

(i) Each owner or operator applying for permission to use an alternative means of emission limitation shall be responsible for collecting and verifying test data for the alternative.

(ii) For each kind of equipment for which permission is requested, the emission reduction achieved by the required work practices shall be demonstrated for a minimum period of 12 months.

(iii) For each kind of equipment for which permission is requested, the emission reduction achieved by the

alternative means of emission limitation shall be demonstrated.

(iv) Each owner or operator applying for such permission shall commit, in writing, for each kind of equipment to work practices that provide for emission reductions equal to or greater than the emission reductions achieved by the required work practices.

(v) The Administrator will compare the demonstrated emission reduction for the alternative means of emission limitation to the demonstrated emission reduction for the required work practices and will consider the commitment in paragraph (d)(2)(iv) of this section.

(vi) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve the same or greater emission reduction as the required work practices of this subpart.

(3) An owner or operator may offer a unique approach to demonstrate the alternative means of emission limitation.

(4) If, in the judgement of the Administrator, an alternative means of emission limitation will be approved, the Administrator will publish a notice of the determination in the **Federal Register** using the procedures specified in the referencing subpart.

§ 63.1022 Equipment identification.

(a) *General equipment identification.* Equipment subject to this subpart shall be identified. Identification of the equipment does not require physical tagging of the equipment. For example, the equipment may be identified on a plant site plan, in log entries, by designation of process unit or affected facility boundaries by some form of weatherproof identification, or by other appropriate methods.

(b) *Additional equipment identification.* In addition to the general identification required by paragraph (a) of this section, equipment subject to any of the provisions in §§ 63.1023 through 63.1034 shall be specifically identified as required in paragraphs (b)(1) through (b)(5) of this section, as applicable. This paragraph does not apply to an owner or operator of a batch product process who elects to pressure test the batch product process equipment train pursuant to § 63.1036.

(1) *Connectors.* Except for inaccessible, ceramic, or ceramic-lined connectors meeting the provision of § 63.1027(e)(2) and instrumentation systems identified pursuant to paragraph (b)(4) of this section, identify the connectors subject to the requirements of this subpart. Connectors need not be individually identified if all connectors in a designated area or length of pipe subject to the provisions of this subpart are identified as a group, and the number of connectors subject is indicated. With respect to connectors, the identification shall be complete no later than the completion of the initial survey required by § 63.1027(a)(1) or paragraph (a) of this section.

(2) *Routed to a process or fuel gas system or equipped with a closed vent system and control device.* Identify the equipment that the owner or operator elects to route to a process or fuel gas system or equip with a closed vent system and control device, under the provisions of § 63.1026(e)(3) (pumps in light liquid service), § 63.1028(f)(3) (agitators), § 63.1030(d) (pressure relief devices in gas and vapor service), § 63.1031(e) (compressors), or § 63.1037(a) (alternative means of emission limitation for enclosed-vented process units).

(3) *Pressure relief devices.* Identify the pressure relief devices equipped with rupture disks, under the provisions of § 63.1030(e).

(4) *Instrumentation systems.* Identify instrumentation systems subject to the provisions of this subpart. Individual components in an instrumentation system need not be identified.

(5) *Equipment in service less than 300 hours per calendar year.* The identity, either by list, location (area or group), or other method, of equipment in regulated material service less than 300 hours per calendar year within a process unit or affected facilities subject to the provisions of this subpart shall be recorded.

(c) *Special equipment designations: Equipment that is unsafe or difficult-to-monitor.*

(1) *Designation and criteria for unsafe-to-monitor.* Valves meeting the provisions of § 63.1025(e)(1), pumps meeting the provisions of § 63.1026(e)(6), connectors meeting the provisions of § 63.1027(e)(1), and agitators meeting the provisions of § 63.1028(f)(7) may be designated unsafe-to-monitor if the owner or operator determines that monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements of this subpart. Examples of an unsafe-to-monitor equipment include, but is not limited to, equipment under extreme pressure or heat.

(2) *Designation and criteria for difficult-to-monitor.* Valves meeting the provisions of § 63.1025(e)(2) may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(i) apply. Agitators meeting the provisions of § 63.1028(e)(5) may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(ii) apply.

(i) *Valves.* (A) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface or it is not accessible in a safe manner when it is in regulated material service; and

(B) The process unit or affected facility within which the valve is located is an existing source, or a new source for which the owner or operator designates less than 3 percent of the total number of valves as difficult-to-monitor.

(ii) *Agitators.* The owner or operator determines that the agitator cannot be monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface or it is not accessible in a safe manner when it is in regulated material service.

(3) *Identification of unsafe or difficult-to-monitor equipment.* The owner or operator shall record the identity of equipment designated as unsafe-to-monitor or difficult-to-monitor according to the provisions of paragraphs (c)(1) or (c)(2) of this section, the planned schedule for monitoring this equipment; and an explanation why the equipment is unsafe or difficult-to-monitor, if applicable. This record must be kept at the plant and be available for review by an inspector.

(4) *Written plan requirements.* (i) The owner or operator of equipment designated as unsafe-to-monitor according to the provisions of paragraph (c)(1) of this section shall have a written plan that requires monitoring of the equipment as frequently as practical during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable, and repair of the equipment according to the procedures in § 63.1024 if a leak is detected.

(ii) The owner or operator of equipment designated as difficult-to-monitor according to the provisions of paragraph (c)(2) of this section shall have a written plan that requires monitoring of the equipment at least once per calendar year.

(d) *Special equipment designations: Equipment that is unsafe-to-repair.*

(1) *Designation and criteria.* Connectors subject to the provisions of § 63.1024(e) may be designated unsafe-to-repair if the owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with the repair requirements of this subpart, and if the connector will be repaired before the end of the next process unit or

affected facility shutdown as specified in § 63.1024(e)(2).

(2) *Identification of equipment.* The identity of connectors designated as unsafe-to-repair and an explanation why the connector is unsafe-to-repair shall be recorded.

(e) *Special equipment designations: Compressors operating with an instrument reading of less than 500 parts per million above background.* Identify the compressors that the owner or operator elects to designate as operating with an instrument reading of less than 500 parts per million above background, under the provisions of § 63.1031(f).

(f) *Special equipment designations: Equipment in heavy liquid service.* The owner or operator of equipment in heavy liquid service shall comply with the requirements of either paragraph (f)(1) or (f)(2) of this section, as provided in paragraph (f)(3) of this section.

(1) Retain information, data, and analyses used to determine that a piece of equipment is in heavy liquid service.

(2) When requested by the Administrator, demonstrate that the piece of equipment or process is in heavy liquid service.

(3) A determination or demonstration that a piece of equipment or process is in heavy liquid service shall include an analysis or demonstration that the process fluids do not meet the definition of ''in light liquid service.'' Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

§ 63.1023 Instrument and sensory monitoring for leaks.

(a) *Monitoring for leaks.* The owner or operator of a regulated source subject to this subpart shall monitor regulated equipment as specified in paragraph (a)(1) of this section for instrument monitoring and paragraph (a)(2) of this section for sensory monitoring.

(1) *Instrument monitoring for leaks.* (i) Valves in gas and vapor service and in light liquid service shall be monitored pursuant to § 63.1025(b).

(ii) Pumps in light liquid service shall be monitored pursuant to § 63.1026(b).

(iii) Connectors in gas and vapor service and in light liquid service shall be monitored pursuant to § 63.1027(b).

(iv) Agitators in gas and vapor service and in light liquid service shall be monitored pursuant to § 63.1028(c).

(v) Pressure relief devices in gas and vapor service shall be monitored pursuant to § 63.1030(c).

(vi) Compressors designated to operate with an instrument reading less than 500 parts per million above background, as described in § 63.1022(e), shall be monitored pursuant to § 63.1031(f).

(2) *Sensory monitoring for leaks.* (i) Pumps in light liquid service shall be observed pursuant to §§ 63.1026(b)(4) and (e)(1).

(ii) Inaccessible, ceramic, or ceramic-lined connectors in gas and vapor service and in light liquid service shall be observed pursuant to § 63.1027(e)(2).

(iii) Agitators in gas and vapor service and in light liquid service shall be monitored pursuant to § 63.1028(b)(3) or (e)(1)(i).

(iv) Pumps, valves, agitators, and connectors in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service shall be observed pursuant to § 63.1029(b)(1).

(b) *Instrument monitoring methods.* Instrument monitoring, as required under this subpart, shall comply with the requirements specified in paragraphs (b)(1) through (b)(6) of this section.

(1) *Monitoring method.* Monitoring shall comply with Method 21 of 40 CFR part 60, appendix A, except as otherwise provided in this section.

(2) *Detection instrument performance criteria.* (i) Except as provided for in paragraph (b)(2)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2, paragraph (a) of Method 21 shall be for the representative composition of the process fluid not each individual VOC in the stream. For process streams that contain nitrogen, air, or other inerts that are not HAP or VOC, the representative stream response factor shall be determined on an inert-free basis. The response factor may be determined at any concentration for which monitoring for leaks will be conducted.

(ii) If there is no instrument commercially available that will meet the performance criteria specified in paragraph (b)(2)(i) of this section, the instrument readings may be adjusted by multiplying by the representative response factor of the process fluid, calculated on an inert-free basis as described in paragraph (b)(2)(i) of this section.

(3) *Detection instrument calibration procedure.* The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(4) *Detection instrument calibration gas.* Calibration gases shall be zero air (less than 10 parts per million of hydrocarbon in air); and the gases specified in paragraph (b)(4)(i) of this section except as provided in paragraph (b)(4)(ii) of this section.

(i) Mixtures of methane in air at a concentration no more than 2,000 parts per million greater than the leak definition concentration of the equipment monitored. If the monitoring instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,000 parts per million above the concentration specified as a leak, and the highest scale shall be calibrated with a calibration gas that is approximately equal to 10,000 parts per million. If only one scale on an instrument will be used during monitoring, the owner or operator need not calibrate the scales that will not be used during that day's monitoring.

(ii) A calibration gas or other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (b)(2)(i) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(5) *Monitoring performance.* Monitoring shall be performed when the equipment is in regulated material service or is in use with any other detectable material.

(6) *Monitoring data.* Monitoring data obtained prior to the regulated source becoming subject to the referencing subpart that do not meet the criteria specified in paragraphs (b)(1) through (b)(5) of this section may still be used to qualify initially for less frequent monitoring under the provisions in § 63.1025(a)(2), (b)(3) or (b)(4) for valves or § 63.1027(b)(3) for connectors provided the departures from the criteria or from the specified monitoring frequency of § 63.1025(b)(3) or (b)(4) are minor and do not significantly affect the quality of the data. Examples of minor departures are monitoring at a slightly different frequency (such as every 6 weeks instead of monthly or quarterly), following the performance criteria of section 3.1.2, paragraph (a) of Method 21 of Appendix A of 40 CFR part 60 instead of paragraph (b)(2) of this section, or monitoring using a different leak definition if the data would indicate the presence or absence of a leak at the concentration specified in this subpart. Failure to use a calibrated instrument is not considered a minor departure.

(c) *Instrument monitoring using background adjustments.* The owner or operator may elect to adjust or not to adjust the instrument readings for

background. If an owner or operator elects not to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (b)(1) through (b)(5) of this section. In such cases, all instrument readings shall be compared directly to the applicable leak definition for the monitored equipment to determine whether there is a leak or to determine compliance with § 63.1030(b) (pressure relief devices) or § 63.1031(f) (alternative compressor standard). If an owner or operator elects to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (c)(1) through (c)(4) of this section.

(1) The requirements of paragraphs (b)(1) through (b)(5) of this section shall apply.

(2) The background level shall be determined, using the procedures in Method 21 of 40 CFR part 60, appendix A.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21 of 40 CFR part 60, appendix A.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared to the applicable leak definition for the monitored equipment to determine whether there is a leak or to determine compliance with § 63.1030(b) (pressure relief devices) or § 63.1031(f) (alternative compressor standard).

(d) *Sensory monitoring methods.* Sensory monitoring consists of visual, audible, olfactory, or any other detection method used to determine a potential leak to the atmosphere.

(e) *Leaking equipment identification and records.* (1) When each leak is detected pursuant to the monitoring specified in paragraph (a) of this section, a weatherproof and readily visible identification, shall be attached to the leaking equipment.

(2) When each leak is detected, the information specified in paragraphs (e)(2)(i) and (e)(2)(ii) shall be recorded and kept pursuant to the referencing subpart, except for the information for connectors complying with the 8 year monitoring period allowed under § 63.1027(b)(3)(iii) shall be kept 5 years beyond the date of its last use.

(i) The instrument and the equipment identification and the instrument operator's name, initials, or identification number if a leak is detected or confirmed by instrument monitoring.

(ii) The date the leak was detected.

§ 63.1024 Leak repair.

(a) *Leak repair schedule.* The owner or operator shall repair each leak detected as soon as practical, but not later than 15 calendar days after it is detected, except as provided in paragraph (d) of this section. A first attempt at repair as defined in the referencing subpart shall be made no later than 5 calendar days after the leak is detected. First attempt at repair for pumps includes, but is not limited to, tightening the packing gland nuts and/or ensuring that the seal flush is operating at design pressure and temperature. First attempt at repair for valves includes, but is not limited to, tightening the bonnet bolts, and/or replacing the bonnet bolts, and/or tightening the packing gland nuts, and/or injecting lubricant into the lubricated packing.

(b) [Reserved]

(c) *Leak identification removal.*—(1) *Valves and connectors.* The leak identification on a valve may be removed after it has been monitored as specified in § 63.1025(d)(2), and no leak has been detected during that monitoring. The leak identification on a connector may be removed after it has been monitored as specified in § 63.1027(b)(3)(iv) and no leak has been detected during that monitoring.

(2) *Other equipment.* The identification that has been placed, pursuant to § 63.1023(e)(1), on equipment determined to have a leak, except for a valve or for a connector that is subject to the provisions of § 63.1027(b)(3), may be removed after it is repaired.

(d) *Delay of repair.* Delay of repair is allowed for any of the conditions specified in paragraphs (d)(1) through (d)(5) of this section. The owner or operator shall maintain a record of the facts that explain any delay of repairs and, where appropriate, why the repair was technically infeasible without a process unit shutdown.

(1) Delay of repair of equipment for which leaks have been detected is allowed if repair within 15 days after a leak is detected is technically infeasible without a process unit or affected facility shutdown. Repair of this equipment shall occur as soon as practical, but no later than the end of the next process unit or affected facility shutdown, except as provided in paragraph (d)(5) of this section.

(2) Delay of repair of equipment for which leaks have been detected is allowed for equipment that is isolated from the process and that does not remain in regulated material service.

(3) Delay of repair for valves, connectors, and agitators is also allowed if the provisions of paragraphs (d)(3)(i) and (d)(3)(ii) of this section are met.

(i) The owner or operator determines that emissions of purged material resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair, and

(ii) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with subpart SS of this part.

(4) Delay of repair for pumps is also allowed if the provisions of paragraphs (d)(4)(i) and (d)(4)(ii) of this section are met.

(i) Repair requires replacing the existing seal design with a new system that the owner or operator has determined under the provisions of § 63.1035(d) will provide better performance or one of the specifications of paragraphs (d)(4)(i)(A) through (d)(4)(i)(C) of this section are met.

(A) A dual mechanical seal system that meets the requirements of § 63.1026(e)(1) will be installed;

(B) A pump that meets the requirements of § 63.1026(e)(1) will be installed; or

(C) A system that routes emissions to a process or a fuel gas system or a closed vent system and control device that meets the requirements of § 63.1026(e)(3) will be installed; and

(ii) Repair is completed as soon as practical, but not later than 6 months after the leak was detected.

(5) Delay of repair beyond a process unit or affected facility shutdown will be allowed for a valve if valve assembly replacement is necessary during the process unit or affected facility shutdown, and valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the second process unit or affected facility shutdown will not be allowed unless the third process unit or affected facility shutdown occurs sooner than 6 months after the first process unit or affected facility shutdown.

(e) *Unsafe-to-repair connectors.* Any connector that is designated, as described in § 63.1022(d), as an unsafe-to-repair connector is exempt from the requirements of § 63.1027(d), and paragraph (a) of this section if the provisions of (e)(1) and (e)(2) of this section are met.

(1) The owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section; and

(2) The connector will be repaired before the end of the next scheduled process unit or affected facility shutdown.

(f) *Leak repair records.* For each leak detected, the information specified in paragraphs (f)(1) through (f)(5) of this section shall be recorded and maintained pursuant to the referencing subpart.

(1) The date of first attempt to repair the leak.

(2) The date of successful repair of the leak.

(3) Maximum instrument reading measured by Method 21 of 40 CFR part 60, appendix A at the time the leak is successfully repaired or determined to be nonrepairable.

(4) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak as specified in paragraphs (f)(4)(i) and (f)(4)(ii) of this section.

(i) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures may be included as part of the startup, shutdown, and malfunction plan, as required by the referencing subpart for the source, or may be part of a separate document that is maintained at the plant site. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(ii) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked on-site before depletion and the reason for depletion.

(5) Dates of process unit or affected facility shutdowns that occur while the equipment is unrepaired.

§ 63.1025 Valves in gas and vapor service and in light liquid service standards.

(a) *Compliance schedule.* (1) The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(2) The use of monitoring data generated before the regulated source became subject to the referencing subpart to qualify initially for less frequent monitoring is governed by the provisions of § 63.1023(b)(6).

(b) *Leak detection.* Unless otherwise specified in §§ 63.1021(b) 63.1036, 63.1037, or paragraph (e) of this section, or the referencing subpart, the owner or operator shall monitor all valves at the intervals specified in paragraphs (b)(3) and/or (b)(4) of this section and shall comply with all other provisions of this section.

(1) *Monitoring method.* The valves shall be monitored to detect leaks by the method specified in § 63.1023(b), (c), and (e).

(2) *Instrument reading that defines a leak.* The instrument reading that defines a leak is 500 parts per million or greater.

(3) *Monitoring frequency.* The owner or operator shall monitor valves for leaks at the intervals specified in paragraphs (b)(3)(i) through (b)(3)(v) of this section and shall keep the record specified in paragraph (b)(3)(vi) of this section.

(i) If at least the greater of 2 valves or 2 percent of the valves in a process unit leak, as calculated according to paragraph (c) of this section, the owner or operator shall monitor each valve once per month.

(ii) At process units with less than the greater of 2 leaking valves or 2 percent leaking valves, the owner or operator shall monitor each valve once each quarter, except as provided in paragraphs (b)(3)(iii) through (b)(3)(v) of this section. Monitoring data generated before the regulated source became subject to the referencing subpart and meeting the criteria of either § 63.1023(b)(1) through (b)(5), or § 63.1023(b)(6), may be used to qualify initially for less frequent monitoring under paragraphs (b)(3)(iii) through (b)(3)(v) of this section.

(iii) At process units with less than 1 percent leaking valves, the owner or operator may elect to monitor each valve once every two quarters

(iv) At process units with less than 0.5 percent leaking valves, the owner or operator may elect to monitor each valve once every four quarters.

(v) At process units with less than 0.25 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 years.

(vi) The owner or operator shall keep a record of the monitoring schedule for each process unit.

(4) *Valve subgrouping.* For a process unit or a group of process units to which this subpart applies, an owner or operator may choose to subdivide the valves in the applicable process unit or group of process units and apply the provisions of paragraph (b)(3) of this section to each subgroup. If the owner or operator elects to subdivide the valves in the applicable process unit or group of process units, then the provisions of paragraphs (b)(4)(i) through (b)(4)(viii) of this section apply.

(i) The overall performance of total valves in the applicable process unit or group of process units to be subdivided shall be less than 2 percent leaking valves, as detected according to paragraphs (b)(1) and (b)(2) of this section and as calculated according to paragraphs (c)(1)(ii) and (c)(2) of this section.

(ii) The initial assignment or subsequent reassignment of valves to subgroups shall be governed by the provisions of paragraphs (b)(4)(ii)(A) through (b)(4)(ii)(C) of this section.

(A) The owner or operator shall determine which valves are assigned to each subgroup. Valves with less than one year of monitoring data or valves not monitored within the last twelve months must be placed initially into the most frequently monitored subgroup until at least one year of monitoring data have been obtained.

(B) Any valve or group of valves can be reassigned from a less frequently monitored subgroup to a more frequently monitored subgroup provided that the valves to be reassigned were monitored during the most recent monitoring period for the less frequently monitored subgroup. The monitoring results must be included with that less frequently monitored subgroup's associated percent leaking valves calculation for that monitoring event.

(C) Any valve or group of valves can be reassigned from a more frequently monitored subgroup to a less frequently monitored subgroup provided that the valves to be reassigned have not leaked for the period of the less frequently monitored subgroup (e.g., for the last 12 months, if the valve or group of valves is to be reassigned to a subgroup being monitored annually). Nonrepairable valves may not be reassigned to a less frequently monitored subgroup.

(iii) The owner or operator shall determine every 6 months if the overall performance of total valves in the applicable process unit or group of process units is less than 2 percent leaking valves and so indicate the performance in the next Periodic Report. If the overall performance of total valves in the applicable process unit or group of process units is 2 percent leaking valves or greater, the owner or operator shall no longer subgroup and shall revert to the program required in paragraphs (b)(1) through (b)(3) of this section for that applicable process unit or group of process units. An owner or operator can again elect to comply with the valve subgrouping procedures of paragraph (b)(4) of this section if future overall performance of total valves in the process unit or groups of process units is again less than 2 percent. The overall performance of total valves in the applicable process unit or group of process units shall be calculated as a weighted average of the percent leaking

valves of each subgroup according to Equation number 1:

$$\%V_{LO} = \frac{\sum_{i=1}^{n}\left(\%V_{Li} \times V_i\right)}{\sum_{i=1}^{n} V_i} \qquad \text{[Eq. 1]}$$

Where:

$\%V_{LO}$=Overall performance of total valves in the applicable process unit or group of process units

$\%V_{Li}$=Percent leaking valves in subgroup i, most recent value calculated according to the procedures in paragraphs (c)(1)(ii) and (c)(2) of this section.

V_i=Number of valves in subgroup i.

n=Number of subgroups.

(iv) The owner or operator shall maintain records specified in paragraphs (b)(4)(iv)(A) through (b)(4)(iv)(D) of this section.

(A) Which valves are assigned to each subgroup,

(B) Monitoring results and calculations made for each subgroup for each monitoring period,

(C) Which valves are reassigned, the last monitoring result prior to reassignment, and when they were reassigned, and

(D) The results of the semiannual overall performance calculation required in paragraph (b)(4)(iii) of this section.

(v) The owner or operator shall notify the Administrator no later than 30 days prior to the beginning of the next monitoring period of the decision to subgroup valves. The notification shall identify the participating process units and the number of valves assigned to each subgroup, if applicable, and may be included in the next Periodic Report.

(vi) The owner or operator shall submit in the periodic reports the information specified in paragraphs (b)(4)(vi)(A) and (b)(4)(vi)(B).

(A) Total number of valves in each subgroup, and

(B) Results of the semiannual overall performance calculation required by paragraph (b)(4)(iii) of this section.

(vii) To determine the monitoring frequency for each subgroup, the calculation procedures of paragraph (c)(2) of this section shall be used.

(viii) Except for the overall performance calculations required by paragraphs (b)(4)(i) and (iii) of this section, each subgroup shall be treated as if it were a process unit for the purposes of applying the provisions of this section.

(c) *Percent leaking valves calculation.*—(1) *Calculation basis and procedures.* (i) The owner or operator shall decide no later than the compliance date of this part or upon revision of an operating permit whether to calculate percent leaking valves on a process unit or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis and this shall be the basis used for comparison with the subgrouping criteria specified in paragraph (b)(4)(i) of this section.

(ii) The percent leaking valves for each monitoring period for each process unit or valve subgroup, as provided in paragraph (b)(4) of this section, shall be calculated using the following equation:

$$\%V_L = \left(V_L/V_T\right) \times 100 \qquad \text{[Eq. 2]}$$

Where:

$\%V_L$=Percent leaking valves.

V_L=Number of valves found leaking, excluding nonrepairable valves, as provided in paragraph (c)(3) of this section.

V_T=The sum of the total number of valves monitored.

(2) *Calculation for monitoring frequency.* When determining monitoring frequency for each process unit or valve subgroup subject to monthly, quarterly, or semiannual monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last two monitoring periods. When determining monitoring frequency for each process unit or valve subgroup subject to annual or biennial (once every 2 years) monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last three monitoring periods.

(3) *Nonrepairable valves.* (i) Nonrepairable valves shall be included in the calculation of percent leaking valves the first time the valve is identified as leaking and nonrepairable and as required to comply with paragraph (c)(3)(ii) of this section. Otherwise, a number of nonrepairable valves (identified and included in the percent leaking valves calculation in a previous period) up to a maximum of 1 percent of the total number of valves in regulated material service at a process unit or affected facility may be excluded from calculation of percent leaking valves for subsequent monitoring periods.

(ii) If the number of nonrepairable valves exceeds 1 percent of the total number of valves in regulated material service at a process unit or affected facility, the number of nonrepairable valves exceeding 1 percent of the total number of valves in regulated material service shall be included in the calculation of percent leaking valves.

(d) *Leak repair.* (1) If a leak is determined pursuant to paragraph (b), (e)(1), or (e)(2) of this section, then the leak shall be repaired using the procedures in § 63.1024, as applicable.

(2) When a leak has been repaired, the valve shall be monitored at least once within the first 3 months after its repair. The monitoring required by this paragraph is in addition to the monitoring required to satisfy the definition of repair.

(i) The monitoring shall be conducted as specified in § 63.1023(b) and (c) of this section, as appropriate, to determine whether the valve has resumed leaking.

(ii) Periodic monitoring required by paragraph (b) of this section may be used to satisfy the requirements of this paragraph, if the timing of the monitoring period coincides with the time specified in this paragraph. Alternatively, other monitoring may be performed to satisfy the requirements of this paragraph, regardless of whether the timing of the monitoring period for periodic monitoring coincides with the time specified in this paragraph.

(iii) If a leak is detected by monitoring that is conducted pursuant to this paragraph, the owner or operator shall follow the provisions of paragraphs (d)(2)(iii)(A) and (d)(2)(iii)(B) of this section, to determine whether that valve must be counted as a leaking valve for purposes of paragraph (c)(1)(ii) of this section.

(A) If the owner or operator elected to use periodic monitoring required by paragraph (b) of this section to satisfy the requirements of this paragraph, then the valve shall be counted as a leaking valve.

(B) If the owner or operator elected to use other monitoring, prior to the periodic monitoring required by paragraph (b) of this section, to satisfy the requirements of this paragraph, then the valve shall be counted as a leaking valve unless it is repaired and shown by periodic monitoring not to be leaking.

(e) *Special provisions for valves.* —(1) *Unsafe-to-monitor valves.* Any valve that is designated, as described in § 63.1022(c)(1), as an unsafe-to-monitor valve is exempt from the requirements of paragraphs (b) of this section and the owner or operator shall monitor the valve according to the written plan specified in § 63.1022(c)(4).

(2) *Difficult-to-monitor valves.* Any valve that is designated, as described in § 63.1022(c)(2), as a difficult-to-monitor valve is exempt from the requirements of paragraph (b) of this section and the

owner or operator shall monitor the valve according to the written plan specified in § 63.1022(c)(4).

(3) *Less than 250 valves.* Any equipment located at a plant site with fewer than 250 valves in regulated material service is exempt from the requirements for monthly monitoring specified in paragraph (b)(3)(i) of this section. Instead, the owner or operator shall monitor each valve in regulated material service for leaks once each quarter, or comply with paragraphs (b)(4)(iii), (b)(4)(iv), or (b)(4)(v) of this section except as provided in paragraphs (e)(1) and (e)(2) of this section.

§ 63.1026 Pumps in light liquid service standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Leak detection.* Unless otherwise specified in § 63.1021(b) or paragraphs (e)(1) through (e)(5) of this section, the owner or operator shall monitor each pump to detect leaks and shall comply with all other provisions of this section.

(1) *Monitoring method.* The pumps shall be monitored monthly to detect leaks by the method specified in § 63.1023(b), (c), and (e).

(2) *Instrument reading that defines a leak.* The instrument reading that defines a leak is specified in paragraphs (b)(2)(1) through (b)(2)(iii) of this section.

(i) 5,000 parts per million or greater for pumps handling polymerizing monomers;

(ii) 2,000 parts per million or greater for pumps in food/medical service; and

(iii) 1,000 parts per million or greater for all other pumps.

(3) *Leak repair exception.* For pumps to which a 1,000 parts per million leak definition applies, repair is not required unless an instrument reading of 2,000 parts per million or greater is detected.

(4) *Visual inspection.* Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in either paragraph (b)(4)(i) or (b)(4)(ii) of this section.

(i) The owner or operator shall monitor the pump as specified in § 63.1023(b), (c), and (e). If the instrument reading indicates a leak as specified in paragraph (b)(2) of this section, a leak is detected and it shall be repaired using the procedures in § 63.1024, except as specified in paragraph (b)(3) of this section; or

(ii) The owner or operator shall eliminate the visual indications of liquids dripping.

(5) *Visual inspection: Leak repair.* Where a leak is identified by visual indications of liquids dripping, repair shall mean that the visual indications of liquids dripping have been eliminated.

(c) *Percent leaking pumps calculation.* (1) The owner or operator shall decide no later than the compliance date of this part or upon revision of an operating permit whether to calculate percent leaking pumps on a process unit basis or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis.

(2) If, when calculated on a 6-month rolling average, at least the greater of either 10 percent of the pumps in a process unit or three pumps in a process unit leak, the owner or operator shall implement a quality improvement program for pumps that complies with the requirements of § 63.1035.

(3) The number of pumps at a process unit or affected facility shall be the sum of all the pumps in regulated material service, except that pumps found leaking in a continuous process unit or affected facility within 1 month after start-up of the pump shall not count in the percent leaking pumps calculation for that one monitoring period only.

(4) Percent leaking pumps shall be determined by the following equation:

$$\%P_L = \left((P_L - P_S)/(P_T - P_S)\right) \times 100 \quad \text{[Eq. 3]}$$

Where:

$\%P_L$=Percent leaking pumps

P_L=Number of pumps found leaking as determined through monthly monitoring as required in paragraph (b)(1) of this section.

P_S=Number of pumps leaking within 1 month of start-up during the current monitoring period.

P_T=Total pumps in regulated material service, including those meeting the criteria in paragraphs (e)(1) and (e)(2) of this section.

(d) *Leak repair.* If a leak is detected pursuant to paragraph (b) of this section, then the leak shall be repaired using the procedures in § 63.1024, as applicable, unless otherwise specified in paragraphs (b)(4) of this section for leaks identified by visual indications of liquids dripping.

(e) *Special provisions for pumps.*—(1) *Dual mechanical seal pumps.* Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section, provided the requirements specified in paragraphs (e)(1)(i) through (e)(1)(viii) of this section are met.

(i) The owner or operator determines, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both. The owner or operator shall keep records at the plant of the design criteria and an explanation of the design criteria; and any changes to these criteria and the reasons for the changes. This record must be available for review by an inspector.

(ii) Each dual mechanical seal system shall meet the requirements specified in paragraph (e)(1)(ii)(A), (e)(1)(ii)(B), or (e)(1)(ii)(C) of this section.

(A) Each dual mechanical seal system is operated with the barrier fluid at a pressure that is at all times (except periods of startup, shutdown, or malfunction) greater than the pump stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that complies with the requirements of subpart SS of this part; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(iii) The barrier fluid is not in light liquid service.

(iv) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(v) Each pump is checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in paragraphs (e)(1)(v)(A) or (e)(1)(v)(B) of this section.

(A) The owner or operator shall monitor the pump as specified in § 63.1023(b), (c), and (e) to determine if there is a leak of regulated material in the barrier fluid. If an instrument reading of 1,000 parts per million or greater is measured, a leak is detected and it shall be repaired using the procedures in § 63.1024; or

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(vi) If indications of liquids dripping from the pump seal exceed the criteria established in paragraph (e)(1)(i) of this section, or if based on the criteria established in paragraph (e)(1)(i) of this section the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(vii) Each sensor as described in paragraph (e)(1)(iv) of this section is observed daily or is equipped with an alarm unless the pump is located within the boundary of an unmanned plant site.

(viii) When a leak is detected pursuant to paragraph (e)(1)(vi) of this section, it shall be repaired as specified in § 63.1024(a).

(2) *No external shaft.* Any pump that is designed with no externally actuated shaft penetrating the pump housing is exempt from the monitoring requirements of paragraph (b) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any pump that is routed to a process or fuel gas system or equipped with a closed vent system capable of capturing and transporting leakage from the pump to a control device meeting the requirements of subpart SS of this part or § 63.1021(b) is exempt from the monitoring requirements of paragraph (b) of this section.

(4) *Unmanned plant site.* Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(4) and (e)(1)(v) of this section, and the daily requirements of paragraph (e)(1)(vii) of this section, provided that each pump is visually inspected as often as practical and at least monthly.

(5) *90 percent exemption.* If more than 90 percent of the pumps at a process unit or affected facility meet the criteria in either paragraph (e)(1) or (e)(2) of this section, the process unit or affected facility is exempt from the requirements of paragraph (b) of this section.

(6) *Unsafe-to-monitor pumps.* Any pump that is designated, as described in § 63.1022(c)(1), as an unsafe-to-monitor pump is exempt from the monitoring requirements of paragraph (b) of this section and the repair requirements of § 63.1024 and the owner or operator shall monitor the pump according to the written plan specified in § 63.1022(c)(4).

§ 63.1027 Connectors in gas and vapor service and in light liquid service standards.

(a) *Compliance schedule.* The owner or operator shall monitor all connectors in each process unit initially for leaks by the later of either 12 months after the compliance date as specified in a referencing subpart or 12 months after initial startup. If all connectors in each process unit have been monitored for leaks prior to the compliance date specified in the referencing subpart, no initial monitoring is required provided either no process changes have been made since the monitoring or the owner or operator can determine that the results of the monitoring, with or without adjustments, reliably demonstrate compliance despite process changes. If required to monitor because of a process change, the owner or operator is required to monitor only those connectors involved in the process change.

(b) *Leak detection.* Except as allowed in § 63.1021(b)(1) or as specified in paragraph (e) of this section, the owner or operator shall monitor all connectors in gas and vapor and light liquid service as specified in paragraphs (a) and (b)(3) of this section.

(1) *Monitoring method.* The connectors shall be monitored to detect leaks by the method specified in § 63.1023(b).

(2) *Instrument reading that defines a leak.* If an instrument reading greater than or equal to 500 parts per million is measured, a leak is detected.

(3) *Monitoring periods.* The owner or operator shall perform monitoring, subsequent to the initial monitoring required in paragraph (a) of this section, as specified in paragraphs (b)(3)(i) through (b)(3)(iii) of this section, and shall comply with the requirements of paragraphs (b)(3)(iv) and (b)(3)(v) of this section. The required period in which monitoring must be conducted shall be determined from paragraphs (b)(3)(i) through (b)(3)(iii) of this section using the monitoring results from the preceding monitoring period. The percent leaking connectors shall be calculated as specified in paragraph (c) of this section.

(i) If the percent leaking connectors in the process unit was greater than or equal to 0.5 percent, then monitor within 12 months (1 year).

(ii) If the percent leaking connectors in the process unit was greater than or equal to 0.25 percent but less than 0.5 percent, then monitor within 4 years. An owner or operator may comply with the requirements of this paragraph by monitoring at least 40 percent of the connectors within 2 years of the start of the monitoring period, provided all connectors have been monitored by the end of the 4 year monitoring period.

(iii) If the percent leaking connectors in the process unit was less than 0.25 percent, then monitor as provided in paragraph (b)(3)(iii)(A) of this section and either paragraph (b)(3)(iii)(B) or (b)(3)(iii)(C) of this section, as appropriate.

(A) An owner or operator shall monitor at least 50 percent of the connectors within 4 years of the start of the monitoring period.

(B) If the percent leaking connectors calculated from the monitoring results in paragraph (b)(3)(iii)(A) of this section is greater than or equal to 0.35 percent of the monitored connectors, the owner or operator shall monitor as soon as practical, but within the next 6 months, all connectors that have not yet been monitored during the monitoring period. At the conclusion of monitoring, a new monitoring period shall be started pursuant to paragraph (b)(3) of this section, based on the percent leaking connectors of the total monitored connectors.

(C) If the percent leaking connectors calculated from the monitoring results in paragraph (b)(3)(iii)(A) of this section is less than 0.35 percent of the monitored connectors, the owner or operator shall monitor all connectors that have not yet been monitored within 8 years of the start of the monitoring period.

(iv) If, during the monitoring conducted pursuant to paragraph (b)(3)(i) through (b)(3)(iii) of this section, a connector is found to be leaking, it shall be re-monitored once within 90 days after repair to confirm that it is not leaking.

(v) The owner or operator shall keep a record of the start date and end date of each monitoring period under this section for each process unit.

(c) *Percent leaking connectors calculation.* For use in determining the monitoring frequency, as specified in paragraphs (a), and (b)(3) of this section, the percent leaking connectors as used in paragraphs (a) and (b)(3) of this section shall be calculated by using equation number 4.

$$\%C_L = C_L/(C_t + C_C) \times 100 \qquad \text{[Eq. 4]}$$

Where:

$\%C_L$ = Percent leaking connectors as determined through monitoring required in paragraphs (a) and (b) of this section.

C_L = Number of connectors measured at 500 parts per million or greater, by the method specified in § 63.1023(b).

C_t = Total number of monitored connectors in the process unit or affected facility.

(d) *Leak repair.* If a leak is detected pursuant to paragraphs (a) and (b) of this section, then the leak shall be repaired using the procedures in § 63.1024, as applicable.

(e) *Special provisions for connectors.*—(1) *Unsafe-to-monitor connectors.* Any connector that is designated, as described in § 63.1022(c)(1), as an unsafe-to-monitor connector is exempt from the requirements of paragraphs (b)(1) through (b)(3) of this section and the owner or operator shall monitor according to the written plan specified in § 63.1022(c)(4).

(2) *Inaccessible, ceramic, or ceramic-lined connectors.* (i) Any connector that is inaccessible or that is ceramic or ceramic-lined (e.g., porcelain, glass, or glass-lined), is exempt from the monitoring requirements of paragraphs (a) and (b) of this section and from the recordkeeping and reporting requirements of §§ 63.1038 and 63.1039. An inaccessible connector is one that meets any of the provisions specified in paragraphs (e)(2)(i)(A) through (e)(2)(i)(F) of this section, as applicable.

(A) Buried;

(B) Insulated in a manner that prevents access to the connector by a monitor probe;

(C) Obstructed by equipment or piping that prevents access to the connector by a monitor probe;

(D) Unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold that would allow access to connectors up to 7.6 meters (25 feet) above the ground.

(E) Inaccessible because it would require elevating the monitoring personnel more than 2 meters (7 feet) above a permanent support surface or would require the erection of scaffold;

(F) Not able to be accessed at any time in a safe manner to perform monitoring. Unsafe access includes, but is not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized man-lift basket in areas where an ignition potential exists, or access would require near proximity to hazards such as electrical lines, or would risk damage to equipment.

(ii) If any inaccessible, ceramic or ceramic-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the visual, audible, olfactory, or other indications of a leak to the atmosphere shall be eliminated as soon as practical.

§ 63.1028 Agitators in gas and vapor service and in light liquid service standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) [Reserved]

(c) *Leak detection.*—(1) *Monitoring method.* Each agitator seal shall be monitored monthly to detect leaks by the methods specified in § 63.1023(b), (c), and (e), except as provided in § 63.1021(b).

(2) *Instrument reading that defines a leak.* If an instrument reading equivalent of 10,000 parts per million or greater is measured, a leak is detected.

(3) *Visual inspection.* (i) Each agitator seal shall be checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal.

(ii) If there are indications of liquids dripping from the agitator seal, the owner or operator shall follow the procedures specified in paragraphs (b)(3)(ii)(A) and (b)(3)(ii)(B) of this section.

(A) The owner or operator shall either monitor the agitator seal as specified in § 63.1023(b), (c), and (e) to determine if there is a leak of regulated material. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected, and it shall be repaired using the procedures in § 63.1024;

(B) The owner or operator shall eliminate the indications of liquids dripping from the pump seal.

(d) *Leak repair.* If a leak is detected, then the leak shall be repaired using the procedures in § 63.1024(a).

(e) *Special provisions for agitators.*—(1) *Dual mechanical seal.* Each agitator equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section, provided the requirements specified in paragraphs (e)(1)(i) through (e)(1)(vi) of this section are met.

(i) Each dual mechanical seal system shall meet the applicable requirements specified in paragraphs (e)(1)(i)(A), (e)(1)(i)(B), or (e)(1)(i)(C) of this section.

(A) Operated with the barrier fluid at a pressure that is at all times (except during periods of startup, shutdown, or malfunction) greater than the agitator stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that meets the requirements of § 63.1034; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(ii) The barrier fluid is not in light liquid service.

(iii) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(iv) Each agitator seal is checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal. If there are indications of liquids dripping from the agitator seal at the time of the weekly inspection, the owner or operator shall follow the procedure specified in paragraphs (e)(1)(iv)(A) or (e)(1)(iv)(B) of this section.

(A) The owner or operator shall monitor the agitator seal as specified in § 63.1023(b), (c), and (e) to determine the presence of regulated material in the barrier fluid. If an instrument reading equivalent to or greater than the leak level specified for agitators in the referencing subpart is measured, a leak is detected and it shall be repaired using the procedures in § 63.1024, or

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(v) Each sensor as described in paragraph (e)(1)(iii) of this section is observed daily or is equipped with an alarm unless the agitator seal is located within the boundary of an unmanned plant site.

(vi) The owner or operator of each dual mechanical seal system shall meet the requirements specified in paragraphs (e)(1)(vi)(A) and (e)(1)(vi)(B).

(A) The owner or operator shall determine, based on design considerations and operating experience, criteria that indicates failure of the seal system, the barrier fluid system, or both and applicable to the presence and frequency of drips. If indications of liquids dripping from the agitator seal exceed the criteria, or if, based on the criteria the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected and shall be repaired pursuant to § 63.1024, as applicable.

(B) The owner or operator shall keep records of the design criteria and an explanation of the design criteria; and any changes to these criteria and the reasons for the changes.

(2) *No external shaft.* Any agitator that is designed with no externally actuated shaft penetrating the agitator housing is exempt from paragraph (b) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any agitator that is routed to a process or fuel gas system that captures and transports leakage from the agitator to a control device meeting the requirements of § 63.1034 is exempt from the requirements of paragraph (b) of this section.

(4) *Unmanned plant site.* Any agitator that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(3) and (e)(1)(iv) of this section, and the daily requirements of paragraph (e)(1)(v) of this section, provided that each agitator is visually inspected as often as practical and at least monthly.

(5) *Difficult-to-monitor agitator seals.* Any agitator seal that is designated, as described in § 63.1022(c)(2), as a difficult-to-monitor agitator seal is exempt from the requirements of paragraph (b) of this section and the owner or operator shall monitor the agitator seal according to the written plan specified in § 63.1022(c)(4).

(6) *Equipment obstructions.* Any agitator seal that is obstructed by equipment or piping that prevents access to the agitator by a monitor probe is exempt from the monitoring requirements of paragraph (b) of this section.

(7) *Unsafe-to-monitor agitator seals.* Any agitator seal that is designated, as described in § 63.1022(c)(1), as an unsafe-to-monitor agitator seal is exempt from the requirements of paragraph (b) of this section and the owner or operator of the agitator seal monitors the agitator seal according to the written plan specified in § 63.1022(c)(4).

§ 63.1029 Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in liquid service; and instrumentation systems standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Leak detection.*—(1) *Monitoring method.* Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems shall be monitored within 5 calendar days by the method specified in § 63.1023(b), (c), and (e) if evidence of a potential leak to the atmosphere is found by visual, audible, olfactory, or any other detection method, unless the potential leak is repaired as required in paragraph (c) of this section.

(2) *Instrument reading that defines a leak.* If an instrument reading of 10,000 parts per million or greater for agitators, 5,000 parts per million or greater for pumps handling agitators, 5,000 parts per million or greater for pumps handling polymerizing monomers, 2,000 parts per million or greater for pumps in food and medical service, or 1,000 parts per million or greater for all other pumps, or 500 parts per million or greater for valves, connectors, instrumentation systems, and pressure relief devices is measured pursuant to paragraph (b)(1) of this section, a leak is detected and shall be repaired pursuant to § 63.1024, as applicable.

(c) *Leak repair.* For equipment identified in paragraph (b) of this section that is not monitored by the method specified in § 63.1023(b), repaired shall mean that the visual, audible, olfactory, or other indications of a leak to the atmosphere have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

§ 63.1030 Pressure relief devices in gas and vapor service standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Compliance standard.* Except during pressure releases as provided for in paragraph (c) of this section, each pressure relief device in gas and vapor service shall be operated with an instrument reading of less than 500 parts per million as measured by the method specified in § 63.1023(b), (c), and (e).

(c) *Pressure relief requirements.* (1) After each pressure release, the pressure relief device shall be returned to a condition indicated by an instrument reading of less than 500 parts per million, as soon as practical, but no later than 5 calendar days after each pressure release, except as provided in § 63.1024(d).

(2) The pressure relief device shall be monitored no later than five calendar days after the pressure to confirm the condition indicated by an instrument reading of less than 500 parts per million above background, as measured by the method specified in § 63.1023(b), (c), and (e).

(3) The owner or operator shall record the dates and results of the monitoring required by paragraph (c)(2) of this section following a pressure release including the background level measured and the maximum instrument reading measured during the monitoring.

(d) *Pressure relief devices routed to a process or fuel gas system or equipped with a closed vent system and control device.* Any pressure relief device that is routed to a process or fuel gas system or equipped with a closed vent system capable of capturing and transporting leakage from the pressure relief device to a control device meeting the requirements of either § 63.1034 or § 63.1021(b) is exempt from the requirements of paragraphs (b) and (c) of this section.

(e) *Rupture disk exemption.* Any pressure relief device that is equipped with a rupture disk upstream of the pressure relief device is exempt from the requirements of paragraphs (b) and (c) of this section provided the owner or operator installs a replacement rupture disk upstream of the pressure relief device as soon as practical after each pressure release but no later than 5 calendar days after each pressure release, except as provided in § 63.1024(d).

§ 63.1031 Compressors standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Seal system standard.* Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluid to the atmosphere, except as provided in § 63.1021(b) and paragraphs (e) and (f) of this section. Each compressor seal system shall meet the applicable requirements specified in paragraph (b)(1), (b)(2), or (b)(3) of this section.

(1) Operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure at all times (except during periods of startup, shutdown, or malfunction); or

(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that meets the requirements of § 63.1034; or

(3) Equipped with a closed-loop system that purges the barrier fluid directly into a process stream.

(c) *Barrier fluid system.* The barrier fluid shall not be in light liquid service. Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both. Each sensor shall be observed daily or shall be equipped with an alarm unless the compressor is

located within the boundary of an unmanned plant site.

(d) *Failure criterion and leak detection.*—(1) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both. If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion, a leak is detected and shall be repaired pursuant to § 63.1024, as applicable.

(2) The owner or operator shall keep records of the design criteria and an explanation of the design criteria; and any changes to these criteria and the reasons for the changes.

(e) *Routed to a process or fuel gas system or equipped with a closed vent system.* A compressor is exempt from the requirements of paragraphs (b) through (d) of this section if it is equipped with a system to capture and transport leakage from the compressor drive shaft seal to a process or a fuel gas system or to a closed vent system that captures and transports leakage from the compressor to a control device meeting the requirements of § 63.1034.

(f) *Alternative compressor standard.*—(1) Any compressor that is designated, as described in § 63.1022(e), as operating with an instrument reading of less than 500 parts per million above background shall operate at all times with an instrument reading of less than 500 parts per million. A compressor so designated is exempt from the requirements of paragraphs (b) through (d) of this section if the compressor is demonstrated, initially upon designation, annually, and at other times requested by the Administrator to be operating with an instrument reading of less than 500 parts per million above background, as measured by the method specified in § 63.1023(b), (c), and (e). A compressor may not be designated or operated as having an instrument reading of less than 500 parts per million as described in § 63.1022(e) if the compressor has a maximum instrument reading greater than 500 parts per million.

(2) The owner or operator shall record the dates and results of each compliance test including the background level measured and the maximum instrument reading measured during each compliance test.

§ 63.1032 Sampling connection systems standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance dates specified in the referencing subpart.

(b) *Equipment requirement.* Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed vent system, except as provided in paragraph (d) of this section or § 63.1021(b). Gases displaced during filling of the sample container are not required to be collected or captured.

(c) *Equipment design and operation.* Each closed-purge, closed-loop, or closed vent system as required in paragraph (b) of this section shall meet the applicable requirements specified in paragraphs (c)(1) through (c)(5) of this section.

(1) The system shall return the purged process fluid directly to a process line or to a fuel gas system; or

(2) Collect and recycle the purged process fluid to a process; or

(3) Be designed and operated to capture and transport all the purged process fluid to a control device that meets the requirements of § 63.1034; or

(4) Collect, store, and transport the purged process fluid to a system or facility identified in paragraph (c)(4)(i), (c)(4)(ii), or (c)(4)(iii) of this section.

(i) A waste management unit as defined in 40 CFR 63.111 or subpart G, if the waste management unit complying with the provisions of 40 CFR part 63, subpart G, applicable to group 1 wastewater streams. If the purged process fluid does not contain any regulated material listed in Table 9 of 40 CFR part 63, subpart G, the waste management unit need not be subject to, and operated in compliance with the requirements of 40 CFR part 63, subpart G, applicable to group 1 wastewater steams provided the facility has an NPDES permit or sends the wastewater to a National Pollution Discharge Elimination System (NPDES) permit or sends the wastewater to an NPDES-permitted facility.

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR parts 262, 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261.

(5) Containers that are part of a closed purge system must be covered or closed when not being filled or emptied.

(d) *In-situ sampling systems.* In-situ sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (b) and (c) of this section.

§ 63.1033 Open-ended valves or lines standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance date specified in the referencing subpart.

(b) *Equipment and operational requirements.* (1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in § 63.1021(b) and paragraphs (c) and (d) of this section. The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line, or during maintenance. The operational provisions of paragraphs (b)(2) and (b)(3) of this section also apply.

(2) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(3) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (b)(1) of this section at all other times.

(c) *Emergency shutdown exemption.* Open-ended valves or lines in an emergency shutdown system that are designed to open automatically in the event of a process upset are exempt from the requirements of paragraph (b) of this section.

(d) *Polymerizing materials exemption.* Open-ended valves or lines containing materials that would autocatalytically polymerize or, would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraph (b) of this section are exempt from the requirements of paragraph (b) of this section.

§ 63.1034 Closed vent systems and control devices; or emissions routed to a fuel gas system or process standards.

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the compliance date specified in the referencing subpart.

(b) *Compliance standard.* (1) Owners or operators of closed vent systems and control devices used to comply with the provisions of this subpart shall design and operate the closed vent systems and control devices with an efficiency specified in the referencing subpart or greater and shall comply with the provisions of subpart SS of this part, except as provided in § 63.1037.

(2) Owners or operators routing emissions from equipment leaks to a fuel gas system or process shall comply

with the provisions of subpart SS of this part, except as provided in § 63.1037.

§ 63.1035 Quality improvement program for pumps.

(a) *Criteria.* If, on a 6-month rolling average, at least the greater of either 10 percent of the pumps in a process unit or affected facility (or plant site) or three pumps in a process unit or affected facility (or plant site) leak, the owner or operator shall comply with the requirements specified in paragraphs (a)(1) and (a)(2) of this section.

(1) Pumps that are in food and medical service or in polymerizing monomer service shall comply with all requirements except for those specified in paragraph (d)(8) of this section.

(2) Pumps that are not in food and medical or polymerizing monomer service shall comply with all of the requirements of this section.

(b) *Exiting the QIP.* The owner or operator shall comply with the requirements of this section until the number of leaking pumps is less than the greater of either 10 percent of the pumps or three pumps, calculated as a 6-month rolling average, in the process unit or affected facility (or plant site). Once the performance level is achieved, the owner or operator shall comply with the requirements in § 63.1026.

(c) *Resumption of QIP.* If, in a subsequent monitoring period, the process unit or affected facility (or plant site) has greater than 10 percent of the pumps leaking or three pumps leaking (calculated as a 6-month rolling average), the owner or operator shall resume the quality improvement program starting at performance trials.

(d) *QIP requirements.* The quality improvement program shall meet the requirements specified in paragraphs (d)(1) through (d)(8) of this section.

(1) The owner or operator shall comply with the requirements in § 63.1026.

(2) *Data collection.* The owner or operator shall collect the data specified in paragraphs (d)(2)(i) through (d)(2)(v) of this section and maintain records for each pump in each process unit or affected facility (or plant site) subject to the quality improvement program. The data may be collected and the records may be maintained on a process unit, affected facility, or plant site basis.

(i) Pump type (e.g., piston, horizontal or vertical centrifugal, gear, bellows); pump manufacturer; seal type and manufacturer; pump design (e.g., external shaft, flanged body); materials of construction; if applicable, barrier fluid or packing material; and year installed.

(ii) Service characteristics of the stream such as discharge pressure, temperature, flow rate, corrosivity, and annual operating hours.

(iii) The maximum instrument readings observed in each monitoring observation before repair, response factor for the stream if appropriate, instrument model number, and date of the observation.

(iv) If a leak is detected, the repair methods used and the instrument readings after repair.

(v) If the data will be analyzed as part of a larger analysis program involving data from other plants or other types of process units or affected facilities, a description of any maintenance or quality assurance programs used in the process unit or affected facility that are intended to improve emission performance.

(3) The owner or operator shall continue to collect data on the pumps as long as the process unit or affected facility (or plant site) remains in the quality improvement program.

(4) *Pump or pump seal inspection.* The owner or operator shall inspect all pumps or pump seals that exhibited frequent seal failures and were removed from the process unit or affected facility due to leaks. The inspection shall determine the probable cause of the pump seal failure or of the pump leak and shall include recommendations, as appropriate, for design changes or changes in specifications to reduce leak potential.

(5)(i) *Data analysis.* The owner or operator shall analyze the data collected to comply with the requirements of paragraph (d)(2) of this section to determine the services, operating or maintenance practices, and pump or pump seal designs or technologies that have poorer than average emission performance and those that have better than average emission performance. The analysis shall determine if specific trouble areas can be identified on the basis of service, operating conditions or maintenance practices, equipment design, or other process-specific factors.

(ii) The analysis shall also be used to determine if there are superior performing pump or pump seal technologies that are applicable to the service(s), operating conditions, or pump or pump seal designs associated with poorer than average emission performance. A superior performing pump or pump seal technology is one with a leak frequency of less than 10 percent for specific applications in the process unit, affected facility, or plant site. A candidate superior performing pump or pump seal technology is one demonstrated or reported in the available literature or through a group study as having low emission performance and as being capable of achieving less than 10 percent leaking pumps in the process unit or affected facility (or plant site).

(iii) The analysis shall include consideration of the information specified in paragraphs (d)(5)(iii)(A) through (d)(5)(iii)(C) of this section.

(A) The data obtained from the inspections of pumps and pump seals removed from the process unit or affected facility due to leaks;

(B) Information from the available literature and from the experience of other plant sites that will identify pump designs or technologies and operating conditions associated with low emission performance for specific services; and

(C) Information on limitations on the service conditions for the pump seal technology operating conditions as well as information on maintenance procedures to ensure continued low emission performance.

(iv) The data analysis may be conducted through an inter-or intra-company program (or through some combination of the two approaches) and may be for a single process unit, a plant site, a company, or a group of process units.

(v) The first analysis of the data shall be completed no later than 18 months after the start of the quality improvement program. The first analysis shall be performed using data collected for a minimum of 6 months. An analysis of the data shall be done each year the process unit or affected facility is in the quality improvement program.

(6) *Trial evaluation program.* A trial evaluation program shall be conducted at each plant site for which the data analysis does not identify use of superior performing pump seal technology or pumps that can be applied to the areas identified as having poorer than average performance, except as provided in paragraph (d)(6)(v) of this section. The trial program shall be used to evaluate the feasibility of using in the process unit or affected facility (or plant site) the pump designs or seal technologies, and operating and maintenance practices that have been identified by others as having low emission performance.

(i) The trial evaluation program shall include on-line trials of pump seal technologies or pump designs and operating and maintenance practices that have been identified in the available literature or in analysis by others as having the ability to perform with leak rates below 10 percent in similar services, as having low

probability of failure, or as having no external actuating mechanism in contact with the process fluid. If any of the candidate superior performing pump seal technologies or pumps is not included in the performance trials, the reasons for rejecting specific technologies from consideration shall be documented as required in paragraph (e)(1)(ii) of this section.

(ii) The number of pump seal technologies or pumps in the trial evaluation program shall be the lesser of 1 percent or two pumps for programs involving single process units or affected facilities and the lesser of 1 percent or five pumps for programs involving a plant site or groups of process units or affected facilities. The minimum number of pumps or pump seal technologies in a trial program shall be one.

(iii) The trial evaluation program shall specify and include documentation of the information specified in paragraphs (d)(6)(iii)(A) through (d)(6)(iii)(D) of this section.

(A) The candidate superior performing pump seal designs or technologies to be evaluated, the stages for evaluating the identified candidate pump designs or pump seal technologies, including the time period necessary to test the applicability;

(B) The frequency of monitoring or inspection of the equipment;

(C) The range of operating conditions over which the component will be evaluated; and (D) Conclusions regarding the emission performance and the appropriate operating conditions and services for the trial pump seal technologies or pumps.

(iv) The performance trials shall initially be conducted, at least, for a 6-month period beginning not later than 18 months after the start of the quality improvement program. No later than 24 months after the start of the quality improvement program, the owner or operator shall have identified pump seal technologies or pump designs that, combined with appropriate process, operating, and maintenance practices, operate with low emission performance for specific applications in the process unit or affected facility. The owner or operator shall continue to conduct performance trials as long as no superior performing design or technology has been identified, except as provided in paragraph (d)(6)(vi) of this section. The initial list of superior emission performance pump designs or pump seal technologies shall be amended in the future, as appropriate, as additional information and experience are obtained.

(v) Any plant site with fewer than 400 valves and owned by a corporation with fewer than 100 employees shall be exempt from trial evaluations of pump seals or pump designs. Plant sites exempt from the trial evaluations of pumps shall begin the pump seal or pump replacement program at the start of the fourth year of the quality improvement program.

(vi) An owner or operator who has conducted performance trials on all alternative superior emission performance technologies suitable for the required applications in the process unit or affected facility may stop conducting performance trials provided that a superior performing design or technology has been demonstrated or there are no technically feasible alternative superior technologies remaining. The owner or operator shall prepare an engineering evaluation documenting the physical, chemical, or engineering basis for the judgment that the superior emission performance technology is technically infeasible or demonstrating that it would not reduce emissions.

(7) *Quality assurance program*. Each owner or operator shall prepare and implement a pump quality assurance program that details purchasing specifications and maintenance procedures for all pumps and pump seals in the process unit or affected facility. The quality assurance program may establish any number of categories, or classes, of pumps as needed to distinguish among operating conditions and services associated with poorer than average emission performance as well as those associated with better than average emission performance. The quality assurance program shall be developed considering the findings of the data analysis required under paragraph (d)(5) of this section, if applicable, the findings of the trial evaluation required in paragraph (d)(6) of this section, and the operating conditions in the process unit or affected facility. The quality assurance program shall be updated each year as long as the process unit or affected facility has the greater of either 10 percent or more leaking pumps or has three leaking pumps.

(i) The quality assurance program shall meet the requirements specified in paragraphs (d)(7)(i)(A) through (d)(7)(i)(D) of this section.

(A) Establish minimum design standards for each category of pumps or pump seal technology. The design standards shall specify known critical parameters such as tolerance, manufacturer, materials of construction, previous usage, or other applicable identified critical parameters;

(B) Require that all equipment orders specify the design standard (or minimum tolerances) for the pump or the pump seal;

(C) Provide for an audit procedure for quality control of purchased equipment to ensure conformance with purchase specifications. The audit program may be conducted by the owner or operator of the plant site or process unit or affected facility, or by a designated representative; and

(D) Detail off-line pump maintenance and repair procedures. These procedures shall include provisions to ensure that rebuilt or refurbished pumps and pump seals will meet the design specifications for the pump category and will operate so that emissions are minimized.

(ii) The quality assurance program shall be established no later than the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees; and no later than the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees.

(8) *Pump or pump seal replacement.* Three years after the start of the quality improvement program for plant sites with 400 or more valves or 100 or more employees and at the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees, the owner or operator shall replace, as described in paragraphs (d)(8)(i) and (d)(8)(ii) of this section, the pumps or pump seals that are not superior emission performance technology with pumps or pump seals that have been identified as superior emission performance technology and that comply with the quality assurance standards for the pump category. Superior emission performance technology is that category or design of pumps or pump seals with emission performance that when combined with appropriate process, operating, and maintenance practices, will result in less than 10 percent leaking pumps for specific applications in the process unit, affected facility, or plant site. Superior emission performance technology includes material or design changes to the existing pump, pump seal, seal support system, installation of multiple mechanical seals or equivalent, or pump replacement.

(i) Pumps or pump seals shall be replaced at the rate of 20 percent per year based on the total number of pumps in light liquid service. The

calculated value shall be rounded to the nearest nonzero integer value. The minimum number of pumps or pump seals shall be one. Pump replacement shall continue until all pumps subject to the requirements of § 63.1026 are pumps determined to be superior performance technology.

(ii) The owner or operator may delay replacement of pump seals or pumps with superior technology until the next planned process unit or affected facility shutdown, provided the number of pump seals and pumps replaced is equivalent to the 20 percent or greater annual replacement rate.

(iii) The pumps shall be maintained as specified in the quality assurance program.

(e) *QIP recordkeeping.* In addition to the records required by paragraph (d)(2) of this section, the owner or operator shall maintain records for the period of the quality improvement program for the process unit or affected facility as specified in paragraphs (e)(1) through (e)(6) of this section.

(1) When using a pump quality improvement program as specified in this section, record the information specified in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(i) The rolling average percent leaking pumps.

(ii) Documentation of all inspections conducted under the requirements of paragraph (d)(4) of this section, and any recommendations for design or specification changes to reduce leak frequency.

(iii) The beginning and ending dates while meeting the requirements of paragraph (d) of this section.

(2) If a leak is not repaired within 15 calendar days after discovery of the leak, the reason for the delay and the expected date of successful repair.

(3) Records of all analyses required in paragraph (d) of this section. The records will include the information specified in paragraphs (e)(3)(i) through (e)(3)(iv) of this section.

(i) A list identifying areas associated with poorer than average performance and the associated service characteristics of the stream, the operating conditions and maintenance practices.

(ii) The reasons for rejecting specific candidate superior emission performing pump technology from performance trials.

(iii) The list of candidate superior emission performing valve or pump technologies, and documentation of the performance trial program items required under paragraph (d)(6)(iii) of this section.

(iv) The beginning date and duration of performance trials of each candidate superior emission performing technology.

(4) All records documenting the quality assurance program for pumps as specified in paragraph (d)(7) of this section, including records indicating that all pumps replaced or modified during the period of the quality improvement program are in compliance with the quality assurance.

(5) Records documenting compliance with the 20 percent or greater annual replacement rate for pumps as specified in paragraph (d)(8) of this section.

(6) Information and data to show the corporation has fewer than 100 employees, including employees providing professional and technical contracted services.

§ 63.1036 Alternative means of emission limitation: Batch processes.

(a) *General requirement.* As an alternative to complying with the requirements of §§ 63.1025 through 63.1033 and § 63.1035, an owner or operator of a batch process that operates in regulated material service during the calendar year may comply with one of the standards specified in paragraphs (b) and (c) of this section, or the owner or operator may petition for approval of an alternative standard under the provisions of § 63.1021(b). The alternative standards of this section provide the options of pressure testing or monitoring the equipment for leaks. The owner or operator may switch among the alternatives provided the change is documented as specified in paragraph (b)(7) of this section.

(b) *Pressure testing of the batch equipment.* The following requirements shall be met if an owner or operator elects to use pressure testing of batch product-process equipment to demonstrate compliance with this subpart.

(1) *Reconfiguration.* Each time equipment is reconfigured for production of a different product or intermediate, the batch product-process equipment train shall be pressure-tested for leaks before regulated material is first fed to the equipment and the equipment is placed in regulated material service.

(i) When the batch product-process equipment train is reconfigured to produce a different product, pressure testing is required only for the new or disturbed equipment.

(ii) Each batch product process that operates in regulated material service during a calendar year shall be pressure-tested at least once during that calendar year.

(iii) Pressure testing is not required for routine seal breaks, such as changing hoses or filters, that are not part of the reconfiguration to produce a different product or intermediate.

(2) *Testing procedures.* The batch product process equipment shall be tested either using the procedures specified in paragraph (b)(5) of this section for pressure vacuum loss or with a liquid using the procedures specified in paragraph (b)(6) of this section.

(3) *Leak detection.* (i) For pressure or vacuum tests using a gas, a leak is detected if the rate of change in pressure is greater than 6.9 kilopascals (1 pound per square inch gauge) in 1 hour or if there is visible, audible, or olfactory evidence of fluid loss.

(ii) For pressure tests using a liquid, a leak is detected if there are indications of liquids dripping or if there is other evidence of fluid loss.

(4) *Leak repair.* (i) If a leak is detected, it shall be repaired and the batch product-process equipment shall be retested before start-up of the process.

(ii) If a batch product-process fails the retest or the second of two consecutive pressure tests, it shall be repaired as soon as practical, but not later than 30 calendar days after the second pressure test except as specified in paragraph (e) of this section.

(5) *Gas pressure test procedure for pressure or vacuum loss.* The procedures specified in paragraphs (b)(5)(i) through (b)(5)(v) of this section shall be used to pressure test batch product-process equipment for pressure or vacuum loss to demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section.

(i) The batch product-process equipment train shall be pressurized with a gas to a pressure less than the set pressure of any safety relief devices or valves or to a pressure slightly above the operating pressure of the equipment, or alternatively the equipment shall be placed under a vacuum.

(ii) Once the test pressure is obtained, the gas source or vacuum source shall be shut off.

(iii) The test shall continue for not less than 15 minutes unless it can be determined in a shorter period of time that the allowable rate of pressure drop or of pressure rise was exceeded. The pressure in the batch product-process equipment shall be measured after the gas or vacuum source is shut off and at the end of the test period. The rate of change in pressure in the batch product-process equipment shall be calculated using the following equation:

$$\Delta(P/t) = \left(\left|P_f - P_i\right|\right) / \left(t_f - t_i\right) \qquad \text{[Eq. 5]}$$

Where:

Δ (P/t) = Change in pressure, pounds per square inch gauge per hour.

P_f = Final pressure, pounds per square inch gauge.

P_i = Initial pressure, pounds per square inch gauge.

$t_f - t_i$ = Elapsed time, hours.

(iv) The pressure shall be measured using a pressure measurement device (gauge, manometer, or equivalent) that has a precision of ±2.5 millimeter mercury (0.10 inch of mercury) in the range of test pressure and is capable of measuring pressures up to the relief set pressure of the pressure relief device. If such a pressure measurement device is not reasonably available, the owner or operator shall use a pressure measurement device with a precision of at least ± 10 percent of the test pressure of the equipment and shall extend the duration of the test for the time necessary to detect a pressure loss or rise that equals a rate of 1 pound per square inch gauge per hour (7 kilopascals per hour).

(v) An alternative procedure may be used for leak testing the equipment if the owner or operator demonstrates the alternative procedure is capable of detecting a pressure loss or rise.

(6) *Pressure test procedure using test liquid.* The procedures specified in paragraphs (b)(6)(i) through (b)(g)(iv) of this section shall be used to pressure-test batch product-process equipment using a liquid to demonstrate compliance with the requirements of paragraph (b)(3)(ii) of this section.

(i) The batch product-process equipment train, or section of the equipment train, shall be filled with the test liquid (e.g., water, alcohol) until normal operating pressure is obtained. Once the equipment is filled, the liquid source shall be shut off.

(ii) The test shall be conducted for a period of at least 60 minutes, unless it can be determined in a shorter period of time that the test is a failure.

(iii) Each seal in the equipment being tested shall be inspected for indications of liquid dripping or other indications of fluid loss. If there are any indications of liquids dripping or of fluid loss, a leak is detected.

(iv) An alternative procedure may be used for leak testing the equipment, if the owner or operator demonstrates the alternative procedure is capable of detecting losses of fluid.

(7) *Pressure testing recordkeeping.* The owner or operator of a batch product process who elects to pressure test the batch product process equipment train to demonstrate compliance with this subpart shall maintain records of the information specified in paragraphs (b)(7)(i) through (b)(7)(v) of this section.

(i) The identification of each product, or product code, produced during the calendar year. It is not necessary to identify individual items of equipment in a batch product process equipment train.

(ii) Physical tagging of the equipment to identify that it is in regulated material service and subject to the provisions of this subpart is not required. Equipment in a batch product process subject to the provisions of this subpart may be identified on a plant site plan, in log entries, or by other appropriate methods.

(iii) The dates of each pressure test required in paragraph (b) of this section, the test pressure, and the pressure drop observed during the test.

(iv) Records of any visible, audible, or olfactory evidence of fluid loss.

(v) When a batch product process equipment train does not pass two consecutive pressure tests, the information specified in paragraphs (b)(7)(v)(A) through (b)(7)(v)(E) of this section shall be recorded in a log and kept for 2 years:

(A) The date of each pressure test and the date of each leak repair attempt.

(B) Repair methods applied in each attempt to repair the leak.

(C) The reason for the delay of repair.

(D) The expected date for delivery of the replacement equipment and the actual date of delivery of the replacement equipment; and

(E) The date of successful repair.

(c) *Equipment monitoring.* The following requirements shall be met if an owner or operator elects to monitor the equipment in a batch process to detect leaks by the method specified in § 63.1023(b) to demonstrate compliance with this subpart.

(1) The owner or operator shall comply with the requirements of §§ 63.1025 through 63.1035 as modified by paragraphs (c)(2) through (c)(4) of this section.

(2) The equipment shall be monitored for leaks by the method specified in § 63.1023(b) when the equipment is in regulated material service or is in use with any other detectable material.

(3) The equipment shall be monitored for leaks as specified in paragraphs (c)(3)(i) through (c)(3)(iv) of this section.

(i) Each time the equipment is reconfigured for the production of a new product, the reconfigured equipment shall be monitored for leaks within 30 days of start-up of the process. This initial monitoring of reconfigured equipment shall not be included in determining percent leaking equipment in the process unit or affected facility.

(ii) Connectors shall be monitored in accordance with the requirements in § 63.1027.

(iii) Equipment other than connectors shall be monitored at the frequencies specified in table 1. The operating time shall be determined as the proportion of the year the batch product-process that is subject to the provisions of this subpart is operating.

(iv) The monitoring frequencies specified in paragraph (c)(3)(iii) of this section are not requirements for monitoring at specific intervals and can be adjusted to accommodate process operations. An owner or operator may monitor anytime during the specified monitoring period (e.g., month, quarter, year), provided the monitoring is conducted at a reasonable interval after completion of the last monitoring campaign. For example, if the equipment is not operating during the scheduled monitoring period, the monitoring can be done during the next period when the process is operating.

(4) If a leak is detected, it shall be repaired as soon as practical but not later than 15 calendar days after it is detected, except as provided in paragraph (e) of this section.

(d) *Added equipment recordkeeping.* (1) For batch product-process units or affected facilities that the owner or operator elects to monitor as provided under paragraph (c) of this section, the owner or operator shall prepare a list of equipment added to batch product process units or affected facilities since the last monitoring period required in paragraphs (c)(3)(ii) and (3)(iii) of this section.

(2) Maintain records demonstrating the proportion of the time during the calendar year the equipment is in use in a batch process that is subject to the provisions of this subpart. Examples of suitable documentation are records of time in use for individual pieces of equipment or average time in use for the process unit or affected facility. These records are not required if the owner or operator does not adjust monitoring frequency by the time in use, as provided in paragraph (c)(3)(iii) of this section.

(3) Record and keep pursuant to the referencing subpart and this subpart, the date and results of the monitoring required in paragraph (c)(3)(i) of this section for equipment added to a batch product-process unit or affected facility since the last monitoring period required in paragraphs (c)(3)(ii) and (c)(3)(iii) of this section. If no leaking equipment is found during this monitoring, the owner or operator shall

record that the inspection was performed. Records of the actual monitoring results are not required.

(e) *Delay of repair.* Delay of repair of equipment for which leaks have been detected is allowed if the replacement equipment is not available providing the conditions specified in paragraphs (e)(1) and (e)(2) of this section are met.

(1) Equipment supplies have been depleted and supplies had been sufficiently stocked before the supplies were depleted.

(2) The repair is made no later than 10 calendar days after delivery of the replacement equipment.

(f) *Periodic report contents.* For owners or operators electing to meet the requirements of paragraph (b) of this section, the Periodic Report to be filed pursuant to § 63.1039(b) shall include the information listed in paragraphs (f)(1) through (f)(4) of this section for each process unit.

(1) Batch product process equipment train identification;

(2) The number of pressure tests conducted;

(3) The number of pressure tests where the equipment train failed the pressure test; and

(4) The facts that explain any delay of repairs.

§ 63.1037 Alternative means of emission limitation: Enclosed-vented process units or affected facilities.

(a) *Use of closed vent system and control device.* Process units or affected facilities enclosed in such a manner that all emissions from equipment leaks are vented through a closed vent system to a control device meeting the requirements of either § 63.1034 or § 63.1021(b) are exempt from the requirements of §§ 63.1025 through 63.1035. The enclosure shall be maintained under a negative pressure at all times while the process unit or affected facility is in operation to ensure that all emissions are routed to a control device.

(b) *Recordkeeping.* Owners and operators choosing to comply with the requirements of this section shall maintain the records specified in paragraphs (b)(1) through (b)(3) of this section.

(1) Identification of the process unit(s) or affected facilities and the regulated materials they handle.

(2) A schematic of the process unit or affected facility, enclosure, and closed vent system.

(3) A description of the system used to create a negative pressure in the enclosure to ensure that all emissions are routed to the control device.

§ 63.1038 Recordkeeping requirements.

(a) *Recordkeeping system.* An owner or operator of more than one regulated source subject to the provisions of this subpart may comply with the recordkeeping requirements for these regulated sources in one recordkeeping system. The recordkeeping system shall identify each record by regulated source and the type of program being implemented (e.g., quarterly monitoring, quality improvement) for each type of equipment. The records required by this subpart are summarized in paragraphs (b) and (c) of this section.

(b) *General equipment leak records.* (1) As specified in § 63.1022(a) through (c), the owner or operator shall keep general and specific equipment identification if the equipment is not physically tagged and the owner or operator is electing to identify the equipment subject to this subpart through written documentation such as a log or other designation.

(2) The owner or operator shall keep a written plan as specified in § 63.1022(c)(4) for any equipment that is designated as unsafe- or difficult-to-monitor.

(3) The owner or operator shall maintain a record of the identity and an explanation as specified in § 63.1022(d)(2) for any equipment that is designated as unsafe-to-repair.

(4) As specified in § 63.1022(e), the owner or operator shall maintain the identity of compressors operating with an instrument reading of less than 500 parts per million.

(5) The owner or operator shall keep records associated with the determination that equipment is in heavy liquid service as specified in § 63.1022(f).

(6) The owner or operator shall keep records for leaking equipment as specified in § 63.1023(e)(2).

(7) The owner or operator shall keep records for leak repair as specified in § 63.1024(f) and records for delay of repair as specified in § 63.1024(d).

(c) *Specific equipment leak records.* (1) For valves, the owner or operator shall maintain the records specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section.

(i) The monitoring schedule for each process unit as specified in § 63.1025(b)(3)(i).

(ii) The valve subgrouping records specified in § 63.1025(b)(4)(iv), if applicable.

(2) For pumps, the owner or operator shall maintain the records specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

(i) Documentation of pump visual inspections as specified in § 63.1026(b)(4).

(ii) Documentation of dual mechanical seal pump visual inspections as specified in § 63.1026(e)(1)(v).

(iii) For the criteria as to the presence and frequency of drips for dual mechanical seal pumps, records of the design criteria and explanations and any changes and the reason for the changes, as specified in § 63.1026(e)(1)(i).

(3) For connectors, the owner or operator shall maintain the monitoring schedule for each process unit as specified in § 63.1027(b)(3).

(4) For the criteria as to the presence and frequency of drips for agitators, the owner or operator shall keep records of the design criteria and explanations and any changes and the reason for the changes, as specified in § 63.1028(e)(1)(vi).

(5) For pressure relief devices in gas and vapor or light liquid service, the owner or operator shall keep records of the dates and results of monitoring following a pressure release, as specified in § 63.1030(c)(3).

(6) For compressors, the owner or operator shall maintain the records specified in paragraphs (c)(6)(i) and (c)(6)(ii) of this section.

(i) For criteria as to failure of the seal system and/or the barrier fluid system, record the design criteria and explanations and any changes and the reason for the changes, as specified in § 63.1031(d)(2).

(ii) For compressors operating under the alternative compressor standard, record the dates and results of each compliance test as specified in § 63.1031(f)(2).

(7) For a pump QIP program, the owner or operator shall maintain the records specified in paragraphs (c)(7)(i) through (c)(7)(v) of this section.

(i) Individual pump records as specified in § 63.1035(d)(2).

(ii) Trial evaluation program documentation as specified in § 63.1035(d)(6)(iii).

(iii) Engineering evaluation documenting the basis for judgment that superior emission performance technology is not applicable as specified in § 63.1035(d)(6)(vi).

(iv) Quality assurance program documentation as specified in § 63.1035(d)(7).

(v) QIP records as specified in § 63.1035(e).

(8) For process units complying with the batch process unit alternative, the owner or operator shall maintain the records specified in paragraphs (c)(8)(i) and (c)(8)(ii) of this section.

(i) Pressure test records as specified in § 63.1036(b)(7).

(ii) Records for equipment added to the process unit as specified in § 63.1036(d).

(9) For process units complying with the enclosed-vented process unit alternative, the owner or operator shall maintain the records for enclosed-vented process units as specified in § 63.1037(b).

§ 63.1039 Reporting requirements.

(a) *Initial compliance status report.* Each owner or operator shall submit an initial compliance status report according to the procedures in the referencing subpart. The notification shall include the information listed in paragraphs (a)(1) through (a)(3) of this section, as applicable.

(1) The notification shall provide the information listed in paragraphs (a)(1)(i) through (a)(1)(iv) of this section for each process unit or affected facility subject to the requirements of this subpart.

(i) Process unit or affected facility identification.

(ii) Number of each equipment type (e.g., valves, pumps) excluding equipment in vacuum service.

(iii) Method of compliance with the standard (e.g., ''monthly leak detection and repair'' or ''equipped with dual mechanical seals'').

(iv) Planned schedule for requirements in §§ 63.1025 and 63.1026.

(2) The notification shall provide the information listed in paragraphs (a)(2)(i) and (a)(2)(ii) of this section for each process unit or affected facility subject to the requirements of § 63.1036(b).

(i) Batch products or product codes subject to the provisions of this subpart, and

(ii) Planned schedule for pressure testing when equipment is configured for production of products subject to the provisions of this subpart.

(3) The notification shall provide the information listed in paragraphs (a)(3)(i) and (a)(3)(ii) of this section for each process unit or affected facility subject to the requirements in § 63.1037.

(i) Process unit or affected facility identification.

(ii) A description of the system used to create a negative pressure in the enclosure and the control device used to comply with the requirements of subpart SS of this part.

(b) *Periodic reports.* The owner or operator shall report the information specified in paragraphs (b)(1) through (b)(6) of this section, as applicable, in the Periodic Report specified in the referencing subpart.

(1) For the equipment specified in paragraphs (b)(1)(i) through (b)(1)(v) of this section, report in a summary format by equipment type, the number of components for which leaks were detected and for valves, pumps and connectors show the percent leakers, and the total number of components monitored. Also include the number of leaking components that were not repaired as required by § 63.1024, and for valves and connectors, identify the number of components that are determined by § 63.1025(c)(3) to be nonrepairable.

(i) Valves in gas and vapor service and in light liquid service pursuant to § 63.1025 (b) and (c).

(ii) Pumps in light liquid service pursuant to § 63.1026 (b) and (c).

(iii) Connectors in gas and vapor service and in light liquid service pursuant to § 63.1027 (b) and (c).

(iv) Agitators in gas and vapor service and in light liquid service pursuant to § 63.1028(b).

(v) Compressors pursuant to § 63.1031.

(2) Where any delay of repair is utilized pursuant to § 63.1024(d), report that delay of repair has occurred and report the number of instances of delay of repair.

(3) If applicable, report the valve subgrouping information specified in § 63.1025(b)(4)(iv).

(4) For pressure relief devices in gas and vapor service pursuant to § 63.1030(b) and for compressors pursuant to § 63.1031(f) that are to be operated at a leak detection instrument reading of less than 500 parts per million, report the results of all monitoring to show compliance conducted within the semiannual reporting period.

(5) Report, if applicable, the initiation of a monthly monitoring program for valves pursuant to § 63.1025(b)(3)(i).

(6) Report, if applicable, the initiation of a quality improvement program for pumps pursuant to § 63.1035.

(7) Where the alternative means of emissions limitation for batch processes is utilized, report the information listed in § 63.1036(f).

(8) Report the information listed in paragraph (a) of this section for the Initial Compliance Status Report for process units or affected facilities with later compliance dates. Report any revisions to items reported in an earlier Initial Compliance Status Report if the method of compliance has changed since the last report.

TABLE 1.—BATCH PROCESSES MONITORING FREQUENCY FOR EQUIPMENT OTHER THAN CONNECTORS

Operating time (% of year)	Equivalent continuous process monitoring frequency time in use		
	Monthly	Quarterly	Semiannually
0 to <25%	Quarterly	Annually	Annually.
25 to <50%	Quarterly	Semiannually	Annually.
50 to <75%	Bimonthly	Three times	Semiannually.
75 to 100%	Monthly	Quarterly	Semiannually.

5. Part 63 is amended by adding subpart WW as follows:

Subpart WW—National Emission Standards for Storage Vessels (Tanks)—Control Level 2

Sec.

63.1060 Applicability.
63.1061 Definitions.
63.1062 Storage vessel control requirements..
63.1063 Floating roof requirements.
63.1064 Pressurized storage vessel requirements.
63.1065 Enclosure requirements.
63.1066 Alternative means of emission limitation.
63.1067 Procedure for determining no detectable emissions.
63.1068 Recordkeeping requirements.
63.1069 Reporting requirements.

§ 63.1060 Applicability.

(a) The provisions of this subpart apply to the control of air emissions from storage vessels for which another subpart references the use of this subpart for such air emission control. These air emission standards for storage vessels are placed here for administrative convenience and only apply to those owners and operators of facilities subject to a referencing subpart. The provisions of 40 CFR part 63, subpart A (General Provisions) do not apply to this subpart except as noted in the referencing subpart.

(b) If a physical process change is made that causes a storage vessel to fall outside the criteria in the referencing subpart that required the storage vessel to control emissions of regulated material, the owner or operator may elect to comply with the provisions for the storage vessels not subject to control contained in the referencing subpart instead of the provisions of this subpart.

§ 63.1061 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in this section.

Capacity means the volume of liquid that is capable of being stored in a vessel, based on the vessel's diameter and external shell height.

Deck cover means a device which covers an opening in a floating roof deck. There is a gasket between the cover and the deck. Some deck covers move horizontally with respect to the deck (i.e., a sliding cover).

Empty or emptying means the removal of some or all of the stored liquid from a storage vessel. Storage vessels where stored liquid is left on the walls, as bottom clingage, or in pools due to bottom irregularities are considered empty. Lowering of the stored liquid level, such that the floating roof is resting on its legs, as necessitated by normal vessel operation (for example, to minimize contamination when changing stored material or when transferring material out of the vessel for shipment) is not considered emptying.

External floating roof or *EFR* means a floating roof located in a storage vessel without a fixed roof.

Fill or *filling* means the introduction of regulated material into a storage vessel, but not necessarily to complete capacity.

Fixed roof means a roof that is mounted (i.e., permanently affixed) on a storage vessel that does not move with fluctuations in stored liquid level.

Flexible fabric sleeve seal means a seal made of an elastomeric fabric (or other material) which covers an opening in a floating roof deck, and which allows the penetration of a pole, such as a fixed roof support column or a guidepole. The seal is attached to the rim of the deck opening and extends to the outer surface of the pole. The seal is draped (but does not contact the stored liquid) to allow the horizontal movement of the deck relative to the pole.

Floating roof means a roof that floats on the surface of the liquid in a storage vessel. A floating roof substantially covers the stored liquid surface (but is not necessarily in contact with the entire surface), and is comprised of a deck, a rim seal, and miscellaneous deck fittings.

Initial fill or initial filling means the first introduction of regulated material into a storage vessel, or the introduction of regulated material into a storage vessel that has been out of (regulated-material) service for a year or longer.

Internal floating roof or *IFR* means a floating roof located in a storage vessel with a fixed roof. For the purposes of this subpart, an external floating roof located in a storage vessel to which a fixed roof has been added is considered to be an internal floating roof.

Liquid-mounted seal means a resilient or liquid-filled rim seal designed to contact the stored liquid.

Mechanical shoe seal or *metallic shoe seal* means a rim seal consisting of a band of metal (or other suitable material) as the sliding contact with the wall of the storage vessel, and a fabric seal to close the annular space between the band and the rim of the floating roof deck. The band is typically formed as a series of sheets (shoes) that are overlapped or joined together to form a ring. The lower end of the band extends into the stored liquid.

Pole float means a float located inside a guidepole that floats on the surface of the stored liquid. The rim of the float has a wiper or seal that extends to the inner surface of the pole, and that is at or above the height of the deck cover.

Pole sleeve means a device which extends from the opening in a floating roof deck or deck cover to the outer surface of a pole. The sleeve extends into the stored liquid.

Pole wiper means a seal that extends from the rim of the opening in a floating roof deck cover to the outer surface of a pole.

Referencing subpart means the subpart that refers an owner or operator to this subpart.

Regulated material means liquids that are regulated by a referencing subpart.

Rim seal means a device attached to the rim of a floating roof deck that spans the annular space between the deck and the wall of the storage vessel. When a floating roof has only one such device, it is a primary seal; when there are two seals (one mounted above the other), the lower seal is the primary seal and the upper seal is the secondary seal.

Slotted guidepole means a guidepole or gaugepole that has slots or holes through the wall of the pole. The slots or holes allow the stored liquid to flow into the pole at all floating roof heights.

Storage vessel or *Tank* means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) which provide structural support and is designed to hold an accumulation of liquids or other materials.

Vapor-mounted seal means a rim seal designed not to be in contact with the stored liquid. Vapor-mounted seals may include, but are not limited to, resilient seals and flexible wiper seals.

§ 63.1062 Storage vessel control requirements.

(a) For each storage vessel to which this subpart applies, the owner or operator shall comply with one of the requirements listed in paragraphs (a)(1) through (a)(8) of this section.

(1) Operate and maintain an IFR.

(2) Operate and maintain an EFR.

(3) *Closed vent system and flare.* Operate and maintain a closed vent system and flare as specified in subpart SS of this part. Periods of planned routine maintenance of the flare during which the flare does not meet the specifications of subpart SS of this part shall not exceed 72 hours per year.

(4) *Closed vent system and control device.* Operate and maintain a closed vent system and control device as specified in paragraphs (a)(4)(i) and (a)(4)(ii) of this section and subpart SS of this part.

(i) The control device shall be designed and operated to reduce inlet emissions of regulated material.

(ii) Periods of planned routine maintenance of the control device shall not exceed 72 hours per year. The owner or operator shall report periods of planned routine maintenance as specified in subpart SS of this part.

(5) *Route to a process or fuel gas system.* Route the emissions to a process or fuel gas system as provided in subpart SS of this part.

(6) *Equivalent requirements.* Comply with an equivalent to the requirements in paragraph (a)(1) or (a)(2) of this section, as provided in § 63.1066.

(7) *Pressurized storage vessel.* Operate a pressurized storage vessel in accordance with the requirements specified in § 63.1064; or

(8) *Enclosure.* Operate and maintain the storage vessel inside an enclosure that is vented through a closed vent system to an enclosed combustion control device in accordance with the requirements specified in § 63.1065.

§ 63.1063 Floating roof requirements.

The owner or operator who elects to use a floating roof to comply with the requirements of § 63.1062 shall comply with the requirements in paragraphs (a) through (e) of this section.

(a) *Design requirements.*—(1) *Rim seals.*—

(i) *Internal floating roof.* An IFR shall be equipped with one of the devices

listed in paragraphs (a)(1)(i)(A) through (a)(1)(i)(C) of this section.

(A) A liquid-mounted seal.

(B) A mechanical shoe seal.

(C) Two seals mounted one above the other. The lower seal may be vapor-mounted.

(D) If the IFR is equipped with a vapor-mounted seal as of the proposal date for a referencing subpart, paragraphs (a)(1)(i)(A) through (a)(1)(i)(C) of this section do not apply until the next time the storage vessel is emptied and degassed, or 10 years after promulgation of the referencing subpart, whichever occurs first.

(ii) *External floating roof.* An EFR shall be quipped with one of the devices listed in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this section.

(A) A liquid-mounted seal and a secondary seal.

(B) A mechanical shoe seal and a secondary seal. The upper end of the shoe(s) shall extend a minimum of 61 centimeters (24 inches) above the stored liquid surface.

(C) If the EFR is equipped with a liquid-mounted seal or mechanical shoe seal, or a vapor-mounted seal and secondary seal, as of the proposal date for a referencing subpart, the seal options specified in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this section do not apply until the next time the storage vessel is emptied and degassed, or 10 years after the promulgation date of the referencing subpart, whichever occur first.

(2) *Deck Fittings.* Openings through the deck of the floating roof shall be equipped as described in paragraphs (a)(2)(i) through (a)(2)(viii) of this section.

(i) Each opening except those for automatic bleeder vents (vacuum breaker vents) and rim space vents shall have its lower edge below the surface of the stored liquid.

(ii) Each opening except those for automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, fixed roof support columns, sample wells, guidepoles, and deck drains shall be equipped with a deck cover.

(iii) Each automatic bleeder vent (vacuum breaker vent) and rim space vent shall be equipped with a gasket.

(iv) Each opening for a fixed roof support column shall be equipped with a flexible fabric sleeve seal or a deck cover.

(v) Each opening for a sample well or deck drain (that empties into the stored liquid) shall be equipped with a slit fabric seal or similar device that covers at least 90 percent of the opening.

(vi) Each cover on access hatches and gauge float wells shall be designed to be bolted or fastened when closed.

(vii) Each opening for an unslotted guidepole shall be equipped with the devices specified in paragraphs (a)(2)(vii)(A) and (a)(2)(vii)(B) of this section.

(A) A gasketed cap on the top of the guidepole which is closed at all times except when gauging the liquid level or taking liquid samples.

(B) The well shall be quipped with one of the devices specified in paragraphs (a)(2)(vii)(B)(*1*) and (a)(2)(vii)(B)(*2*) of this section.

(*1*) A flexible fabric sleeve seal.

(*2*) A deck cover with a pole wiper.

(viii) Each opening for a slotted guidepole shall be equipped wtih one of the devices specified in paragraphs (a)(2)(viii)(A) through (a)(2)(viii)(C) of this section.

(A) A flexible fabric sleeve seal and a pole float.

(B) A deck cover with a pole wiper, and a pole float.

(C) A deck cover with a pole wiper, and a pole sleeve.

(ix) If the floating roof does not meet the requirements listed in paragraphs (a)(2)(i) through (a)(2)(vii) of this section as of the proposal date of the referencing subpart, these requirements do not apply until the next time the vessel is emptied and degassed, or 10 years after the promulgation date of the referencing subpart, whichever occurs first.

(b) *Operating requirements.* (1) The floating roof shall float on the stored liquid surface at all times, except when the floating roof is supported by its leg supports.

(2) When the floating roof is supported by its leg supports, the process of filling or emptying the vessel shall be continuous and shall be accomplished as soon as practical, and the owner or operator shall maintain the record specified in § 63.1068(c).

(3) Each cover over an opening in the floating roof, except for automatic bleeder vents (vacuum breaker vents) and rim space vents, shall be closed at all times, except when the cover must be open for access.

(4) Each automatic bleeder vent (vacuum breaker vent) and rim space vent shall be closed at all times, except when required to be open to relieve excess pressure or vacuum, in accordance with the manufacturers design.

(c) *Inspection frequency requirements*—(1) *Internal floating roofs.* Internal floating roofs shall be inspected as specified in paragraph (d)(1) of this section before the initial filling of the storage vessel. Subsequent inspections shall be performed as specified in paragraph (c)(1)(i) or (c)(1)(ii) of this section.

(i) Internal floating roofs shall be inspected as specified in paragraphs (c)(1)(i)(A) and (c)(1)(i)(B) of this section.

(A) At least once per year the IFR shall be inspected as specified in paragraph (d)(2) of this section.

(B) Each time the storage vessel is emptied and degassed, or every 10 years, whichever occurs first, the IFR shall be inspected as specified in paragraph (d)(1) of this section.

(ii) Internal floating roofs with two rim seals shall be inspected as specified in paragraph (c)(1)(ii)(A) or (c)(1)(ii)(E) of this section.

(A) The internal floating roof shall be inspected as specified in paragraph (c)(1)(i) of this section.

(B) The internal floating roof shall be inspected as specified in paragraph (d)(1) of this section each time the storage vessel is emptied or degassed, or every 5 years, whichever occurs first.

(2) *External floating roofs.* External floating roofs shall be inspected as specified in paragraphs (c)(2)(i) through (c)(2)(iv) of this section.

(i) Within 90 days after the initial filling of the storage vessel, and at least every 5 years thereafter, the primary rim seal shall be inspected as specified in paragraph (d)(3) of this section.

(ii) Within 90 days after the initial filling of the storage vessel, and at least once per year thereafter, the secondary seal shall be inspected as specified in paragraph (d)(3) of this section.

(iii) Each time the storage vessel is emptied and degassed, or every 10 years, whichever occurs first, the EFR shall be inspected as specified in paragraph (d)(1) of this section.

(iv) If the owner or operator determines that it is unsafe to perform the floating roof inspections specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this section, the owner or operator shall comply with the requirements of paragraph (c)(2)(iv)(A) or (c)(2)(iv)(B) of this section.

(A) The inspections shall be performed no later than 30 days after the determination that the floating roof is unsafe.

(B) The storage vessel shall be removed from regulated material service no later than 75 days after the determination that the floating roof is unsafe.

(d) *Inspection procedure requirements.* Floating roof inspections shall be conducted as specified in paragraphs (d)(1) through (d)(3) of this section, as applicable. If a floating roof fails an inspection, the owner or

operator shall comply with the repair requirements of paragraph (e) of this section.

(1) Floating roof (IFR and EFR) inspections shall be conducted by visually inspecting the floating roof deck, deck fittings, and rim seals from within the storage vessel. The inspection may be performed entirely from the top side of the floating roof, as long as there is visual access to all deck components specified in paragraph (a) of this section. Any of the conditions described in paragraphs (d)(1)(i) through (d)(1)(v) of this section constitutes inspection failure.

(i) Regulated material on the floating roof.

(ii) Holes or tears in the primary or secondary seal (if one is present).

(iii) Floating roof deck, deck fittings, or rim seals that are not functioning as designed (as specified in paragraph (a) of this section).

(iv) Failure to comply with the operational requirements of paragraph (b) of this section.

(v) Gaps of more than 0.32 centimeters (⅛ inch) between any deck fitting gasket (required by paragraph (a) of this section) and any surface that it is intended to seal.

(2) Tank-top inspections of IFR's shall be conducted by visually inspecting the floating roof deck, deck fittings, and rim seal through openings in the fixed roof. Any of the conditions described in paragraphs (d)(1)(i) through (d)(1)(iv) of this section constitutes inspection failure. Identification of holes or tears in the rim seal is required only for the seal that is visible from the top of the storage vessel.

(3) Seal gap inspections for EFR's shall determine the presence and size of gaps between the rim seals and the wall of the storage vessel by the procedures specified in paragraph (d)(3)(i) of this section. Any exceedance of the gap requirements specified in paragraphs (d)(3)(ii) and (d)(3)(iii) of this section constitutes inspection failure.

(i) Rim seals shall be measured for gaps at one or more levels while the EFR is floating, as specified in paragraphs (d)(3)(i)(A) through (d)(3)(i)(F) of this section.

(A) the inspector shall hold a 0.32 centimeter (⅛ inch) diameter probe vertically against the inside of the storage vessel wall, just above the rim seal, and attempt to slide the probe down between the seal and the vessel wall. Each location where the probe passes freely (without forcing or binding against the seal) between the seal and the vessel wall constitutes a gap.

(B) The length of each gap shall be determined by inserting the probe into the gap (vertically) and sliding the probe along the vessel wall in each direction as far as it will travel freely without binding between the seal and the vessel wall. The circumferential length along which the probe can move freely is the gap length.

(C) The maximum width of each gap shall be determined by inserting probes of various diameters between the seal and the vessel wall. The smallest probe diameter should be 0.32 centimeter, and larger probes should have diameters in increments of 0.32 centimeter. The diameter of the largest probe that can be inserted freely anywhere along the length of the gap is the maximum gap width.

(D) The average width of each gap shall be determined by averaging the minimum gap width (0.32 centimeter) and the maximum gap width.

(E) The area of a gap is the product of the gap length and average gap width.

(F) The ratio of accumulated area of rim seal gaps to storage vessel diameter shall be determined by adding the area of each gap, and dividing the sum by the nominal diameter of the storage vessel. This ratio shall be determined separately for primary and secondary rim seals.

(ii) The ratio of seal gap area to vessel diameter for the primary seal shall not exceed 212 square centimeters per meter of vessel diameter (10 square inches per foot of vessel diameter), and the maximum gap width shall not exceed 3.81 centimeters (1.5 inches).

(iii) The ratio of seal gap area to vessel diameter for the secondary seal shall not exceed 21.2 square centimeters per meter (1 square inch per foot), and the maximum gap width shall not exceed 1.27 centimeters (0.5 inches).

(e) *Repair requirements.* Conditions causing inspection failures under paragraph (d) of this section shall be repaired as specified in paragraph (e)(1) or (e)(2) of this section.

(1) If the inspection is performed while the storage vessel is not storing regulated material, or is out of service and degassed, repairs shall be completed before the refilling of the storage vessel with regulated material.

(2) If the inspection is performed while the storage vessel is storing regulated material, repairs shall be completed or the vessel removed from regulated material service within 75 days.

§ 63.1064 Pressurized storage vessel requirements.

(a) The owner or operator who elects to control storage vessel air emissions by using a pressurized storage vessel shall meet the following requirements.

(1) The storage vessel shall be designed not to vent to the atmosphere as a result of compression of the vapor headspace in the storage vessel during filling of the storage vessel to its design capacity.

(2) All storage vessel openings shall be equipped with closure devices designed to operate with no detectable organic emissions as determined using the procedure specified in § 63.1067.

(3) Whenever a regulated material is in the storage vessel, the storage vessel shall be operated as a closed system that does not vent to the atmosphere except in the event that opening of a safety device, a defined in § 63.681, is required to avoid an unsafe condition.

(b) [Reserved]

§ 63.1065 Enclosure requirements.

(a) The owner or operator who elects to control air emissions by using an enclosure vented through a closed vent system to an enclosed combustion control device shall meet the requirements specified in paragraphs (a)(1) and (a)(2) of this section.

(1) The storage vessel shall be located inside an enclosure. The enclosure shall be designed and operated in accordance with the criteria for a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' under 40 CFR 52.741, Appendix B. The enclosure may have permanent or temporary openings to allow worker access; passage of material into our out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure. The owner or operator shall perform the verification procedure for the enclosure as specified in Section 5.0 to ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' initially when the enclosure is first installed and, thereafter, annually.

(2) The enclosure shall be vented through a closed vent system to an enclosed combustion control device that is designed and operated in accordance with the standards for either a vapor incinerator, boiler, or process heater specified in subpart SS of this part.

(b) [Reserved]

§ 63.1066 Alternative means of emission limitation.

(a) An alternate control device may be substituted for a control device specified in § 63.1063 if the alternate device has an emission factor less than or equal to the emission factor for the device specified in § 63.1063. Requests for the use of alternate devices shall be

made as specified in § 63.1069(b)(3). Emission factors for the devices specified in § 63.1063 are published in EPA Report No. AP–42, Complication of Air Pollutant Emission Factors.

(b) Tests to determine emission factors for an alternate device shall accurately simulate conditions under which the device will operate, such as wind, temperature, and barometric pressure. Test methods that can be used to perform the testing required in this paragraph include, but are not limited to, the methods listed in paragraphs (b)(1) through (b)(iii) of this section.

(i) American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 19, Section 3, Part A, Wind Tunnel Test Method for the Measurement of Deck-Fitting Loss Factors for External Floating-Roof Tanks.

(ii) API Manual of Petroleum Measurement Standards, Chapter 19, Section 3, part B, Air Concentration Test Method for the Measurement of Rim Seal Loss Factors for Floating-Roof Tanks.

(iii) API Manual of Petroleum Measurement Standards, Chapter 19, Section 3, Part E, Weight Loss Test Method for the Measurement of Deck-Fitting Loss Factors for Internal Floating-Roof Tanks.

(c) An alternate combination of control devices may be substituted for any combination of rim seal and deck fitting control devices specified in § 63.1063 if the alternate combination emits no more than the combination specified in § 63.1063. The emissions from an alternate combination of control devices shall be determined using AP–42 or as specified in paragraph (b) of this section. The emissions from a combination of control devices specified in § 63.1063 shall be determined using AP–42. Requests for the use of alternate devices shall be made as specified in § 63.1069(b)(3).

§ 63.1067 Procedure for determining no detectable emissions.

(a) Procedure for determining no detectable organic emissions for the purpose of complying with this subpart.

(1) The test shall be conducted in accordance with the procedures specified in Method 21 of 40 CFR part 60, appendix A. Each potential leak interface (i.e., a location where organic vapor leakage could occur) on the cover and associated closure devices shall be checked. Potential leak interfaces that are associated with covers and closure devices include, but are not limited to: the interface of the cover and its foundation mounting; the periphery of any opening on the cover and its associated closure device; and the sealing seat interface on a spring-loaded pressure-relief valve.

(2) The test shall be performed when the unit contains a material having an organic HAP concentration representative of the range of concentrations for the regulated materials expected to be managed in the unit. During the test, the cover and closure devices shall be secured in the closed position.

(3) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the organic constituents in the regulated material placed in the unit, not for each individual organic constituent.

(4) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(5) Calibration gases shall be as follows:

(i) Zero air (less than 10 parts per million by volume hydrocarbon in air); and

(ii) A mixture of methane in air at a concentration of approximately, but less than 10,000 parts per million by volume.

(6) The background level shall be determined according to the procedures in Method 21 of 40 CFR part 60 appendix A.

(7) Each potential leak interface shall be checked by traversing the instrument probe around the potential leak interface as close to the interface as possible, as described in Method 21. In the case when the configuration of the cover or closure device prevents a complete traverse of the interface, all accessible portions of the interface shall be sampled. In the case when the configuration of the closure devise presents any sampling at the interface and the device is equipped with an enclosed extension or horn (e.g., some pressure relief devices), the instrument probe inlet shall be placed at approximately the center of the exhaust area to the atmosphere.

(8) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 parts per million by volumes. If the difference is less than 500 parts per million by volume, then the potential leak interface is determined to operate with no detectable organic emissions.

(b) [Reserved]

§ 63.1068 Recordkeeping requirements.

The owner or operator shall keep records as specified in paragraphs (a) through (c) of this section for as long as regulated material is stored. Records required in paragraph (b) of this section shall be kept for at least 5 years. Records shall be readily accessible.

(a) *Vessel dimensions and capacity.* A record shall be kept of the dimensions of the storage vessel, an analysis of the capacity of the storage vessel, and an identification of the regulated material stored.

(b) *Inspection results.* Records of floating roof inspection results shall be kept as specified in paragraphs (b)(1) and (b)(2) of this section.

(1) If the floating roof passes inspection, a record shall be kept that includes the information specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section. If the floating roof fails inspection, a record shall be kept that includes the information specified in paragraphs (b)(1)(i) through (b)(1)(v) of this section.

(i) Identification of the storage vessel that was inspected.

(ii) The date of the inspection.

(iii) A description of all inspection failures.

(iv) A description of all repairs and the dates they were made.

(v) The date the storage vessel was removed from regulated material service, if applicable.

(2) A record shall be kept of EFR seal gap measurements, including the raw data obtained and any calculations performed.

(c) *Floating roof set on its legs.* The owner or operator shall maintain a record identifying the date when the floating roof was set on its legs and the date when the roof was refloated. The record shall also indicate whether this was a continuous operation.

§ 63.1069 Reporting requirements.

(a) *Notification of initial startup.* If the referencing subpart requires that a notification of initial startup be filed, then the content of the notification of initial startup shall include (at a minimum) the information specified in the referencing subpart and the information specified in paragraphs (a)(1) and (a)(2) of this section.

(1) The identification of each storage vessel, its capacity and the regulated material stored in the storage vessel.

(2) A statement of whether the owner or operator of the source can achieve compliance by the compliance date specified in referencing subpart.

(b) *Periodic reports.* Report the information specified in paragraphs (b)(1) through (b)(3) of this section, as

applicable, in the periodic report specified in the referencing subpart.

(1) *Notification of inspection.* To provide the Administrator the opportunity to have an observer present, the owner or operator shall notify the Administrator at least 15 days before an inspection. If a delegated State or local agency is notified, the owner or operator is not required to notify the Administrator. A delegated State or local agency may waive the requirement for notification of inspections.

(2) *Inspection results.* Within 30 days of a failed inspection, the owner or operator shall submit a copy of the inspection record (required in § 63.1068).

(3) *Requests for alternate devices.* The owner or operator requesting the use of an alternate control device shall submit a written application including emissions test results and analysis demonstrating that the alternate device has an emission factor that is less than or equal to the device specified in § 63.1063.

6. Part 63 is amended by adding subpart YY to read as follows:

Subpart YY—National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards

Sec.

63.1100 Applicability.
63.1101 Definitions.
63.1102 Compliance schedule.
63.1103 Source category-specific applicability, definitions, and requirements.
63.1104 Process vents from continuous unit operations: applicability determination procedures and methods.
63.1105 Process vents from batch unit operations: applicability determination procedures and methods.
63.1106 Wastewater treatment systems: applicability determination procedures and methods.
63.1107 Equipment leaks: applicability determination procedures and methods.
63.1108 Compliance with standards and operation and maintenance requirements.
63.1109 Recordkeeping requirements.
63.1110 Reporting requirements.
63.1111 Startup, shutdown, and malfunction.
63.1112 Extension of compliance, and performance test, monitoring, recordkeeping, and reporting waivers and alternatives.
63.1113 Procedures for approval of alternative means of emission limitation.

§ 63.1100 Applicability

(a) This subpart applies to source categories and affected sources specified in § 63.1103(a) through (d) of this subpart. The affected emission points, by source category, are summarized in table 1. This table also delineates the section and paragraph of the rule that directs an owner or operator of an affected source to source category-specific control, monitoring, recordkeeping, and reporting requirements.

TABLE 1 TO § 63.1100.—SOURCE CATEGORY MACT [a] APPLICABILITY

Source category	Storage vessels	Process vents	Transfer racks	Equipment leaks	Waste-water treatment system units	Other	Source category MACT requirements
1. Acetal Resins Production	Yes	Yes	No	Yes	Yes	No	§ 63.1103(a)
2. Acrylic and Modacrylic Fibers Production	Yes	Yes	No	Yes	Yes	Yes [b]	§ 63.1103(b)
3. Hydrogen Fluoride Production	Yes	Yes	Yes	Yes	No	Yes [c]	§ 63.1103(c)
4. Polycarbonates Production	Yes	Yes	No	Yes	Yes	No	§ 63.1103(d)

[a] Maximum achievable control technology.
[b] Fiber spinning lines using spinning solution or suspension containing acrylonitrile.
[c] Kilns used to react calcium fluoride with sulfuric acid.

(b) The provisions of subpart A of this part (General Provisions), §§ 63.1 through 63.5, and §§ 63.12 through 63.15 apply to owners or operators of affected sources subject to this subpart.

(c) The provisions of this subpart do not apply to research and development facilities, consistent with section 112(b)(7) of the Act.

(d) *Primary product determination and applicability.* The primary product of a process unit shall be determined according to the procedures specified in paragraphs (d)(1) and (d)(2). Paragraphs (d)(3) and (d)(4) of this section discuss compliance for those process units operated as flexible operation units, as specified in paragraph (d)(2) of this section.

(1) If a process unit only manufactures one product, then that product shall represent the primary product of the process unit.

(2) If a process unit is designed and operated as a flexible operation unit, the primary product shall be determined as specified in paragraphs (d)(2)(i) or (d)(2)(ii) of this section based on the anticipated operations for the 5 years following the promulgation date for existing affected sources and for the first 5 years after initial startup for new affected sources.

(i) If the flexible operation unit will manufacture one product for the greatest operating time over the five year period, then that product shall represent the primary product of the flexible operation unit.

(ii) If the flexible operation unit will manufacture multiple products equally based on operating time, then the product with the greatest production on a mass basis over the five year period shall represent the primary product of the flexible operation unit.

(3) Once the primary product of a process unit has been determined to be a product produced by a source category subject to this subpart, the owner or operator of the affected source shall comply with the standards for the primary product production process unit.

(4) The determination of the primary product for a process unit, to include the determination of applicability of this subpart to process units that are designed and operated as flexible operation units, shall be reported in the Notification of Compliance Status Report required by § 63.1110 when the primary product is determined to be a product produced by a source category subject to requirements under this subpart. The Notification of Compliance Status shall include the information specified in either paragraph (d)(4)(i) or (d)(4)(ii) of this section. If the primary product is determined to be something other than a product produced by a source category subject to requirements under this subpart, the owner or operator shall retain information, data, and analyses used to document the basis for the determination that the primary product is not produced by a source category subject to requirements under this subpart.

(i) If the process unit manufactures only one product subject to requirements under this subpart, identification of that product.

(ii) If the process unit is designed and operated as a flexible operation unit, the information specified in paragraphs (d)(4)(ii)(A) and (d)(4)(ii)(B) of this section, as appropriate.

(A) Identification of the primary product.

(B) Information concerning operating time and/or production mass for each product that was used to make the determination of the primary product under paragraph (d)(2)(i) or (d)(2)(ii) of this section.

(iii) Demonstrate that the parameter monitoring levels established for the primary product are also appropriate for those periods when products other than the primary product are being produced. Material demonstrating this finding shall be submitted in the Notification of Compliance Status Report required by § 63.1110.

(e) *Storage vessel ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (e)(1) through (e)(8) of this section to determine to which process unit a storage vessel shall belong.

(1) If a storage vessel is already subject to another subpart of 40 CFR part 63 on the date of promulgation for an affected source, that storage vessel shall belong to the process unit subject to the other subpart.

(2) If a storage vessel is dedicated to a single process unit, the storage vessel shall belong to that process unit.

(3) If a storage vessel is shared among process units, then the storage vessel shall belong to that process unit located on the same plant site as the storage vessel that has the greatest input into or output from the storage vessel (i.e., the process unit has the predominant use of the storage vessel).

(4) If predominant use cannot be determined for a storage vessel that is shared among process units and if only one of those process units is subject to this subpart, the storage vessel shall belong to that process unit.

(5) If predominant use cannot be determined for a storage vessel that is shared among process units and if more than one of the process units are subject to standards under this subpart that have different primary products, then the owner or operator shall assign the storage vessel to any one of the process units sharing the storage vessel.

(6) If the predominant use of a storage vessel varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding the date of promulgation of standards for an affected source under this subpart or based on the expected utilization for the 5 years following promulgation date of standards for an affected source under this subpart for existing affected sources, whichever is more representative of the expected operations for that storage vessel, and based on the expected utilization for the 5 years after initial startup for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status Report required by § 63.1110. If the predominant use changes, the redetermination of predominant use shall be reported in the next Periodic Report.

(7) If the storage vessel begins receiving material from (or sending material to) another process unit; ceases to receive material from (or send material to) a process unit; or if the applicability of this subpart to a storage vessel has been determined according to the provisions of paragraphs (e)(1) through (e)(6) of this section and there is a significant change in the use of the storage vessel that could reasonably change the predominant use, the owner or operator shall reevaluate the applicability of this subpart to the storage vessel.

(8) Where a storage vessel is located at a major source that includes one or more process units that place material into, or receive materials from the storage vessel, but the storage vessel is located in a tank farm, the applicability of this subpart shall be determined according to the provisions in paragraphs (e)(8)(i) through (e)(8)(iii) of this section.

(i) The storage vessel may only be assigned to a process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw materials, as appropriate). With respect to any process unit, an intervening storage vessel means a storage vessel connected by hard-piping to the process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is only one process unit at a major source subject to the requirements of this subpart with respect to a storage vessel, the storage vessel shall be assigned to that process unit.

(iii) If there are two or more process units at the major source that meet the criteria of paragraph (e)(8)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those process units according to the provisions of paragraph (e)(6) of this section. The predominant use shall be determined among only those process units that meet the criteria of paragraph (e)(8)(i) of this section.

(f) *Recovery operation equipment ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (f)(1) through (f)(7) of this section to determine to which process unit recovery operation equipment shall belong.

(1) If recovery operation equipment is already subject to another subpart of 40 CFR part 63 on the date standards are promulgated for an affected source, that recovery operation equipment shall belong to the process unit subject to the other subpart.

(2) If recovery operation equipment is used exclusively by a single process unit, the recovery operation shall belong to that process unit.

(3) If recovery operation equipment is shared among process units, then the recovery operation equipment shall belong to that process unit located on the same plant site as the recovery operation equipment that has the greatest input into or output from the recovery operation equipment (i.e., that process unit has the predominant use of the recovery operation equipment).

(4) If predominant use cannot be determined for recovery operation equipment that is shared among process units and if one of those process units is a process unit subject to this subpart, the recovery operation equipment shall belong to the process unit subject to this subpart.

(5) If predominant use cannot be determined for recovery operation equipment that is shared among process units and if more than one of the process units are process units that have different primary products and that are subject to this subpart, then the owner or operator shall assign the recovery operation equipment to any one of those process units.

(6) If the predominant use of recovery operation equipment varies from year to year, then the predominant use shall be determined based on the utilization that occurred during the year preceding the promulgation date of standards for an affected source under this subpart or based on the expected utilization for the 5 years following the promulgation date for standards for an affected source under this subpart for existing affected sources, whichever is the more representative of the expected operations for the recovery operations equipment, and based on the expected utilization for the first 5 years after

initial startup for new affected sources. This determination shall be reported in the Notification of Compliance Status Report required by § 63.1110. If the predominant use changes, the redetermination of predominant use shall be reported in the next Periodic Report.

(7) If there is an unexpected change in the utilization of recovery operation equipment that could reasonably change the predominant use, the owner or operator shall redetermine to which process unit the recovery operation belongs by reperforming the procedures specified in paragraphs (f)(2) through (f)(6) of this section.

(g) *Overlap with other regulations.* (1) *Overlap of subpart YY with other regulations for storage vessels.* (i) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a storage vessel that is part of an existing source that is subject to the provisions of 40 CFR part 63, subpart WW (National Emission Standards for Storage Vessels—Control Level 2) (if referenced under this subpart) under this subpart and the storage vessel provisions of 40 CFR part 63, subpart G (the hazardous organic national emission standards for hazardous air pollutants (the HON)) is in compliance with the storage vessel requirements of subpart WW of this part if it complies with the requirements of subpart WW or the storage vessel requirements of subpart G of this part.

(ii) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a storage vessel that is part of an existing source that is subject to the provisions of 40 CFR part 63, subpart WW (National Emission Standards for Storage Vessels—Control Level 2) (if referenced under this subpart) under this subpart and the storage vessel provisions of 40 CFR part 60, subpart Ka or Kb is required only to comply with the storage vessel control requirements of subpart WW of this part.

(2) *Overlap of subpart YY with other regulations for process vents.* After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a process vent that is part of an existing source that is subject to the requirements of 40 CFR part 63, subpart SS (National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or Process) under this subpart and the process vent requirements of 40 CFR part 63, subpart G (the HON) is in compliance with subpart SS if it complies with the provisions of subpart SS of this subpart or the process vent closed-vent system, control device, recovery, and routing to a fuel gas system or process requirements of subpart G of this part.

(3) *Overlap of subpart YY with other regulations for transfer racks.* After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, a transfer rack that is part of an existing source that is subject to the provisions of 40 CFR part 63, subpart SS (National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or Process) under this subpart and the transfer rack requirements of 40 CFR part 63, subpart G (the HON) is in compliance with subpart SS of this part if it complies with the provisions of subpart SS of this part or the transfer rack closed-vent system, control device, recovery, and routing to a fuel gas system or process requirements of subpart G of this part.

(4) *Overlap of subpart YY with other regulations for equipment leaks.* (i) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, equipment that is part of an existing source that is subject to the equipment leak control requirements of 40 CFR part 63, subpart TT (National Emission Standards for Equipment Leaks—Control Level 1) under this subpart and 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V is required only to comply with subpart TT of this part.

(ii) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, equipment that is part of an existing source that is subject to the equipment leak control requirements of 40 CFR part 63, subpart UU (National Emission Standards for Equipment Leaks—Control Level 2) under this subpart and 40 CFR part 63, subpart H (the HON) is in compliance with the equipment leak requirements of this subpart if it complies with the equipment leak provisions of subpart UU or subpart H of this part.

(5) *Overlap of subpart YY with other regulations for wastewater treatment system units.* (i) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, wastewater streams that are subject to control requirements in the Hazardous Organic NESHAP (40 CFR part 63, subpart G) and this subpart is required to comply with both rules.

(ii) After the compliance dates specified in § 63.1102 for an affected source subject to this subpart, wastewater streams that are subject to control requirements in the Benzene Waste NESHAP (40 CFR part 61, subpart FF) and this subpart is required to comply with both rules.

§ 63.1101 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in this section.

Annual average concentration, as used in the wastewater provisions, means the flow-weighted annual average concentration, as determined according to the procedures specified in § 63.1106.

Annual average flow rate, as used in the wastewater provisions, means the annual average flow rate, as determined according to the procedures specified in § 63.1106.

Batch cycle refers to manufacturing a product from start to finish in a batch unit operation.

Batch emission episode means a discrete venting episode that may be associated with a single unit operation. A unit operation may have more than one batch emission episode per batch cycle. For example, a displacement of vapor resulting from the charging of a vessel with HAP will result in a discrete emission episode. If the vessel is then heated, there may also be another discrete emission episode resulting from the expulsion of expanded vapor. Both emission episodes may occur during the same batch cycle in the same vessel or unit operation. There are possibly other emission episodes that may occur from the vessel or other process equipment, depending on process operations.

Batch unit operation means a unit operation involving intermittent or discontinuous feed into equipment, and, in general, involves the emptying of equipment after the batch cycle ceases and prior to beginning a new batch cycle. Mass, temperature, concentration and other properties of the process may vary with time. Addition of raw material and withdrawal of product do not simultaneously occur in a batch unit operation.

Bottoms receiver means a tank that collects distillation bottoms before the stream is sent for storage or for further downstream processing.

By compound means by individual stream components, not carbon equivalents.

Capacity means the volume of liquid that is capable of being stored in a storage vessel, based on the vessel's diameter and internal shell height.

Closed vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device. Closed vent system does

not include the vapor collection system that is part of any tank truck or railcar.

Continuous parameter monitoring system or *CPMS* means the total equipment that may be required to meet the data acquisition and availability requirements of this part, used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

Continuous unit operation means a unit operation where the inputs and outputs flow continuously. Continuous unit operations typically approach steady-state conditions. Continuous unit operations typically involve the simultaneous addition of raw material and withdrawal of the product.

Control device means any combustion device, recovery device, recapture device, or any combination of these devices used to comply with this subpart. Such equipment or devices include, but are not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents from continuous unit operations, recapture devices and combustion devices are considered control devices but recovery devices are not considered control devices. For process vents from batch unit operations, recapture devices, recovery devices, and combustion devices are considered control devices except for process condensers. Primary condensers on stream strippers or fuel gas systems are not considered control devices.

Day means a calendar day.

Emission point means an individual process vent, storage vessel, transfer rack, wastewater stream, kiln, fiber spinning line, equipment leak, or other point where a gaseous stream is released.

Equipment, means each of the following that is subject to control under this subpart: pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system; and any control device or system used to comply with this subpart.

Equivalent method means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Administrator's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

Flexible operation unit means a process unit that manufactures different chemical products periodically by alternating raw materials or operating conditions.

Halogens and hydrogen halides means hydrogen chloride (HCl), chlorine (Cl_2), hydrogen bromide (HBr), bromine (Br_2), and hydrogen fluoride (HF).

Initial start-up means, for new sources, the first time the source begins production. For additions or changes not defined as a new source by this subpart, initial startup means the first time additional or changed equipment is put into operation. Initial startup does not include operation solely for testing equipment. Initial startup does not include subsequent startup (as defined in this section) of process units following malfunctions or process unit shutdowns. Except for equipment leaks, initial startup also does not include subsequent startups (as defined in this section) of process units following changes in product for flexible operation units or following recharging of equipment in batch unit operations.

Low throughput transfer rack means those transfer racks that transfer less than a total of 11.8 million liters per year of liquid containing regulated HAP.

Maximum true vapor pressure means the equilibrium partial pressure exerted by the total organic HAP's in the stored or transferred liquid at the temperature equal to the highest calendar-month average of the liquid storage or transfer temperature for liquids stored or transferred above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored or transferred at the ambient temperature, as determined:

(1) In accordance with methods described in American Petroleum Institute Publication 2517, Evaporation Loss From External Floating-Roof Tanks (incorporated by reference as specified in § 63.14 of subpart A of this part); or

(2) As obtained from standard reference texts; or

(3) As determined by the American Society for Testing and Materials Method D2879–83 (incorporated by reference as specified in § 63.14 of subpart A of this part); or

(4) Any other method approved by the Administrator.

On-site means, with respect to records required to be maintained by this subpart, a location within a plant site that encompasses the affected source. On-site includes, but is not limited to, the affected source to which the records pertain, or central files elsewhere at the plant site.

Organic hazardous air pollutant or *organic HAP* means any organic chemicals that are also HAP.

Permitting authority means one of the following:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661) and part 71 of this chapter.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Process condenser means a condenser whose primary purpose is to recover material as an integral part of a process. The condenser must support a vapor-to-liquid phase change for periods of source equipment operation that are above the boiling or bubble point of substance(s). Examples of process condensers include distillation condensers, reflux condensers, process condensers in line prior to the vacuum source, and process condensers used in stripping or flashing operations.

Process unit means the equipment assembled and connected by pipes or ducts to process raw and/or intermediate materials and to manufacture an intended product. A process unit includes more than one unit operation. A process unit includes, but is not limited to, process vents, storage vessels, and the equipment (i.e., pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, surge control vessels, bottoms receivers, and control devices or systems.

Process unit shutdown means a work practice or operational procedure that stops production from a process unit, or part of a process unit during which it is technically feasible to clear process material from a process unit, or part of a process unit, consistent with safety constraints and during which repairs can be effected. The following are not considered process unit shutdowns:

(1) An unscheduled work practice or operational procedure that stops production from a process unit, or part of a process unit, for less than 24 hours.

(2) An unscheduled work practice or operational procedure that would stop production from a process unit, or part of a process unit, for a shorter period of time than would be required to clear the process unit, or part of the process unit, of materials and start up the unit, and

would result in greater emissions than delay of repair of leaking components until the next scheduled process unit shutdown.

(3) The use of spare equipment and technically feasible bypassing of equipment without stopping production.

Process vent means a gas stream that is continuously discharged during operation of the unit within a manufacturing process unit that meets the applicability criteria of this subpart. Process vents include gas streams that are either discharged directly to the atmosphere or are discharged to the atmosphere after diversion through a product recovery device. Process vents exclude relief valve discharges and leaks from equipment regulated under this subpart.

Process wastewater means wastewater which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. Examples are product tank drawdown or feed tank drawdown; water formed during a chemical reaction or used as a reactant; water used to wash impurities from organic products or reactants; water used to cool or quench organic vapor streams through direct contact; and condensed steam from jet ejector systems pulling vacuum on vessels containing organics.

Recapture device means an individual unit of equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse, or sale. For example, a recapture device may recover chemicals primarily for disposal. Recapture devices include, but are not limited to, absorbers, carbon adsorbers, and condensers. For purposes of the monitoring, recordkeeping, and reporting requirements of this subpart, recapture devices are considered recovery devices.

Recovery device means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (i.e., net positive heating value), use, reuse, or for sale for fuel value, or reuse. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units. For purposes of the monitoring, recordkeeping, and reporting requirements of this subpart, recapture devices are considered recovery devices.

Storage vessel or *Tank*, for the purposes of this subpart, means a stationary unit that is constructed primarily of nonearthen materials (such as wood, concrete, steel, fiberglass, or plastic) that provide structural support and is designed to hold an accumulation of liquids or other materials. Storage vessel does not include:

(1) Vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) Bottoms receiver tanks;

(3) Surge control vessels; or

(4) Wastewater storage tanks.

Surge control vessel means a feed drum, recycle drum, or intermediate vessel. Surge control vessels are used within a process unit (as defined in this subpart) when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

Total organic compounds or *TOC* means those compounds, excluding methane and ethane, measured according to the procedures of Method 18 or Method 25A, 40 CFR part 60, appendix A.

Total resource effectiveness index value or *TRE index value* means a measure of the supplemental total resource requirement per unit reduction of organic HAP associated with a process vent stream, based on vent stream flow rate, emission rate of organic HAP, net heating value, and corrosion properties (whether or not the vent stream contains halogenated compounds), as quantified by the equations given under § 63.1104(e).

Transfer rack means a single system used to fill bulk cargo tanks mounted on or in a truck, railcar, or marine vessel. A transfer rack includes all loading arms, pumps, meters, shutoff valves, relief valves, and other piping and equipment necessary for the transfer operation. Transfer equipment and operations that are physically separate (i.e., do not share common piping, valves, and other equipment) are considered to be separate transfer racks.

Unit operation means distinct equipment used in processing, among other things, to prepare reactants, facilitate reactions, separate and purify products, and recycle materials. Equipment used for these purposes includes, but is not limited to, reactors, distillation columns, extraction columns, absorbers, decanters, dryers, condensers, and filtration equipment.

Vapor balancing system means a piping system that is designed to collect organic HAP vapors displaced from tank trucks or railcars during loading; and to route the collected organic HAP vapors to the storage vessel from which the liquid being loaded originated, or to compress collected organic HAP vapors and commingle with the raw feed of a production process unit.

Wastewater treatment system unit means an individual storage vessel, surface impoundment, container, oil-water or organic-water separator, or transfer system used at a plant site to manage process wastewater associated with a source category subject to this subpart.

§ 63.1102 Compliance schedule.

(a) Affected sources, as defined in § 63.1103(a)(1)(i) for acetyl resins production; § 63.1103(b)(1)(i) for acrylic and modacrylic fiber production; § 63.1103(c)(1)(i) for hydrogen fluoride production; or § 63.1103(d)(1)(i) for polycarbonate production, shall comply with the appropriate provisions of this subpart and the subparts referenced by this subpart according to the schedule described in paragraph (a)(1) or (a)(2) of this section, as appropriate.

(1) *Compliance dates for new and reconstructed sources.*

(i) The owner or operator of a new or reconstructed affected source for which construction or reconstruction commences after October 14, 1998 that has an initial startup before the effective date of standards for an acetal resins, acrylic and modacrylic fiber, hydrogen fluoride, and polycarbonate production affected source under this subpart shall comply with this subpart no later than the effective date of standards for the affected source.

(ii) The owner or operator of a new or reconstructed acetal resins, acrylic and modacrylic fiber, hydrogen fluoride, and polycarbonate production affected source that has an initial startup after the effective date of standards for the affected source shall comply with this subpart upon startup of the source.

(iii) The owner or operator of an acetal resins, acrylic and modacrylic fiber, hydrogen fluoride, and polycarbonate production affected source for which construction or reconstruction is commenced after October 14, 1998 but before the effective date of standards for the affected source under this subpart shall comply with this subpart no later than the date 3 years after the effective date if:

(A) The promulgated standard is more stringent than the proposed standard;

(B) The owner or operator complies with this subpart as proposed during the 3-year period immediately after the effective date of standards for an acetal resins, acrylic and modacrylic fiber, hydrogen fluoride, and polycarbonate production affected source.

(iv) The owner or operator of an acetal resins, acrylic and modacrylic fiber, hydrogen fluoride, and polycarbonate

production affected source for which construction or reconstruction commenced after October 14, 1998 but before the proposal date of a relevant standard established pursuant to section 112(f) shall comply with the emission standard under section 112(f) not later than the date 10 years after the date construction or reconstruction is commenced, except that, if the section 112(f) standard is promulgated more than 10 years after construction or reconstruction is commenced, the owner or operator shall comply with this subpart as provided in paragraphs (a)(2)(i) and (a)(2)(ii) of this section.

(2) *Compliance dates for existing sources.*

(i) The owner or operator of an existing acetal resins, acrylic and modacrylic fiber, hydrogen fluoride, and polycarbonate production affected source shall comply with the requirements of this subpart within 3 years after the effective date of standards for the affected source.

(ii) The owner or operator of an acetal resins, acrylic and modacrylic fiber, hydrogen fluoride, and polycarbonate production area source that increases its emissions of (or its potential to emit) hazardous air pollutants such that the source becomes a major source shall be subject to the relevant standards for new sources under this subpart. Such sources shall comply with the relevant standard upon startup.

(b) [Reserved]

§ 63.1103 Source category-specific applicability, definitions, and requirements.

(a) *Acetal resins production applicability, definitions, and requirements.*—(1) *Applicability.*—(i) *Affected source.* For the acetal resins production source category (as defined in paragraph (a)(2) of this section), the affected source shall comprise all emission points, in combination, listed in paragraphs (a)(1)(i)(A) through (a)(1)(i)(D) of this section, that are associated with an acetal resins production process unit located at a major source, as defined in section 112(a) of the Clean Air Act (Act).

(A) All storage vessels that store liquids containing HAP.

(B) All process vents from continuous unit operations (front end process vents and back end process vents).

(C) All wastewater treatment system units.

(D) Equipment (as defined in § 63.1101 of this subpart) that contains or contacts HAP.

(ii) The compliance schedule for affected sources as defined in paragraph (a)(1)(i) of this section is specified in § 63.1102(a).

(2) *Definitions.*

Acetal resins production means the production of homopolymers and/or copolymers of alternating oxymethylene units. Acetal resins are also known as polyoxymethylenes, polyacetals, and aldehyde resins. Acetal resins are generally produced by polymerizing formaldehyde (HCHO) with the methylene functional group (CH2) and are characterized by repeating oxymethylene units (CH2O) in the polymer backbone.

Back end process vent means any process vent from a continuous unit operation that is not a front end process vent up to the final separation of raw materials and by-products from the stabilized polymer.

Front end process vent means any process vent from a continuous unit operation involved in the purification of formaldehyde feedstock for use in the acetal homopolymer process. All front end process vents are restricted to those vents that occur prior to the polymer reactor.

(3) *Requirements.* Table 1 specifies the acetal resins production standards applicability for existing and new sources. Applicability determination procedures and methods are specified in §§ 63.1104 through 63.1107. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Procedures for approval of alternative means of emission limitations are specified in § 63.1113.

TABLE 1 TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACETAL RESINS PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
1. a storage vessel with: a size capacity > 34 cubic meters	the maximum true vapor pressure of organic HAP > 17.1 kilopascals (for existing sources) or > 11.7 kilopascals (for new sources)	reduce emissions of organic HAP by 95 weight-percent, or reduce TOC to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to a control device meeting the requirements specified in 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(a) of this part; or route emissions to a fuel gas system meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(a) of this part or comply with the requirements of 40 CFR subpart WW (national emission standards for storage vessels (control level 2)) of this part.
2. a front end process vent from continuous unit operations		reduce emissions of organic HAP by using a flare or reduce emission of organic HAP by 60 weight-percent, or reduce TOC to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part.

TABLE 1 TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACETAL RESINS PRODUCTION EXISTING OR NEW AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
3. a back end process vent from continuous unit operations	the vent stream has a a TRE [a] ≤ 1.0	reduce emissions of organic HAP by using a flare or reduce emissions of organic HAP by 98 weight-percent, or reduce TOC to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part, or achieve and maintain a TRE greater than 1.0.
4. a back end process vent from continuous unit operations	1.0 ≤ TRE [a] ≤ 4.0	monitor and keep records of equipment operating parameters specified to be monitored under 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), §§ 63.990(c)(absorber monitoring), 63.991(c) (condenser monitoring), 63.992(c) (carbon adsorber monitoring), or 63.995(c) (other noncombustion systems used as a control device monitoring) of this part.
5. equipment as defined under § 63.1101	the equipment contains or contacts ≥ 10 weight-percent HAP,[b] and operates ≥ 300 hours per year	comply with the requirements of 40 CFR subpart TT (national emission standards for equipment leaks (control level 1)) or UU (national emission standards for equipment leaks (control level 2)) of this part.
6. a wastewater treatment unit	the wastewater stream has an annual average HAP concentration ≥ 10,000 parts per million [c] by weight at any flow rate, or the wastewater stream has an annual average HAP concentration ≥ 1,000 parts per million by weight,[c] and an annual average flowrate ≥ 10 liters per minute [d]	comply with the requirements of 40 CFR subparts OO, VV, QQ, and RR (national emission standards for organic wastewater treatment facilities) of this part.

[a] The TRE is determined according to the procedures specified in § 63.1104(j).
[b] The weight-percent HAP is determined for equipment according to procedures specified in § 63.1107.
[c] The annual average wastewater organic HAP concentration is determined according to the procedures specified in § 63.1106(a) through (c).
[d] The annual wastewater average flowrate is determined according to procedures specified in § 63.1106(d).

(b) *Acrylic and modacrylic fiber production applicability, definitions, and requirements.*—(1) *Applicability.*—(i) *Affected source.* For the acrylic fibers and modacrylic fibers production (as defined in paragraph (b)(2) of this section) source category, the affected source shall comprise all emission points, in combination, listed in paragraphs (b)(1)(i)(A) through (b)(1)(i)(E) of this section, that are associated with a suspension or solution polymerization process unit that produces acrylic and modacrylic fiber located at a major source as defined in section 112(a) of the Act.

(A) All storage vessels that store liquid containing acrylonitrile or HAP.

(B) All process vents from continuous unit operations.

(C) All wastewater treatment system units.

(D) Equipment (as defined in § 63.1101 of this subpart) that contains or contacts acrylonitrile or HAP.

(E) All acrylic and modacrylic fiber spinning lines using a spinning solution or suspension having organic acrylonitrile or HAP.

For the purpose of implementing this paragraph, a spinning line includes the spinning solution filters, spin bath, and the equipment used downstream of the spin bath to wash, dry, or draw the spun fiber.

(ii) The compliance schedule, for affected sources as defined in paragraph (b)(1)(i) of this section, is specified in § 63.1102(a).

(2) *Definitions.*

Acrylic fiber means a manufactured synthetic fiber in which the fiber-forming substance is any long-chain synthetic fiber in which the fiber-forming substance is any long-chain synthetic polymer composed of at least 85 percent by weight of acrylonitrile units.

Acrylic and modacrylic fibers production means the production of either of the following synthetic fibers composed of acrylonitrile units:

1. Acrylic fiber.
2. Modacrylic fiber.

Fiber spinning line means the group of equipment and process vents associated with acrylic or modacrylic fiber spinning operations. The fiber spinning line includes (as applicable to the type of spinning process used) the blending and dissolving tanks, spinning solution filters, wet spinning units, spin bath tanks, and the equipment used downstream of the spin bath to wash, dry, or draw the spun fiber.

Modacrylic fiber means a manufactured synthetic fiber in which the fiber-forming substance is any long-

chain synthetic polymer composed of at least 35 percent by weight of acrylonitrile units but less than 85 percent by weight of acrylonitrile units.

Solution polymerization means a polymerization process where polymer formed in the reactor is soluble in the spinning solvent present in the reactor.

Suspension polymerization means a polymerization process where insoluble beads of polymer are formed in a suspension reactor.

(3) *Requirements.* An owner or operator of an affected source must comply with the requirements of paragraph (b)(3)(i) or (b)(3)(ii) of this section.

(i) Table 3a specifies the acrylic and modacrylic fiber production source category control requirement applicability for both existing and new sources. Applicability determination procedures and methods are specified in §§ 63.1104 through 63.1107. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Procedures for approval of alternative means of emission limitations are specified in § 63.1113. The owner or operator must control HAP emissions from the each affected source emission point by meeting the applicable requirements specified in table 3a of this section.

TABLE 2 TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACRYLIC AND MODACRYLIC FIBER PRODUCTION EXISTING OR NEW AFFECTED SOURCE AND AM COMPLYING WITH PARAGRAPH (B)(3)(I) OF THIS SECTION?

If you own or operate. . .	And if. . .	Then you must. . .
1. a storage vessel	the stored material is acrylonitrile	reduce emissions of acrylonitrile by 98 weight-percent, or reduce TOC to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to a control device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(a) of this part, or 95 weight-percent or greater by venting through a closed vent system to a recovery device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(a) of this part; or comply with the requirements of 40 CFR part 63 subpart WW (national emission standards for storage vessels (control level 2)) of this part.
2. a process vent from continuous unit operations (halogenated)	the vent steam has a mass emission rate of halogen atoms contained in organic compounds ≥ 0.45 kilograms per hour [a] and an acrylonitrile concentration ≥ 50 parts per million by volume [b] and an average flow rate ≥ 0.005 cubic meters per minute	reduce emissions of acrylonitrile or TOC as specified for nonhalogenated process vents from continuous unit operations (other than by using a flare) and by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part that reduces hydrogen halides and halogens by 99 weight-percent or to less than 0.45 kilograms per year, whichever is less stringent; or reduce the process vent halogen atom mass emission rate to less than 0.45 kilograms per hour by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part and then complying with the requirements specified for process vents from continuous unit operations (nonhalogenated).
3. a process vent from continuous unit operations (nonhalogenated)	the vent steam has a mass emission rate of halogen atoms contained in organic compounds < 0.45 kilograms per hour [a], and an acrylonitrile concentration ≥ 50 parts per million by volume [b] and an average flow rate ≥ 0.005 cubic meters per minute	reduce emissions of acrylonitrile by using a flare or reduce emissions of acrylonitrile by 98 weight-percent, or reduce TOC to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part.

TABLE 2 TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACRYLIC AND MODACRYLIC FIBER PRODUCTION EXISTING OR NEW AFFECTED SOURCE AND AM COMPLYING WITH PARAGRAPH (B)(3)(I) OF THIS SECTION?—Continued

If you own or operate. . .	And if. . .	Then you must. . .
4. a wastewater treatment unit	the wastewater stream has an annual average acrylonitrile concentration ≥ 10,000 parts per million by weight [c] or the wastewater stream has an annual average HAP concentration ≥ 1,000 parts per million by weight [c], and an annual average flowrate ≥ 10 liters per minute [d]	comply with the requirements of 40 CFR subparts OO, VV, QQ, and RR (national emission standards for organic wastewater treatment facilities) of this part.
5. a fiber spinning line	the lines use a spinning solution or spin dope with an acrylonitrile concentration > 100 parts per million [c] by weight	reduce acrylonitrile emissions to greater than or equal to 85 weight-percent by enclosing the spinning and washing areas of the spinning line (as specified in paragraph (b)(4) of this section) by using a flare meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part; or by venting emissions through a closed vent system and using any combination of control devices meeting the requirements of 40 CFR subpart SS of this part.
6. equipment as defined under § 63.1101	it contains or contacts ≥ 10 weight-percent acrylonitrile [e], and operates ≥ 300 hours per year	comply with the requirements of 40 CFR subpart TT (national emission standards for equipment leaks (control level 1)) or UU (national emission standards for equipment leaks (control level 2)) of this part.

[a] The mass emission rate of halogen atoms contained in organic compounds is determined according to the procedures specified in § 63.1104(i).
[b] The percent by weight organic HAP is determined according to the procedures specified in § 63.1107.
[c] The annual average wastewater organic HAP concentration is determined according to the procedures specified in § 63.1106(a) through (c).
[d] The annual wastewater average flowrate is determined according to procedures specified in § 63.1106(d).
[e] The weight-percent HAP is determined for equipment according to procedures specified in § 63.1107.

(ii) The owner or operator must control HAP emissions from the acrylic and modacrylic fibers production facility by meeting the applicable requirements specified in table 3b of this subpart. The owner or operator must determine the facility acrylonitrile emission rate using the procedures specified in paragraph (b)(5) of this section.

TABLE 3b TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE AN ACRYLIC AND MODACRYLIC FIBER PRODUCTION EXISTING OR NEW AFFECTED SOURCE AND AM COMPLYING WITH PARAGRAPH (b)(3)(ii) OF THIS SECTION?

If you own or operate. . .	Then you must control HAP emissions from the affected source by. . .
1. an acrylic and modacrylic fibers production affected source and your facility is an *existing* source	Meeting all of following requirements: a. 1. Reduce total acrylonitrile emissions from all affected storage vessels, process vents, wastewater treatment units, and fiber spinning lines operated in your acrylic and modacrylic fibers production facility to less than or equal to 1.0 kilograms (kg) of acrylonitrile per megagram (Mg) of fiber produced. b. 2. Determine the facility acrylonitrile emission rate in accordance with the requirements specified in § 63.1103(b)(5) of this section.
2. an acrylic and modacrylic fibers production affected source and your facility is a *new* source	Meeting all of following requirements: a. 1. Reduce total acrylonitrile emissions from all affected storage vessels, process vents, wastewater treatment units, and fiber spinning lines operated in the acrylic and modacrylic fibers production facility to less than or equal to 0.5 kilograms (kg) of acrylonitrile per megagram (Mg) of fiber produced. b. 2. Determine the facility acrylonitrile emission rate in accordance with the requirements specified in § 63.1103(b)(5) of this section.
3. equipment as defined under § 63.1101 and it contains or contacts ≥ 10 weight-percent acrylonitrile,[a] and operates ≥ 300 hours per year	Meeting either of the following standards for equipment leaks: a. 1. Comply with 40 CFR 63 subpart TT of this part; or b. 2. Comply with 40 CFR 63 subpart UU of this part.

[a] The weight-percent HAP is determined for equipment according to procedures specified in § 63.1107.

(4) *Fiber spinning line enclosure requirements.* For an owner or operator electing to comply with paragraph (b)(3)(i) of this section, the fiber spinning line enclosure must be designed and operated to meet the requirements specified in paragraphs (b)(4)(i) through (b)(4)(iv) of this section.

(i) The enclosure must cover the spinning and washing areas of the spinning line.

(ii) The enclosure must be designed and operated in accordance with the criteria for a permanent total enclosure as specified in ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' in 40 CFR 52.741, Appendix B.

(iii) The enclosure may have permanent or temporary openings to allow worker access; passage of material into or out of the enclosure by conveyor, vehicles, or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure.

(iv) The owner or operator must perform the verification procedure for the enclosure as specified in section 5.0 to ''Procedure T—Criteria for and Verification of a Permanent or Temporary Total Enclosure'' initially when the enclosure is first installed and, thereafter, annually.

(5) *Facility acrylonitrile emission rate determination.* For an owner or operator electing to comply with paragraph (b)(3)(ii) of this section, the facility acrylonitrile emission rate must be determined using the requirements specified in paragraphs (b)(5)(i) through (b)(5)(iii) of this section.

(i) The owner or operator must prepare an initial determination of the facility acrylonitrile emission rate.

(ii) Whenever changes to the acrylic or modacrylic fiber production operations at the facility could potentially cause the facility acrylonitrile emission rate to exceed the applicable limit of kg of acrylonitrile per Mg of fiber produced, the owner or operator must prepare a new determination of the facility acrylonitrile emission rate.

(iii) For each determination, the owner or operator must prepare and maintain at the facility site sufficient process data, emissions data, and any other documentation necessary to support the facility acrylonitrile emission rate calculation.

(c) *Hydrogen fluoride production applicability, definitions, and requirements.*—(1) *Applicability.*—(i) *Affected source.* For the hydrogen fluoride production (as defined in paragraph (c)(2) of this section) source category, the affected source shall comprise all emission points, in combination, listed in paragraphs (c)(1)(i)(A) through (c)(1)(i)(E) of this section, that are associated with a hydrogen fluoride production process unit located at a major source as defined in section 112(a) of the Act.

(A) All storage vessels used to accumulate or store hydrogen fluoride.

(B) All process vents from continuous unit operations associated with hydrogen fluoride recovery and refining operations. These process vents include vents on condensers, distillation units, and water scrubbers.

(C) All transfer racks used to load hydrogen fluoride into tank trucks or railcars.

(D) Equipment (as defined in § 63.1101 of this subpart) that contains or contacts hydrogen fluoride.

(E) Seals on kilns used to react calcium fluoride with sulfuric acid.

(ii) The compliance schedule, for affected sources as defined in paragraph (c)(1)(i) of this section, is specified in § 63.1102(a).

(2) *Definitions.*

Hydrogen fluoride production means a process engaged in the production and recovery of hydrogen fluoride by reacting calcium fluoride with sulfuric acid. For the purpose of implementing this subpart, hydrogen fluoride production is not a process that produces gaseous hydrogen fluoride for direct reaction with hydrated aluminum to form aluminum fluoride (i.e., the hydrogen fluoride is not recovered as an intermediate or final product prior to reacting with the hydrated aluminum).

Kiln seal means the mechanical or hydraulic seals at both ends of the kiln, designed to prevent the infiltration of moisture and air through the interface of the rotating kiln and stationary pipes and equipment attached to the kiln during normal vacuum operation of the kiln (operation at an internal pressure of at least 0.25 kilopascal [one inch of water] below ambient pressure).

Leakless pump means a pump whose seals are submerged in liquid, a pump equipped with a dual mechanical seal system that includes a barrier fluid system, or a pump potential leak interface hydrogen fluoride concentration measurement of less than 500 parts per million by volume.

(3) *Requirements.* Table 4 specifies the hydrogen fluoride production source category control requirement applicability for both existing and new sources. The owner or operator must control hydrogen fluoride emission from each affected source emission point as specified in table 4. Applicability determination procedures and methods are specified in §§ 63.1104 through 63.1107. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Procedures for approval of alternative means of emission limitations are specified in § 63.1113.

TABLE 4. TO § 63.1103—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A HYDROGEN FLUORIDE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?

If you own or operate...	And if...	Then you must...
1. a storage vessel	the stored material is hydrogen fluoride	reduce emissions of hydrogen fluoride by venting emissions through a closed vent system to a recovery system or wet scrubber that achieves a 99 weight-percent removal efficiency according to the requirements of 40 CFR subpart SS of this part.
2. a process vent from continuous unit operations	the vent steam is from hydrogen fluoride recovery and refining vessels	reduce emissions of hydrogen fluoride from the process vent by venting emissions through a closed vent system to a wet scrubber that achieves a 99 weight-percent removal efficiency according to the requirements of 40 CFR subpart SS of this part.
3. kiln seals	the kilns are used to react calcium fluoride with sulfuric acid	capture and vent hydrogen fluoride emissions during emergencies through a closed vent system to a wet scrubber that achieves a 99 weight-percent hydrogen fluoride removal efficiency meeting the requirements of 40 CFR subpart SS of this part. An alternative means of emission limitation including leakless seals may also be established as provided in § 63.1112 .

TABLE 4. TO § 63.1103—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A HYDROGEN FLUORIDE PRODUCTION EXISTING OR NEW AFFECTED SOURCE?—Continued

If you own or operate...	And if...	Then you must...
4. a transfer rack	the transfer rack is associated with bulk hydrogen fluoride liquid loading into tank trucks and rail cars	reduce emissions of hydrogen fluoride emissions by venting emissions through a closed vent system to a recovery system or wet scrubber that achieves a 99 weight-percent according to the requirements of 40 CFR subpart SS of this part, and must load hydrogen fluoride into only tank trucks and railcars that have a current certification in accordance with the U.S. DOT pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars; or have been demonstrated to be vapor-tight (i.e. will sustain a pressure change of not more than 750 Pascals within 5 minutes after it is pressurized to a minimum or 4,500 Pascals) within the preceding 12 months.
5. equipment as defined under § 63.1101	it contains or contacts hydrogen fluoride	control hydrogen fluoride emissions by using leakless pumps and by implementing a visual and olfactory leak detection and repair program as specified in § 63.1004(d) of subpart TT of this part for visual and olfactory leak detection and § 63.1005 of subpart TT of this part for repair. An owner or operator is required to perform visual and olfactory leak detection inspections once every 8 hours.

(d) *Polycarbonate production applicability, definitions, and requirements.*—(1) *Applicability.*—(i) *Affected source.* For the polycarbonates production (as defined in paragraph (d)(2) of this section) source category, the affected source shall comprise all emission points, in combination, listed in paragraphs (d)(1)(i)(A) through (d)(1)(i)(D) of this section, that are associated with a polycarbonate production process unit located at a major source as defined in section 112(a) of the Act. A polycarbonate production process unit, for the purposes of this rulemaking, is a unit that produces polycarbonates by interfacial polymerization from bisphenols and phosgene. Phosgene production units that are associated with polycarbonate production process units are considered to be part of the polycarbonate production process. Therefore, for the purposes of this proposed rulemaking, such phosgene production units are considered to be polycarbonate production process units.

(A) All storage vessels that store liquids containing HAP.

(B) All process vents from continuous and batch unit operations.

(C) All wastewater treatment system units.

(D) Equipment (as defined in § 63.1101 of this subpart) that contains or contacts HAP.

(ii) The compliance schedule, for affected sources as defined in paragraph (d)(1)(i) of this section, is specified in § 63.1102(a).

(2) *Definitions.*

Polycarbonates production means a process engaged in the production of a special class polyester formed from any dihydroxy compound and any carbonate diester or by ester exchange. Polycarbonates may be produced by solution or emulsion polymerization, although other methods may be used. A typical method for the manufacture of polycarbonates includes the reaction of bisphenol-A with phosgene in the presence of pyridine to form polycarbonate. Methylene chloride is used as a solvent in this polymerization reaction.

(3) *Requirements.* Tables 5 and 6 specify the applicability criteria and standards for existing and new sources within the polycarbonates production source category. Applicability determination procedures and methods are specified in §§ 63.1104 through 63.1107. General compliance, recordkeeping, and reporting requirements are specified in §§ 63.1108 through 63.1112. Procedures for approval of alternative means of emission limitations are specified in § 63.1113.

TABLE 5 TO § 63.1103—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATES PRODUCTION EXISTING AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
1. a storage vessel with: 8 cubic meters	the maximum true vapor pressure of organic HAP is > 41.3 kilopascals	reduce emissions of organic HAP by 95 weight-percent, or reduce TOC to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to a control device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(a) of this part
		or
a storage vessel with: 75 cubic meters ≤ capacity < 151 cubic meters	the maximum true vapor pressure of organic HAP ≥ 27.6 kilopascals	route emissions to a fuel gas system or process meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(a) of this part
		or
		comply with the requirements of 40 CFR subpart WW (national emission standards for storage vessels (control level 2)) of this part.

TABLE 5 TO § 63.1103—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATES PRODUCTION EXISTING AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
2. a storage vessel with: 151 cubic meters ≤ capacity	the maximum true vapor pressure of organic HAP ≥ 5.2 kilopascals	reduce emissions of organic HAP by 98 weight-percent, or reduce TOC to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to a control device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(a) of this part or
a storage vessel with: 8 cubic meters ≤ capacity	the maximum true vapor pressure of organic HAP ≥ 76.6 kilopascals	route emissions to a fuel gas system or process meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(a) of this part.
3. a process vent from continuous unit operations (nonhalogenated)	the vent stream has a mass emission rate of halogen atoms contained in organic compounds < 0.45 kilograms per hour [a], and a TRE [b] ≤ 2.7	reduce emissions of organic HAP by using a flare, or reduce emissions of organic HAP by 98 weight-percent, or reduce TOC to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part; or achieve and maintain a TRE index value greater than 2.7.
a process vent from continuous unit operations (halogenated)	the vent stream has a mass emission rate of halogen atoms contained in organic compounds ≥ 0.45 kilograms per hour [a], and a TRE [b] 2.7	reduce emissions of organic HAP as specified for nonhalogenated process vents from continuous unit operations (other than by using a flare) and by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part that reduces hydrogen halides and halogens by 99 weight-percent or to less than 0.45 kilograms per hour, whichever is less stringent; or reduce the process vent halogen atom mass emission rate to less than 0.45 kilograms per hour by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part and then complying with the requirements specified for process vents from continuous unit operations (nonhalogenated).
4. a process vent from continuous unit operations	2.7 ≤ TRE [b] ≤ 4.0	monitor and keep records of equipment operating parameters specified to be monitored under 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), §§ 63.990(c)(absorber monitoring), 63.991(c) (condenser monitoring), 63.992(c) (carbon adsorber monitoring), or 63.995(c) (other noncombustion systems used as a control device monitoring) of this part.
5. a process vent from batch unit operations (nonhalogenated) [c]	annual emissions of organic HAP ≥ 11,800 kilogram HAP per year [d], and the calculated cutoff flow rate ≥ the annual average flow rate of the streams [e], and aggregated mass emission rate of halogen atoms contained in organic compounds < 3,750 kilograms per year [e]	reduce emissions of organic HAP from the process vent from batch unit operations by using a flare meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part, or reduce emissions of organic HAP by an aggregated 90 weight-percent or to a TOC concentration of 20 parts per million by volume per batch cycle, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part.

TABLE 5 TO § 63.1103—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATES PRODUCTION EXISTING AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
6. a process vent from batch unit operations (halogenated) [c]	annual emissions of organic HAP ≥ 11,800 kilogram HAP per year [d] and the calculated cutoff flow rate ≥ the annual average flow rate of the streams [e] and aggregated mass emissions rate of halogen atoms contained in organic compounds of ≥ 3,750 kilograms per year [f]	reduce emissions of HAP as specified for nonhalogenated process vent from batch unit operations (other than by using a flare) and by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part that reduces hydrogen halides and halogens by 99 weight percent, or reduce the process vent halogen atom mass emission rate to less than 3,750 kilograms per year, whichever is less stringent, by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part and then complying with the requirements for process vents from batch unit operations (nonhalogenated).
7. a wastewater treatment system unit	the wastewater stream has an annual average HAP concentration ≥ 10,000 part per million by weight [g] or the wastewater stream has an annual average HAP concentration ≥ 1,000 parts per million by weight [g], and an annual average flowrate ≥ 10 liters per minute [h]	comply with the requirements of 40 CFR subparts OO, VV, QQ, and RR (national emission standards for organic wastewater treatment facilities) of this part.
8. equipment as defined under § 63.1101	the equipment contains or contacts ≥ 5 weight-percent HAP [i], and operates ≥ 300 hours per year	comply with the requirements of 40 CFR subpart TT (national emission standards for equipment leaks (control level 1)) or UU (national emission standards for equipment leaks (control level 2)) of this part.

[a] The mass emission rate of halogen atoms contained in organic compounds is determined according to the procedures specified in § 63.1104(i).

[b] The TRE is determined according to the procedures specified in § 63.1104(j). If a dryer is manifolded with such vents, and the vent is routed to a recovery, recapture, or combustion device, then the TRE index value for the vent must be calculated based on the properties of the vent stream (including the contributions of the dryer). If a dryer is manifolded with other vents and not routed to a recovery, recapture, or combustion device, then the TRE index value must be calculated excluding the contributions of the dryer. The TRE index value for the dryer must be done separately in this case.

[c] Process vents from batch unit operations that are manifolded with process vents from continuous unit operations are to be treated as a process vent from a continuous unit operation for purposes of applicability and control.

[d] The annual organic HAP emissions from process vents from batch unit operation is determined according to the procedures specified in § 63.1105(b).

[e] The determination of average flow rate and annual average flow rate is determined according to the procedures specified in § 63.1105(d).

[f] The determination of halogenated emissions from batch unit operations is determined according to the procedures specified in § 63.1105(c).

[g] The annual average wastewater organic HAP concentration is determined according to the procedures specified in § 63.1106(a) through (c).

[h] The annual wastewater average flowrate is determined according to procedures specified in § 63.1106(d).

[i] The weight-percent HAP is determined for equipment according to procedures specified in § 63.1107.

TABLE 6 TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATES PRODUCTION NEW AFFECTED SOURCE?

If you own or operate . . .	And if . . .	Then you must . . .
1. a storage vessel with: 8 cubic meters ≤ capacity < 151 cubic meters	the maximum true vapor pressure of organic HAP ≥ 2.1 kilopascals	reduce emissions of organic HAP by 95 weight-percent, or reduce TOC to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to a control device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(a) of this part or route emissions to a fuel gas system meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(a) of this part or comply with the requirements of 40 CFR part 63 subpart WW (national emission standards for storage vessels (control level 2)) of this part.

TABLE 6 TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATES PRODUCTION NEW AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
2. a storage vessel with: 151 cubic meters < capacity	the vapor pressure of stored material is ≥ 5.2 kilopascals	reduce emissions of organic HAP by 98 weight-percent, or reduce TOC to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to a control device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part
		or
a storage vessel with: 38 cubic meters ≤ capacity	the vapor pressure of stored material is ≥ 76.6 kilopascals	route emissions to a fuel gas system or process meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part.
3. a process vent from continuous unit operations (nonhalogenated)	the vent stream has a mass emission rate of halogen atoms contained in organic compounds < 0.45 kilograms per hour [a] and a TRE [b] ≤ 9.6	reduce emissions of organic HAP by using a flare, or reduce emissions of organic HAP by 98 weight-percent, or reduce TOC to a concentration of 20 parts per million by volume, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part; or achieve and maintain a TRE index value greater than 9.6.
a process vent from continuous unit operations (halogenated)	the vent stream has a mass emission rate of halogen atoms contained in organic compounds ≥ 0.45 kilograms per hour [a] and a TRE [b] ≤ 9.6	reduce emissions of organic HAP as specified for nonhalogenated process vents from continuous unit operations (other than by using a flare) and by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part that reduces hydrogen halides and halogens by 99 weight-percent or to less than 0.45 kilograms per hour, whichever is less stringent; or reduce the process vent halogen atom mass emission rate to less than 0.45 kilograms per hour by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part and then complying with the requirements specified for process vents from continuous unit operations (nonhalogenated).
4. a process vent from batch unit operations (nonhalogenated) [c]	annual emissions of organic HAP ≥ 11,800 kilogram per year [d] and the calculated cutoff flow rate ≥ the annual average flow rate [e] of the streams, and aggregated mass emission rate of halogen atoms contained in organic compounds < 3,750 kilograms per year [f]	reduce emissions of organic HAP from the process vent from batch unit operations by using a flare meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part, or reduce emissions of organic HAP by an aggregated 90 weight-percent or to a TOC concentration of 20 parts per million by volume per batch cycle, whichever is less stringent, by venting emissions through a closed vent system to any combination of control devices meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part.

TABLE 6 TO § 63.1103.—WHAT ARE MY REQUIREMENTS IF I OWN OR OPERATE A POLYCARBONATES PRODUCTION NEW AFFECTED SOURCE?—Continued

If you own or operate . . .	And if . . .	Then you must . . .
5. process vent from batch unit operations (halogenated) [c]	annual emissions of organic HAP ≥ 11,800 kilogram HAP per year,[d] and the calculated cutoff flow rate ≥ the annual average flow rate of the streams,[e] and aggregated mass emissions of halogen atoms contained in organic compounds ≥ 3,750 kilograms per year [f]	reduce emissions of organic HAP as specified for nonhalogenated process vents from batch unit operations (other than by using a flare) and by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part that reduces hydrogen halides and halogens by 99 weight percent, or reduce the process vent halogen atom mass emission rate to less than 3,750 kilograms per year, by venting emissions through a closed vent system to a halogen reduction device meeting the requirements of 40 CFR subpart SS (national emission standards for closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process), § 63.982(b) of this part and then complying with the requirements for process vents from batch unit operations (nonhalogenated).
7. a wastewater treatment unit	the wastewater stream has an annual average HAP concentration ≥ 10,000 parts per million by weight [g] at any flow rate or the wastewater stream has an annual average HAP concentration ≥ 1,000 parts per million by weight[g], and an annual average flowrate ≥ 10 liters per minute [h]	comply with the requirements of 40 CFR subparts OO, VV, QQ, and RR (national emission standards for organic wastewater treatment facilities) of this part.
8. equipment as defined under § 63.1101	the equipment contains or contacts ≥ 5 weight-percent HAP_i, and operates ≥ 300 hours per year	comply with the requirements of 40 CFR subpart TT (national emission standards for equipment leaks (control level 1)) or UU (national emission standards for equipment leaks (control level 2)) of this part.

[a] The mass emission rate of halogen atoms contained in organic compounds is determined according to the procedures specified in § 63.1104(i).
[b] The TRE is determined according to the procedures specified in § 63.1104(j). If a dryer is manifolded with such vents, and the vent is routed to a recovery, recapture, or combustion device, then the TRE index value for the vent must be calculated based on the properties of the vent stream (including the contributions of the dryer). If a dryer is manifolded with other vents and not routed to a recovery, recapture, or combustion device, then the TRE index value must be calculated excluding the contributions of the dryer. The TRE index value for the dryer must be done separately in this case.
[c] Process vents from batch unit operations that are manifolded with process vents from continuous unit operations are to be treated as a process vent from a continuous unit operation for purposes of applicability and control.
[d] The annual organic HAP emissions from process vents from batch unit operation is determined according to the procedures specified in § 63.1105(b).
[e] The determination of average flow rate and annual average flow rate is determined according to the procedures specified in § 63.1105(d).
[f] The determination of halogenated emissions from batch unit operations is determined according to the procedures specified in § 63.1105(c).
[g] The annual average wastewater organic HAP concentration is determined according to the procedures specified in § 63.1106(a) through (c).
[h] The annual wastewater average flowrate is determined according to procedures specified in § 63.1106(d).

§ 63.1104 Process vents from continuous unit operations: applicability determination procedures and methods.

(a) *General.* The provisions of this section provide calculation and measurement methods for parameters that are used to determine applicability of the requirements for process vents from continuous unit operations. The owner or operator of a process vent controlling emissions by venting emissions to a flare or by reducing emissions of organic HAP by a specified weight-percent or to a TOC concentration is not required to determine the TRE index value for the process vent. Section 63.1103 of this subpart directs the owner or operator to the emission point control and associated monitoring, recordkeeping and reporting requirements that apply.

(b) *Sampling sites.* For purposes of determining process vent volumetric flow rate, regulated organic HAP concentration, total organic HAP or TOC concentration, heating value, or TRE index value, the sampling site shall be located after the last recovery device (if any recovery devices are present) but prior to the inlet of any control device that is present, and prior to release to the atmosphere.

(1) *Sampling site selection method.* Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling site. No traverse site selection method is needed for process vents smaller than 0.10 meter (0.33 foot) in nominal inside diameter.

(2) *Sampling site when a halogen reduction device is used prior to a combustion device.* An owner or operator using a scrubber to reduce the process vent halogen atom mass emission rate to less than 0.45 kilograms per hour (0.99 pound per hour) prior to a combustion control device in compliance with § 63.1103 (as appropriate) shall determine the halogen atom mass emission rate prior to the combustor according to the procedures in paragraph (i) of this section.

(c) *Requirement applicability determination.* The TOC or HAP concentrations, process vent volumetric

flow rates, process vent heating values, process vent TOC or HAP emission rates, halogenated process vent determinations, process vent TRE index values, and engineering assessment process vent control applicability determination requirements are to be determined during maximum representative operating conditions for the process, except as provided in paragraph (d) of this section, or unless the Administrator specifies or approves alternate operating conditions. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of an applicability test.

(d) *Exceptions.* (1) The owner or operator shall determine process vent requirement applicability based on periods of peak emission episode(s) for the combined stream.

(2) The owner or operator must develop an emission profile for an applicable process vent, based on either process knowledge or test data collected, to demonstrate that control requirement applicability determination periods are representative of peak emission episodes for batch unit operations and maximum representative operating conditions for continuous unit operations. The emission profile must profile HAP loading rate versus time for all emission episodes contributing to the process vent stack for a period of time that is sufficient to include all continuous unit operations and batch cycles form batch unit operations venting to the stack. Examples of information that could constitute process knowledge include calculations based on material balances, and process stoichiometry. Previous test results may be used to develop an emission profile, provided the results are still representative of the current process vent stream conditions.

(e) *TOC or HAP concentration.* The TOC or HAP concentrations, used for TRE index value calculations in paragraph (j) of this section, shall be determined based on paragraph (e)(1), (e)(2) or (k) of this section, or any other method or data that have been validated according to the protocol in method 301 of appendix A of part 63. For concentrations needed for comparison with the appropriate control applicability concentrations specified in § 63.1103, TOC or HAP concentration shall be determined based on paragraph (e)(1), (e)(2), or (k) of this section or any other method or data that has been validated according to the protocol in method 301 of appendix A of part 63. The owner or operator shall record the TOC or HAP concentration as specified in paragraph.

(1) *Method 18.* The procedures specified in paragraph (e)(1)(i) and (e)(1)(ii) of this section shall be used to calculate parts per million by volume concentration using method 18 of 40 CFR part 60, appendix A:

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(ii) The concentration of either TOC (minus methane and ethane) or regulated organic HAP emissions shall be calculated according to paragraph (e)(1)(ii)(A) or (e)(1)(ii)(B) of this section (as applicable).

(A) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \frac{\sum_{i=1}^{x}\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad \text{[Eq. 1]}$$

Where:

C_{TOC} = Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

C_{ji} = Concentration of sample component j of the sample i, dry basis, parts per million by volume.

n = Number of components in the sample.

x = Number of samples in the sample run.

(B) The regulated organic HAP or total organic HAP concentration (C_{HAP}) shall be computed according to the equation in paragraph (e)(1)(ii)(A) of this section except that only the regulated or total organic HAP species shall be summed, as appropriate.

(2) *Method 25A.* The procedures specified in paragraphs (e)(2)(i) through (e)(2)(vi) of this section shall be used to calculate parts per million by volume concentration using Method 25A of 40 CFR part 60, appendix A:

(i) Method 25A of 40 CFR part 60, appendix A shall be used only if a single organic HAP compound greater than 50 percent of total organic HAP or TOC, by volume, in the process vent.

(ii) The process vent composition may be determined by either process knowledge, test data collected using an appropriate Environmental Protection Agency method or a method or data validated according to the protocol in method 301 of appendix A of part 63. Examples of information that could constitute process knowledge include calculations based on material balances, process stoichiometry, or previous test results provided the results are still relevant to the current process vent conditions.

(iii) The organic compound used as the calibration gas for Method 25A of 40 CFR part 60, appendix A shall be the single organic HAP compound present at greater than 50 percent of the total organic HAP or TOC by volume.

(iv) The span value for Method 25A of 40 CFR part 60, appendix A shall be equal to the appropriate control applicability concentration value specified in the applicable table(s) presented in § 63.1103 of this subpart.

(v) Use of Method 25A of 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(vi) The owner or operator shall demonstrate that the concentration of TOC including methane and ethane measured by Method 25A of 40 CFR part 60, appendix A is below one-half the appropriate control applicability concentration specified in the applicable table for a subject source category in § 63.1103 in order to qualify for a low HAP concentration exclusion.

(f) *Volumetric flow rate.* The process vent volumetric flow rate (Q_S), in standard cubic meters per minute at 20 °C, shall be determined as specified in paragraphs (f)(1) or (f)(2) of this section shall be recorded as specified in § 63.1109.

(1) Use Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate. If the process vent tested passes through a final steam jet ejector and is not condensed, the stream volumetric flow shall be corrected to 2.3 percent moisture; or

(2) The engineering assessment procedures in paragraph (k) of this section can be used for determining volumetric flow rates.

(g) *Heating value.* The net heating value shall be determined as specified in paragraphs (g)(1) and (g)(2) of this section, or by using the engineering assessment procedures in paragraph (k) of this section.

(1) The net heating value of the process vent shall be calculated using the following equation:

$$H_T = K_1\left(\sum_{j=1}^{n} D_j H_j\right) \qquad \text{[Eq. 2]}$$

Where:

H_T = Net heating value of the sample, megaJoule per standard cubic

meter, where the net enthalpy per mole of process vent is based on combustion at 25 °C and 760 millimeters of mercury, but the standard temperature for determining the volume corresponding to 1 mole is 20 °C, as in the definition of Q_s (process vent volumetric flow rate).

K_1 = Constant, 1.740 x 10^{-7} (parts per million)$^{-1}$(gram-mole per standard cubic meter) (megaJoule per kilocalorie), where standard temperature for (gram-mole per standard cubic meter) is 20 °C.

D_j = Concentration on a wet basis of compound j in parts per million, as measured by procedures indicated in paragraph (e)(2) of this section. For process vents that pass through a final stream jet and are not condensed, the moisture is assumed to be 2.3 percent by volume.

H_j = Net heat of combustion of compound j, kilocalorie per gram-mole, based on combustion at 25 °C and 760 millimeters mercury. The heats of combustion of process vent components shall be determined using American Society for Testing and Materials D2382–76 if published values are not available or cannot be calculated.

(2) The molar composition of the process vent (D_j) shall be determined using the methods specified in paragraphs (g)(2)(i) through (g)(2)(iii) of this section:

(i) Method 18 of 40 CFR part 60, appendix A to measure the concentration of each organic compound.

(ii) American Society for Testing and Materials D1946–77 to measure the concentration of carbon monoxide and hydrogen.

(iii) Method 4 of 40 CFR part 60, appendix A to measure the moisture content of the stack gas.

(h) *TOC or HAP emission rate.* The emission rate of TOC (minus methane and ethane) (E_{TOC}) and the emission rate of the regulated organic HAP or total organic HAP (E_{HAP}) in the process vent, as required by the TRE index value equation specified in paragraph (j) of this section, shall be calculated using the following equation:

$$E = K_2\left(\sum_{j=1}^{n} C_j M_j\right) Q_S \qquad \text{[Eq. 3]}$$

Where:

E=Emission rate of TOC (minus methane and ethane) (E_{TOC}) or emission rate of the regulated organic HAP or total organic HAP (E_{HAP}) in the sample, kilograms per hour.

K_2=Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minutes/hour), where standard temperature for (gram-mole per standard cubic meter) is 20 °C.

n=Number of components in the sample.

C_j=Concentration on a dry basis of organic compound j in parts per million as measured by method 18 of 40 CFR part 60, appendix A as indicated in paragraph (e) of this section. If the TOC emission rate is being calculated, C_j includes all organic compounds measured minus methane and ethane; if the total organic HAP emission rate is being calculated, only organic HAP compounds are included; if the regulated organic HAP emission rate is being calculated, only regulated organic HAP compounds are included.

M_j=Molecular weight of organic compound j, gram/gram-mole.

Q_s=Process vent flow rate, dry standard cubic meter per minute, at a temperature of 20 °C.

(i) *Halogenated process vent determination.* In order to determine whether a process vent is halogenated, the mass emission rate of halogen atoms contained in organic compounds shall be calculated according to the procedures specified in paragraphs (i)(1) and (i)(2) of this section. A process vent is considered halogenated if the mass emission rate of halogen atoms contained in the organic compounds is equal to or greater than 0.45 kilograms per hour.

(1) The process vent concentration of each organic compound containing halogen atoms (parts per million by volume, by compound) shall be determined based on one of the procedures specified in paragraphs (i)(1)(i) through (i)(1)(iv) of this section:

(i) Process knowledge that no halogen or hydrogen halides are present in the process vent, or

(ii) Applicable engineering assessment as discussed in paragraph (k) of this section, or

(iii) Concentration of organic compounds containing halogens measured by method 18 of 40 CFR part 60, appendix A, or

(iv) Any other method or data that have been validated according to the applicable procedures in method 301 of appendix A of this part.

(2) The following equation shall be used to calculate the mass emission rate of halogen atoms:

$$E = K_2 Q\left(\sum_{j=1}^{n}\sum_{i=1}^{m} C_j * L_{j,i} * M_{j,i}\right) \qquad \text{[Eq. 4]}$$

Where:

E=mass of halogen atoms, dry basis, kilogram per hour,

K_2=Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (kilogram-mole per standard cubic meter) (minute per hour), where standard temperature is 20 °C.

Q=Flow rate of gas stream, dry standard cubic meters per minute, determined according to paragraph (f)(1) or (f)(2) of this section.

n=Number of halogenated compounds j in the gas stream.

j=Halogenated compound j in the gas stream.

m=Number of different halogens i in each compound j of the gas stream.

i=Halogen atom i in compound j of the gas stream.

C_j=Concentration of halogenated compound j in the gas stream, dry basis, parts per million by volume.

L_{ji}=Number of atoms of halogen i in compound j of the gas stream.

M_{ji}=Molecular weight of halogen atom i in compound j of the gas stream, kilogram per kilogram-mole.

(j) *TRE index value.* The owner or operator shall calculate the TRE index value of the process vent using the equations and procedures in this paragraph, as applicable, and shall maintain records specified in paragraph or, as applicable.

(1) *TRE index value equation.* The equation for calculating the TRE index value is as follows:

$$TRE = 1/E_{HAP} * \left[A + B(Q_s) + C(H_T) + D(E_{TO}C)\right] \qquad \text{[Eq. 5]}$$

Where:

TRE = TRE index value.

A, B, C, D=Parameters presented in table 8 of this subpart. The parameters in the table include the following variables:

E_{HAP}=Emission rate of total organic HAP, kilograms per hour, as calculated according to paragraph (h) or (k) of this section.

Q_s=process vent flow rate, standard cubic meters per minute, at a standard temperature of 20 °C, as calculated according to paragraph (f) or (k) of this section.

H_T=process vent net heating value, megaJoules per standard cubic meter, as calculated according to paragraph (g) or (k) of this section.

E_{TOC}=Emission rate of TOC (minus methane and ethane), kilograms per hour, as calculated according to paragraph (h) or (k) of this section.

TABLE 8.—TRE INDEX VALUE PARAMETERS [a]

Existing or new?	Halogenated vent stream?	A	B	C	D
Existing	Yes	3.995	0.05200	−0.001769	0.0009700
	No	1.935	0.3660	−0.007687	−0.000733
		1.492	0.06267	0.03177	−0.001159
		2.519	0.01183	0.01300	0.04790
New	Yes	1.0895	0.01417	−0.000482	0.0002645
	No	0.5276	0.0998	−0.002096	−0.0002000
		0.4068	0.0171	0.008664	−0.000316
		0.6868	0.00321	0.003546	0.01306

[a] Use according to procedures outlined in this section.
AAAAMJ/scm=Mega Joules per standard cubic meter
AAAAscm/min = Standard cubic meters per minute

(2) *Nonhalogenated process vents.* The owner or operator of a nonhalogenated process vent shall calculate the TRE index value by using the equation and appropriate nonhalogenated process vent parameters in table 8 of this section for process vents at existing and new sources. The lowest TRE index value is to be selected.

(3) *Halogenated process vents.* The owner or operator of a halogenated process vent stream, as determined according to procedures specified in paragraph (i) or (k) of this section, shall calculate the TRE index value using the appropriate halogenated process vent parameters in table 8 of this section for existing and new sources.

(k) *Engineering assessment.* For purposes of TRE index value determination, engineering assessment may be used to determine process vent flow rate, net heating value, TOC emission rate, and total organic HAP emission rate for the representative operating condition expected to yield the lowest TRE index value. Engineering assessments shall meet the requirements of paragraphs (k)(1) through (k)(4) of this section. If process vent flow rate or process vent organic HAP or TOC concentration is being determined for comparison with the 0.011 scmm flow rate or the applicable concentration value presented in the tables in § 63.1103, engineering assessment may be used to determine the flow rate or concentration for the representative operating condition expected to yield the highest flow rate or concentration.

(1) If the TRE index value calculated using such engineering assessment and the TRE index value equation in paragraph (j) of this section is greater than 4.0, then the owner or operator is not required to perform the measurements specified in paragraphs (e) through (i) of this section.

(2) If the TRE index value calculated using such engineering assessment and the TRE index value equation in paragraph (j) of this section is less than or equal to 4.0, then the owner or operator is required either to perform the measurements specified in paragraphs (e) through (i) of this section for control applicability determination or comply with the requirements (or standards) specified in the tables presented in § 63.1103 (as applicable).

(3) Engineering assessment includes, but is not limited to, the examples specified in paragraphs (k)(3)(i) through (k)(3)(iv):

(i) Previous test results, provided the tests are representative of current operating practices at the process unit.

(ii) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(iii) Maximum flow rate, TOC emission rate, organic HAP emission rate, organic HAP or TOC concentration, or net heating value limit specified or implied within a permit limit applicable to the process vent.

(iv) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to those specified in paragraphs (k)(3)(iv)(A) through (k)(3)(iv)(D) of this section:

(A) Use of material balances based on process stoichiometry to estimate maximum TOC or organic HAP concentrations,

(B) Estimation of maximum flow rate based on physical equipment design such as pump or blower capacities,

(C) Estimation of TOC or organic HAP concentrations based on saturation conditions, and

(D) Estimation of maximum expected net heating value based on the stream concentration of each organic compound or, alternatively, as if all TOC in the stream were the compound with the highest heating value.

(4) All data, assumptions, and procedures used in the engineering assessment shall be documented. The owner or operator shall maintain the records specified in paragraphs (l)(1) through (l)(4) of this section, as applicable.

(l) *Applicability determination recordkeeping requirements.*—(1) TRE index value records. The owner or operator shall maintain records of measurements, engineering assessments, and calculations performed to determine the TRE index value of the process vent according to the procedures of paragraph (j) of this section, including those records associated with halogen vent stream determination. Documentation of engineering assessments shall include all data, assumptions, and procedures used for the engineering assessments, as specified in paragraph (k) of this section. As specified in paragraph (m) of this section, the owner or operator shall include this information in the Initial Compliance Status Report.

(2) *Flow rate records.* The owner or operator shall record the flow rate as measured using the sampling site and flow rate determination procedures (if applicable) specified in paragraphs (b) and (f) of this section or determined through engineering assessment as specified in paragraph (k) of this section. As specified in paragraph (m) of this section, the owner or operator shall

include this information in the Initial Compliance Status Report.

(3) *Concentration records.* The owner or operator shall record the regulated organic HAP or TOC concentration (if applicable) as measured using the sampling site and regulated organic HAP or TOC concentration determination procedures specified in paragraphs (e)(1) and (e)(2) of this section, or determined through engineering assessment as specified in paragraph (k) of this section. As specified in paragraph (m) of this section, the owner or operator shall include this information in the Initial Compliance Status Report.

(4) *Process change records.* The owner or operator shall keep up-to-date, readily accessible records of any process changes that change the control applicability for a process vent. Records are to include any recalculation or measurement of the flow rate, regulated organic HAP or TOC concentration, and TRE index value.

(m) *Applicability determination reporting requirements.*—(1) Initial compliance status report. The owner or operator shall submit, as part of the Initial Compliance Status Report specified in § 63.1110, the information recorded in paragraph (m)(2) or (m)(3) of this section.

(2) *Process change.* (i) Whenever a process vent becomes subject to control requirements under subpart SS of this part as a result of a process change, the owner or operator shall submit a report within 60 days after the performance test or applicability determination, whichever is sooner. The report may be submitted as part of the next Periodic Report. The report shall include the information specified in paragraphs (m)(2)(i)(A) through (m)(2)(i)(C) of this section.

(A) A description of the process change;

(B) The results of the recalculation of the flow rate, organic HAP or TOC concentration, and/or TRE index value required under paragraphs (e), (f), and (j), and recorded under paragraph (l); and

(C) A statement that the owner or operator will comply with the requirements specified in § 63.1103 by the schedules specified in that section for the affected source.

(ii) If a performance test is required as a result of a process change, the owner or operator shall specify that the performance test has become necessary due to a process change. This specification shall be made in the notification to the Administrator of the intent to conduct a performance test.

(iii) If a process change does not result in the need for additional requirements then the owner or operator shall include a statement documenting this in the next Periodic Report (as provided for in § 63.1110 of this subpart) after the process change was made.

(iv) *Parameter monitoring.* An owner or operator that maintains a TRE index value (if applicable) greater than the value specified in an applicable table presented in § 63.1103 of this subpart without using a recovery device shall report a description of the parameter(s) to be monitored to ensure pollution prevention measure is operated in conformance with its design or process and achieves and maintains the TRE index value above the specified level, and an explanation of the criteria used to select parameter(s). An owner or operator that maintains a TRE index value (if applicable) greater than the value specified in an applicable table presented in § 63.1104 of this subpart by using a recovery device shall comply with the requirements of § 63.993(c) of subpart SS. A pollution prevention measure is any practice that meets the criteria of paragraphs (m)(2)(iv)(A) and (m)(2)(iv)(B) of this section.

(A) A pollution prevention measure is any practice that results in a lesser quantity of regulated HAP emissions per unit of product released to the atmosphere prior to out-of-process recycling, treatment, or control of emissions, while the same product is produced.

(B) Pollution prevention measures may include: substitution of feedstocks that reduce regulated HAP emissions; alterations to the production process to reduce the volume of materials released to the environment; equipment modifications; housekeeping measures; and in-process recycling that returns waste materials directly to production as raw materials. Production cutbacks do not qualify as pollution prevention.

§ 63.1105 Process vents from batch unit operations: applicability determination procedures and methods.

(a) *General.* The provisions of this section provide calculation and measurement methods for parameters that are used to determine applicability of the requirements for process vents for batch unit operations. Section 63.1103 directs the owner or operator to the specific control requirements and associated monitoring, recordkeeping and reporting requirements that apply.

(b) *Annual organic HAP emissions from process vents from batch unit operations.* An owner or operator shall calculate the annual regulated HAP emissions from all process vents from batch unit operations for a process unit by following the procedures specified in paragraphs (b)(1) and (b)(2) of this section.

(1) *Batch cycle emissions.* The uncontrolled regulated organic HAP emissions from an individual batch cycle for each process vent from a batch unit operation shall be determined using the procedures in § 63.488 (b)(1) through (b)(7) of subpart U.

(2) *Determination of annual emissions.* The annual regulated organic HAP emissions from each process vent from a batch unit operation shall be determined using the procedures in § 63.448(b)(8) of subpart U. The owner or operator shall determine, for each applicable production process unit, the sum of annual regulated HAP emissions from all process vents from batch unit by summing the annual regulated organic HAP emissions from all individual process vents from batch unit operations in an applicable production process unit to obtain the total annual regulated organic HAP emissions from the process vents from batch unit operations.

(c) *Halogenated emissions from batch unit operations.* In order to determine whether a batch process vent or an aggregate batch vent stream is halogenated, the annual mass emission rate of halogen atoms contained in organic compounds shall be calculated using the procedures specified in paragraphs (c)(1) through (c)(3) of this section.

(1) The concentration of each organic compound containing halogen atoms (parts per million by volume, by compound) for each batch emission episode shall be determined based on one of the procedures specified in paragraphs (c)(1)(i) through (c)(1)(iv) of this section:

(i) Process knowledge that no halogens or hydrogen halides are present in the process may be used to demonstrate that a batch emission episode is nonhalogenated. Halogens or hydrogen halides that are unintentionally introduced into the process shall not be considered in making a finding that a batch emission episode is nonhalogenated.

(ii) Engineering assessment as discussed in § 63.1104(k).

(iii) Concentration of organic compounds containing halogens and hydrogen halides as measured by Method 26 or 26A of 40 CFR part 60, appendix A.

(iv) Any other method or data that has been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A.

(2) The mass of halogen atoms for a batch process vent shall be calculated using Equation 6.

$$E_{halogen} = K\left[\sum_{j=1}^{n}\sum_{i=1}^{m}\left(C_{avgj}\right)\left(L_{j,i}\right)\left(M_{j,i}\right)\right]AFR \qquad \text{[Eq. 6]}$$

Where:

$E_{halogen}$ = Mass of halogen atoms, dry basis, kilograms per year.

K = Constant, 0.022 (parts per million by volume)$^{-1}$ (kilogram-mole per scm) (minutes per year), where standard temperature is 20°C.

AFR = Annual average batch vent flow rate of the batch process vent, determined according to paragraph (d) of this section, scmm.

$M_{j,i}$ = Molecular weight of halogen atom i in compound j, kilogram per kilogram-mole.

$L_{j,i}$ = Number of atoms of halogen i in compound j.

n = Number of halogenated compounds j in the batch process vent.

m = Number of different halogens i in each compound j of the batch process vent.

C_{avgj} = Annual average batch vent concentration of halogenated compound j in the batch process vent, as determined by using Equation 7, dry basis, parts per million by volume.

$$C_{avgj} = \frac{\sum_{i=1}^{n}\left(DUR_i\right)\left(C_i\right)}{\sum_{i=1}^{n}\left(DUR_i\right)} \qquad \text{[Eq. 7]}$$

Where:

DUR_i = Duration of type i batch emission episodes annually, hours per year.

C_i = Average batch vent concentration of halogenated compound j in type i batch emission episode, parts per million by volume.

n = Number of types of batch emission episodes venting from the batch process vent.

(3) The annual mass emissions of halogen atoms for an aggregate batch vent stream shall be the sum of the annual mass emissions of halogen atoms for all batch process vents included in the aggregate batch vent stream.

(d) *Determination of average flow rate and annual average flow rate.* The owner or operator shall determine, for each applicable production process unit, the total annual average flow rate for all process vents from batch unit operations in accordance with (d)(1) and (d)(2) of this section.

(1) The annual average flow rate for each process vent from a batch unit operation shall be determined using the procedures in § 63.488(e) of subpart U.

(2) The owner or operator shall sum the annual average flow rates from the individual process vents from batch unit operations in an applicable production process unit, determined in accordance with paragraph (d)(1) of this section, to obtain the total annual average flow rate for all process vents from batch unit operations for the applicable production process unit.

(e) *Determination of cutoff flow rate.* For each applicable production process unit at an affected source, the owner or operator shall calculate the cutoff flow rate using Equation 8.

$$CFR = (0.00437)(AE) - 51.6 \qquad \text{[Eq. 8]}$$

Where:

CFR = Cutoff flow rate, standard cubic meters per minute.

AE = Annual TOC or regulated organic HAP emissions from all process vents from batch unit operations in an applicable process unit, as determined in paragraph (b)(2) of this section, kilograms per year.

§ 63.1106 Wastewater treatment system units: applicability determination procedures and methods.

(a) *Knowledge of the wastewater.* The owner or operator shall provide sufficient information to document the total organic HAP average concentration for regulated organic HAP. Examples of information that could constitute knowledge include material balances, records of chemical purchases, process stoichiometry, or previous test results provided the results are still representative of current operating practices at the process unit(s). If test data are used, then the owner or operator shall provide documentation describing the testing protocol and the means by which sampling variability and analytical variability were accounted for in the determination of the total organic HAP average concentration of HAP. The owner or operator shall document how process knowledge is used to determine the total organic HAP average concentration of regulated organic HAP if it is determined that the wastewater stream is not subject to emission control requirements under this subpart due to regulated organic HAP concentration.

(b) *Bench-scale or pilot-scale test data.* The owner or operator shall provide sufficient information to demonstrate that the bench-scale or pilot-scale test concentration data are representative of the actual total organic HAP average concentration of regulated organic HAP. The owner or operator shall also provide documentation describing the testing protocol, and the means by which sampling variability and analytical variability were accounted for in the determination of total organic HAP average concentration or average organic HAP concentration of each individually speciated regulated organic HAP for the wastewater stream.

(c) *Total organic HAP average concentration or average organic HAP concentration.* Each wastewater stream shall be analyzed using one of the following test methods for determining the total organic HAP average concentration or average organic HAP concentration of each regulated organic HAP.

(1) Use procedures specified in Method 305 of 40 CFR part 63, appendix A.

(i) Equation 9 shall be used to calculate the organic HAP concentration of a regulated organic HAP under this subpart:

$$C_i = \left(C_C * \frac{MW}{24.055} * \frac{P_i}{760} * \frac{293}{T_i} * t * L * 10^3\right) / M_S \qquad \text{[Eq. 9]}$$

Where:

C_i = organic HAP concentration of the regulated organic HAP in the wastewater, parts per million by weight.

C_C = Concentration of the regulated organic HAP (i) in the gas stream, as measured by Method 305 of appendix A of this part, parts per million by volume on a dry basis.

M_S = Mass of sample, from Method 305 of appendix A of this part, milligrams.

MW = Molecular weight of the organic HAP (i), grams per gram-mole.

24.055 = Ideal gas molar volume at 293 °Kelvin and 760 millimeters of mercury, liters per gram-mole.

Pi = Barometric pressure at the time of sample analysis, millimeters mercury absolute.

760 = Reference or standard pressure, millimeters mercury absolute.

293 = Reference or standard temperature, °Kelvin.

T_i = Sample gas temperature at the time of sample analysis, °Kelvin.

t = Actual purge time, from Method 305 of appendix A of this part, minutes.

L = Actual purge rate, from Method 305 of appendix A of this part, liters per minute.

10^3 = Conversion factor, milligrams per gram.

(ii) Total organic HAP concentration (stream) can be determined by summing the organic HAP concentrations of all regulated organic HAP's in the wastewater as illustrated by Equation 10.

$$C_{stream} = \sum_{i=1}^{n} C_i \qquad \text{[Eq. 10]}$$

Where:

C_{stream} = Total organic HAP concentration of wastewater stream.

i = Number of organic HAP's in the wastewater stream.

C_i = organic HAP concentration of individual organic HAP (i) calculated according to the procedures in paragraph (c)(1)(i) of this section.

(iii) The calculations in paragraph (c)(1)(i), and where applicable, (c)(1)(ii) of this section shall be performed for a minimum of three samples from each wastewater stream which are representative of normal flow and concentration conditions. Wastewater samples shall be collected using the sampling procedures specified in Method 25D of 40 CFR part 60, appendix A. Where feasible, samples shall be taken from an enclosed pipe prior to the wastewater being exposed to the atmosphere. When sampling from an enclosed pipe is not feasible, a minimum of three representative samples shall be collected in a manner to minimize exposure of the sample to the atmosphere and loss of organic HAP prior to sampling.

(iv) If the wastewater stream has a steady flow rate throughout the year, the total organic HAP average concentration for regulated organic HAP under this subpart of the wastewater stream shall be calculated by averaging the values calculated in paragraph (c)(1)(ii) for the individual samples as illustrated by Equation 11.

$$C_{stream,avg} = \frac{\sum_{j=1}^{m} C_{stream,j}}{j} \qquad \text{[Eq. 11]}$$

Where:

$C_{stream,\ avg}$ = total organic HAP average concentration for regulated organic HAP.

$C_{stream,\ j}$=total organic HAP concentration of wastewater stream as measured in sample (j), calculated according to the procedures in paragraph (c)(1)(ii) of this section.

(v) The average organic HAP concentration for each regulated organic HAP shall be calculated by averaging the values calculated in paragraph (c)(1)(i) of this section for the individual samples as illustrated by Equation 12.

$$C_{i,avg} = \frac{\sum_{j=1}^{m} C_{i,j}}{j} \qquad \text{[Eq. 12]}$$

Where:

$C_{i,\ avg}$=average organic HAP concentration for each regulated organic HAP under this subpart

j=number of samples

$C_{i,\ j}$=organic HAP concentration of an individual organic HAP (i) as measured in sample (j).

(d) *Annual average wastewater flow rate.* An owner or operator shall determine the annual average wastewater flow rate either at the point of generation for each wastewater stream, as specified in paragraph (d)(1) of this section, or downstream of the point(s) of generation for a single wastewater stream or a mixture of wastewater streams as specified in paragraph (d)(2) of this section.

(1) An owner or operator who elects to determine the annual average wastewater flow rate at the point of generation shall comply with paragraph (d)(3), (d)(4), or (d)(5) of this section.

(2) An owner or operator who elects to determine the annual average wastewater flow rate downstream of the point of generation shall comply with paragraph (d)(3), (d)(4), or (d)(5) of this section and with paragraph (d)(6) of this section.

(3) Use the maximum annual average production capacity of the process unit, knowledge of the process, and mass balance information to either: estimate directly the annual average wastewater flow rate; or estimate the total annual wastewater volume and then divide total volume by 525,600 minutes in a year. If knowledge of the process is used to determine the annual average flow rate for a wastewater stream and it is determined that the wastewater stream is not subject to control requirements, the owner or operator shall document how process knowledge is used to determine annual average flow rate.

(4) Select the highest annual average flow rate of wastewater from historical records representing the most recent 5 years of operation or, if the process unit has been in service for less than 5 years but at least 1 year, from historical records representing the total operating life of the process unit.

(5) Measure the flow rate of the wastewater for the point of generation during conditions that are

representative of average wastewater generation rates.

(6) When the average wastewater flow rate is determined downstream of the point of generation at a location where two or more wastewater streams have been mixed, or one or more wastewater streams have been treated or organic HAP losses to the atmosphere have occurred, the owner or operator shall make corrections for such changes in average wastewater flow rate when calculating to represent the average wastewater flow rate at the point of generation.

§ 63.1107 Equipment leaks: applicability determination procedures and methods.

(a) Each piece of equipment within a process unit that can reasonably be expected to contain equipment in organic HAP service is presumed to be in organic HAP service unless an owner or operator demonstrates that the piece of equipment is not in organic HAP service. For a piece of equipment to be considered not in organic HAP service, it must be determined that the percent organic HAP content can be reasonably expected not to exceed the percent by weight control applicability criteria specified in § 63.1103 for an affected source on an annual average basis. For purposes of determining the percent organic HAP content of the process fluid that is contained in or contacts equipment, Method 18 of 40 CFR part 60, appendix A shall be used.

(b) An owner or operator may use good engineering judgment rather than the procedures in paragraph (a) of this section to determine that the percent organic HAP content does not exceed the percent by weight control applicability criteria specified in § 63.1103 for an affected source. When an owner or operator and the Administrator do not agree on whether a piece of equipment is not in organic HAP service, however, the procedures in paragraph (a) of this section shall be used to resolve the disagreement.

(c) If an owner or operator determines that a piece of equipment is in organic HAP service, the determination can be revised after following the procedures in paragraph (a) of this section, or by documenting that a change in the process or raw materials no longer causes the equipment to be in organic HAP service.

(d) Samples used in determining the percent organic HAP content shall be representative of the process fluid that is contained in or contacts the equipment.

§ 63.1108 Compliance with standards and operation and maintenance requirements.

(a) *Requirements.* (1) Except as provided in paragraph (a)(2) of this section, the standards and established parameter ranges of this part shall apply at all times except during periods of startup, shutdown, malfunction, or non-operation of the affected source (or specific portion thereof) resulting in cessation of the emissions to which this subpart applies. However, if a start-up, shutdown, malfunction or period of non-operation of one portion of an affected source does not affect the ability of a particular emission point to comply with the specific provisions to which it is subject, then that emission point shall still be required to comply with the applicable provisions of this subpart and any of the subparts that are referenced by this subpart during startup, shutdown, malfunction, or period of non-operation.

(2) If equipment leak requirements are referenced by this subpart for a subject source category, such requirements shall apply at all times except during periods of startup, shutdown, or malfunction, process unit shutdown (as defined in § 63.1101), or nonoperation of the affected source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which the equipment leak requirements apply.

(3) For batch unit operations, shutdown does not include the normal periods between batch cycles; and start-up does not include the recharging of batch unit operations, or the transitional conditions due to changes in product.

(4) The owner or operator shall not shut down items of equipment that are required or utilized for compliance with requirements of this subpart and any of the subparts that are referenced by this subpart during periods of startup, shutdown, or malfunction when emissions are being routed to such items of equipment if the shutdown would contravene requirements of this subpart to such items of equipment. The owner or operator shall not shut down CPMS during times when emissions are being routed to the equipment that they are monitoring. This paragraph does not apply if the item of equipment is malfunctioning. This paragraph does not apply if the owner or operator shuts down the compliance equipment (other than monitoring systems) to avoid damage due to contemporaneous startup, shutdown, or malfunction of the affected source or portion thereof. If the owner or operator has reason to believe that monitoring equipment would be damaged due to a contemporaneous start-up, shutdown, or malfunction of the affected source or portion thereof, the owner or operator shall provide documentation supporting such a claim. Once approved by the Administrator, the provision for ceasing to collect, during a startup, shutdown, or malfunction, monitoring data that would otherwise be required by the provisions of this subpart must be incorporated into the start-up, shutdown, malfunction plan for that affected source.

(5) During startups, shutdowns, and malfunctions when the standards of this subpart and the subparts referenced by this subpart do not apply pursuant to paragraphs (a)(1) through (a)(4) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions. For purposes of this paragraph, the term ''excess emissions'' means emissions in excess of those that would have occurred if there were no start-up, shutdown, or malfunction and the owner or operator complied with the relevant provisions of this subpart and the subparts referenced by this subpart. The measures to be taken shall be identified in the start-up, shut down, and malfunction plan (if applicable), and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the affected source. Back-up control devices are not required, but may be used if available.

(6) Malfunctions shall be corrected as soon as practical after their occurrence and/or in accordance with the source's startup, shutdown, and malfunction plan developed as specified under § 63.1111.

(7) Operation and maintenance requirements established pursuant to section 112 of the Act are enforceable, independent of emissions limitations or other requirements in relevant standards.

(b) *Compliance determination procedures.*—(1) *Parameter monitoring: compliance with operating conditions.* Compliance with the required operating conditions for the monitored control devices or recovery devices may be determined by, but is not limited to, the parameter monitoring data for emission points that are required to perform continuous monitoring. For each excursion except for excused excursions, and as provided for in paragraph (b)(4) of this section the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating conditions.

(2) *Parameter monitoring: excursions.* An excursion is not a violation and in cases where continuous monitoring is required the excursion does not count toward the number of excused excursions, if the conditions of paragraphs (b)(2)(i) or (b)(2)(ii) of this section are met. Nothing in this paragraph shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this subpart or a subpart referenced by this subpart.

(i) During periods of startup, shutdown, or malfunction [and the source is operated during such periods in accordance with the source's startup, shutdown, and malfunction plan as required by § 63.1111], a monitored parameter is outside its established range or monitoring data cannot be collected, or

(ii) During periods of nonoperation of the affected source or portion thereof (resulting in cessation of the emissions to which the monitoring applies.

(3) *Operation and maintenance procedures.* Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator. This information may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan under § 63.1111), review of operation and maintenance records, and inspection of the affected source and alternatives approved as specified in § 63.1113.

(4) *Applicability and compliance determination.* Applicability and compliance with standards shall be governed, in part, but not limited to, the use of data, tests, and requirements according to paragraphs (b)(4)(i) through (b)(4)(iii). Compliance with design, equipment, work practice, and operating standards, including those for equipment leaks, shall be determined according to paragraph (a)(3) of this section.

(i) *Applicability determinations.* Unless otherwise specified in a relevant test method required to determine control applicability, each test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in this subpart. The arithmetic mean of the results of the three runs shall apply when determining applicability. Upon receiving approval from the Administrator, results of a test run may be replaced with results of an additional test run if it meets the criteria specified in paragraphs (a)(4)(i)(A) through (a)(4)(i)(D).

(A) A sample is accidentally lost after the testing team leaves the site; or

(B) Conditions occur in which one of the three runs must be discontinued because of forced shutdown; or

(C) Extreme meteorological conditions occur;

(D) Other circumstances occur that are beyond the owner or operator's control.

(ii) *Performance test.* The Administrator may determine compliance with emission limitations of this subpart based on, but is not limited to, the results of performance tests conducted according to the procedures specified in subpart SS of this part, unless otherwise specified in this subpart or a subpart referenced by this subpart.

(iii) *Operation and maintenance requirements.* The Administrator may determine compliance with the operation and maintenance standards of this subpart by, but is not limited to, evaluation of an owner or operator's conformance with operation and maintenance requirements, including the evaluation of monitoring data, as specified in this subpart or a subpart referenced by this subpart.

(5) *Design, equipment, work practice, or operational standards.* The Administrator may determine compliance with design, equipment, work practice, or operational requirements by, but is not limited to, review of records, inspection of the affected source, and by evaluation of an owner or operator's conformance with operation and maintenance requirements as specified in this subpart, and in the subparts referenced by this subpart.

(c) *Finding of compliance.* The Administrator may make a finding concerning an affected source's compliance with an emission standard or operating and maintenance requirement as specified in, but not limited to, paragraphs (a) and (b) of this section, upon obtaining all of the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable) and any information available to the Administrator to determine whether proper operation and maintenance practices are being used. Standards in this subpart and methods of determining compliance are in metric units followed by the equivalents in English units. The Administrator will make findings of compliance with the numerical standards of this subpart using metric units.

(d) *Compliance time.* All terms that define a period of time for completion of required tasks (e.g., weekly, monthly, quarterly, annually), unless specified otherwise in the section or subsection that imposes the requirement, refer to the standard calendar periods.

(1) Notwithstanding time periods specified for completion of required tasks, time periods may be changed by mutual agreement between the owner or operator and the Administrator, as specified in § 63.1110(h). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) When the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraph (d)(2)(i) or (d)(2)(ii) of this section, as appropriate.

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period, provided the task is conducted at a reasonable interval after completion of the task during the previous period.

§ 63.1109 Recordkeeping requirements.

(a) *Maintaining notifications, records, and reports.* Except as provided in paragraph (b) of this section, the owner or operator of each affected source subject to this subpart shall keep copies of notifications, reports and records required by this subpart and subparts referenced by this subpart for at least 5 years, unless otherwise specified under this subpart.

(b) *Copies of reports.* If the Administrator has waived the requirement for submittal of copies of reports, the owner or operator is not required to maintain copies of the waived reports. This paragraph applies only to reports and not the underlying

records that must be maintained as specified throughout this subpart and the subparts referenced by this subpart.

(c) *Availability of records.* All records required to be maintained by this subpart or a subpart referenced by this subpart shall be maintained in such a manner that they can be readily accessed and are suitable for inspection. The most recent 2 years of records shall be retained onsite or shall be accessible to an inspector while onsite. The records of the remaining 3 years, where required, may be retained offsite. Records may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, computer disk, magnetic tape, or microfiche.

(d) *Control applicability records.* Owners or operators shall maintain information developed and used to determine control applicability under § 63.1103 (e.g., combined total annual emissions of regulated organic HAP).

§ 63.1110 Reporting requirements.

(a) *Required reports.* Each owner or operator of an affected source subject to this subpart shall submit the reports listed in paragraphs (a)(1) through (a)(6) of this section, as applicable.

(1) A *Notification of initial startup* described in paragraph (b) of this section, as applicable.

(2) An *Initial notification* described in paragraph (c) of this section.

(3) An *Initial compliance status report* described in paragraph (d) of this section.

(4) *Periodic reports* described in paragraph (e) of this section.

(5) *Application for approval of construction or reconstruction* described in § 63.5(d) of subpart A of this part.

(6) *Startup, shutdown, and malfunction reports* described in § 63.1111 of this subpart.

(7) *Other reports.* Other reports shall be submitted as specified elsewhere in this subpart and subparts referenced by this subpart.

(b) *Notification of initial startup.*—(1) *Contents.* An owner or operator of an affected source for which a notice of initial startup has not been submitted under 40 CFR part 63, subpart A, § 63.5, shall send the Administrator written notification of the actual date of initial startup of an affected source.

(2) *Due date.* The notification of the actual date of initial startup shall be postmarked within 15 days after such date.

(c) *Initial notification.* Owners or operators of affected sources that are subject to this subpart shall notify the Administrator of the applicability of this subpart. The notice shall include the information specified in paragraphs (c)(1) through (c)(6) of this section, as applicable. An application for approval of construction or reconstruction required under § 63.5(d) of subpart A of this part may be used to fulfill the initial notification requirements.

(1) Identification of the storage vessels subject to this subpart.

(2) Identification of the process vents subject to this subpart.

(3) Identification of the transfer racks subject to this subpart.

(4) For equipment leaks, identification of the process units of affected facilities subject to this subpart.

(5) Identification of other equipment or emission points subject to this subpart.

(6) The proposed implementation schedule for affected sources identified in paragraphs (c)(1) through (c)(5) of this section, with the implementation schedule extending no longer than 3 years.

(7) *Process unit identification.* As an alternative to the requirements specified in paragraphs (c)(1) through (c)(5) of this section, process units can be identified instead of individual pieces of equipment. For this alternative, the kind of emission point in the process unit that will comply must also be identified.

(8) *Due date.* The initial notification shall be postmarked within 120 calendar days after the source becomes subject to this subpart.

(d) *Initial compliance status report.*—(1) *Contents.* The owner or operator shall submit an Initial Compliance Status Report for each affected source subject to this subpart containing the information specified in this subpart and the subparts referenced by this subpart. Alternatively, this information can be submitted as part of a title V permit application or amendment.

(2) *Due date.* The owner or operator shall submit the Initial Compliance Status Report for each affected source 240 days after the compliance date specified for the affected source under this subpart, or 60 days after the completion of the initial performance test or initial compliance determination, whichever is earlier. Initial Compliance Status Reports may be combined for multiple affected sources as long as the due date requirements for all sources covered in the combined report are met.

(e) *Periodic reports.* The owner or operator of a source subject to monitoring requirements of this subpart, or to other requirements of this subpart or subparts referenced by this subpart, where periodic reporting is specified, shall submit a Periodic Report.

(1) *Contents.* Periodic Reports shall include all information specified in this subpart and subparts referenced by this subpart.

(2) *Due date.* The Periodic Report shall be submitted semiannually no later than 60 calendar days after the end of each 6-month period. The first report shall be submitted no later than the last day of the month that includes the date 8 months (6 months and 60 days) after the date the source became subject to this subpart.

(3) *Overlap with title V reports.* Information required by this subpart, which is submitted with a title V periodic report, need not also be included in a subsequent Periodic Report required by this subpart or subpart referenced by this subpart. The title V report shall be referenced in the Periodic Report required by this subpart.

(f) *General report content.* All reports and notifications submitted pursuant to this subpart, including reports that combine information required under this subpart and a subpart referenced by this subpart, shall include the information specified in paragraphs (f)(1) through (f)(4) of this section.

(1) The name, address and telephone number (fax number may also be provided) of the owner or operator.

(2) The name, address and telephone number of the person to whom inquiries should be addressed, if different than the owner or operator.

(3) The address (physical location) of the reporting facility.

(4) Identification of each affected source covered in the submission and identification of the subparts (this subpart and the subparts referenced in this subpart) that are applicable to that affected source. Summaries and groupings of this information are permitted.

(g) *Report and notification submission.*—(1) *Submission to the Environmental Protection Agency.* All reports and notifications required under this subpart shall be sent to the appropriate EPA Regional Office and to the delegated State authority. The EPA Regional Office may waive the requirement to submit a copy of any reports or notifications at its discretion.

(2) *Submission of copies.* If any State requires a notice that contains all the information required in a report or notification listed in this subpart, an owner or operator may send the appropriate EPA Regional Office a copy of the report or notification sent to the State to satisfy the requirements of this subpart for that report or notification.

(3) *Method of submission.* Wherever this subpart specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (e.g., by fax or

courier). Submittals shall be sent on or before the specified date.

(4) *Submission by electronic media.* If acceptable to both the Administrator and the owner or operator of an affected source, reports may be submitted on electronic media.

(h) *Adjustment to timing of submittals and review of required communications.*—(1) *Alignment with title V submission.* An owner or operator may submit Periodic Reports required by this subpart on the same schedule as the title V periodic report for the facility. The owner or operator using this option need not obtain prior approval, but must ensure that no reporting gaps occur. The owner or operator shall clearly identify the change in reporting schedule in the first report filed under this paragraph. The requirements of paragraph (e) of this section are not waived when implementing this change.

(2) *Establishment of a common schedule.* An owner or operator may arrange by mutual agreement (which may be a standing agreement) with the Administrator a common schedule on which periodic reports required by this subpart shall be submitted throughout the year as long as the reporting period is not extended. Procedures governing the implementation of this provision are specified in paragraphs (h)(3) through (h)(7) of this section.

(3) *Submission requirements.* Except as allowed by paragraph (h)(1) of this section, until an adjustment of a time period or postmark deadline has been approved by the Administrator under paragraphs (h)(5) and (h)(6) of this section, the owner or operator of an affected source remains strictly subject to the required submittal deadlines specified in this subpart and subparts referenced by this subpart.

(4) *Request for adjustment of reporting schedule.* Except as allowed by paragraph (h)(1) of this section, an owner or operator shall request the adjustment provided for in paragraphs (h)(5) and (h)(6) of this section each time he or she wishes to change an applicable time period or postmark deadline specified in this subpart or subparts referenced by this subpart. A request for a change to the periodic reporting schedule need only be made once for every schedule change and not once for every semiannual report submitted.

(5) *Alteration of time periods or deadlines.* Notwithstanding time periods or postmark deadlines specified in this subpart for the submittal of information to the Administrator by an owner or operator, or the review of such information by the Administrator, such time periods or deadlines may be changed by mutual agreement between the owner or operator and the Administrator. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practical before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted.

(6) *Approval of request for adjustment.* If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(7) *Notification of delay.* If the Administrator is unable to meet a specified deadline, he or she will notify the owner or operator of any significant delay and inform the owner or operator of the amended schedule.

§ 63.1111 Startup, Shutdown, and Malfunction.

(a) *Startup, shutdown, and malfunction plan.*—(1) *Description and purpose of plan.* The owner or operator of an affected source shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the affected source during periods of startup, shutdown, and malfunction. This plan shall include a program of corrective action for malfunctioning process and air pollution control equipment used to comply with relevant standards under this subpart and subparts referenced by this subpart. The plan shall also address routine or otherwise predictable CPMS malfunctions. This plan shall be developed by the owner or operator by the affected source's compliance date under this subpart. The requirement to develop and implement this plan shall be incorporated into the source's title V permit. This requirement is optional for equipment that must comply with subparts TT or UU of this part. It is not optional for equipment equipped with a closed vent system and control device subject to subpart SS of this part. The purpose of the startup, shutdown, and malfunction plan is described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(i) To ensure that owners or operators are prepared to correct malfunctions as soon as practical after their occurrence, in order to minimize excess emissions of regulated HAP; and

(ii) To reduce the reporting burden associated with periods of startup, shutdown, and malfunction (including corrective action taken to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation).

(2) *Operation of source.* During periods of startup, shutdown, and malfunction, the owner or operator of an affected source subject to this subpart shall operate and maintain such affected source (including associated air pollution control equipment and CPMS) in accordance with the procedures specified in the startup, shutdown, and malfunction plan developed under paragraph (a)(1) of this section.

(3) *Use of additional procedures.* To satisfy the requirements of this section to develop a startup, shutdown, and malfunction plan, the owner or operator of an affected source may use the affected source's standard operating procedures (SOP) manual, or an Occupational Safety and Health Administration (OSHA) or other plan, provided the alternative plans meet all the requirements of this section and are made available for inspection when requested by the Administrator.

(4) *Revisions to the plan.* The Administrator may require that an owner or operator of an affected source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator may require reasonable revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan is inadequate as specified in paragraphs (a)(4)(i) through (a)(4)(iv):

(i) Does not address a startup, shutdown, and malfunction event of the CPMS, the air pollution control equipment, or the affected source that has occurred; or

(ii) Fails to provide for the operation of the affected source (including associated air pollution control equipment and CPMS) during a startup, shutdown, and malfunction event in a manner consistent with good air pollution control practices for minimizing emissions to the extent practical; or

(iii) Does not provide adequate procedures for correcting malfunctioning process and air pollution control equipment as quickly as practicable; or

(iv) Does not provide adequate measures to prevent or minimize excess emissions to the extent practical.

(5) *Additional malfunction plan requirements.* If a startup, shutdown, and malfunction plan developed under paragraph (a)(1) of this section fails to address or inadequately addresses an event that meets the characteristics of a malfunction, the owner or operator shall revise the startup, shutdown, and malfunction plan within 45 days after the event to include detailed procedures for operating and maintaining the affected source during similar malfunction events and a program of corrective action for similar malfunctions of process or air pollution control equipment or CPMS.

(b) *Startup, shutdown, and malfunction reporting requirements.*—(1) *Periodic startup, shutdown, and malfunction reporting requirements.* If actions taken by an owner or operator during a startup, shutdown, and malfunction of an affected source, or of a control device or monitoring system required for compliance (including actions taken to correct a malfunction) are consistent with the procedures specified in the affected source's plan, then the owner or operator shall state such information in a startup, shutdown, and malfunction report. Reports shall only be required for a startup, shutdown, and malfunction during which excess emissions occur during the reporting period. A startup, shutdown, and malfunction report can be submitted as part of a Periodic Report required under § 63.1110, or on a more frequent basis if specified otherwise under this subpart or a subpart referenced by this subpart or as established otherwise by the permitting authority in the source's title V permit. The startup, shutdown, and malfunction report shall be delivered or postmarked by the 30th day following the end of each calendar half (or other calendar reporting period, as appropriate), unless the information is submitted with the Periodic Report. The report shall include the information specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

(i) The name, title, and signature of the owner or operator or other responsible official certifying its accuracy.

(ii) The number of startup, shutdown, and malfunction events and the total duration of all periods of startup, shutdown, and malfunction for the reporting period if the total duration amounts to either of the durations in paragraphs (b)(1)(ii)(A) or (b)(1)(ii)(B).

(A) Total duration of periods of nonoperation or malfunctioning of a CPMS equal to or greater than 5 percent of that CPMS operating time for the reporting period; or

(B) Total duration of periods of startup, shutdown, and malfunction for an affected source during which excess emissions occur equal to or greater than 1 percent of that affected source's operating time for the reporting period.

(2) *Immediate startup, shutdown, and malfunction reports.*

(i) Notwithstanding the allowance to reduce the frequency of reporting for startup, shutdown, and malfunction reports under paragraph (b)(1) of this section, any time an action taken by an owner or operator during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) during which excess emissions occur is not consistent with the procedures specified in the affected source's plan, the owner or operator shall report the actions taken for that event within 2 working days after commencing actions inconsistent with the plan, followed by a letter delivered or postmarked within 7 working days after the end of the event. The immediate report required under this paragraph shall contain the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy, explaining the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan (if applicable), and whether any excess emissions or parameter monitoring exceedances are believed to have occurred. Notwithstanding the requirements of the previous sentence, after the effective date of an approved permit program in the State in which an affected source is located, the owner or operator may make alternative reporting arrangements, in advance, with the permitting authority in that State. Procedures governing the arrangement of alternative reporting requirements under this paragraph are specified in § 63.1110(h).

§ 63.1112 Extension of compliance, and performance test, monitoring, recordkeeping and reporting waivers and alternatives.

(a) *Extension of compliance.*—(1) *Extension of compliance with emission standards.*

Until an extension of compliance has been granted by the Administrator (or a State with an approved permit program) under this paragraph, the owner or operator of an affected source subject to the requirements of this section shall comply with all applicable requirements of this subpart.

(2) *Extension of compliance for early reductions and other reductions.*—(i) *Early reductions.* Pursuant to section 112(i)(5) of the Act, if the owner or operator of an existing source demonstrates that the source has achieved a reduction in emissions of hazardous air pollutants in accordance with the provisions of subpart D of this part, the Administrator (or the State with an approved permit program) will grant the owner or operator an extension of compliance with specific requirements of this part, as specified in subpart D of this part.

(ii) *Other reductions.* Pursuant to section 112(i)(6) of the Act, if the owner or operator of an existing source has installed best available control technology (BACT) (as defined in section 169(3) of the Act) or technology required to meet a lowest achievable emission rate (LAER) (as defined in section 171 of the Act) prior to the promulgation of an emission standard in this part applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to the BACT or LAER installation, the Administrator will grant the owner or operator an extension of compliance with such emission standard that will apply until the date 5 years after the date on which such installation was achieved, as determined by the Administrator.

(3) *Request for extension of compliance.* Paragraphs (a)(4) through (a)(7) of this section concern requests for an extension of compliance with a relevant standard under this part [except requests for an extension of compliance under paragraph (a)(2)(i) of this section will be handled through procedures specified in subpart D of this part].

(4)(i)(A) The owner or operator of an existing source who is unable to comply with a relevant standard established under this part pursuant to section 112(d) of the Act may request that the Administrator (or a State, when the State has an approved title V permit program and the source is required to obtain a title V permit under that program, or a State, when the State has been delegated the authority to implement and enforce the emission standard for that source) grant an extension allowing the source up to 1 additional year to comply with the standard, if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 1-year extension of compliance is insufficient to dry and cover mining waste in order to reduce emissions of any hazardous air pollutant. The owner or operator of an affected source who has requested an

extension of compliance under this paragraph and who is otherwise required to obtain a title V permit shall apply for such permit or apply to have the source's title V permit revised to incorporate the conditions of the extension of compliance. The conditions of an extension of compliance granted under this paragraph will be incorporated into the affected source's title V permit according to the provisions of part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever are applicable.

(B) Any request under this paragraph for an extension of compliance with a relevant standard shall be submitted in writing to the appropriate authority not later than 12 months before the affected source's compliance date (as specified in § 63.1102) for sources that are not including emission points in an emissions average, or not later than 18 months before the affected source's compliance date [as specified in § 63.1102] for sources that are including emission points in an emissions average. Emission standards established under this part may specify alternative dates for the submittal of requests for an extension of compliance if alternatives are appropriate for the source categories affected by those standards, e.g., a compliance date specified by the standard is less than 12 (or 18) months after the standard's effective date.

(ii) The owner or operator of an existing source unable to comply with a relevant standard established under this part pursuant to section 112(f) of the Act may request that the Administrator grant an extension allowing the source up to 2 years after the standard's effective date to comply with the standard. The Administrator may grant such an extension if he/she finds that such additional period is necessary for the installation of controls and that steps will be taken during the period of the extension to assure that the health of persons will be protected from imminent endangerment. Any request for an extension of compliance with a relevant standard under this paragraph shall be submitted in writing to the Administrator not later than 15 calendar days after the effective date of the relevant standard.

(5) The owner or operator of an existing source that has installed BACT or technology required to meet LAER [as specified in paragraph (a)(2)(ii) of this section] prior to the promulgation of a relevant emission standard in this part may request that the Administrator grant an extension allowing the source 5 years from the date on which such installation was achieved, as determined by the Administrator, to comply with the standard. Any request for an extension of compliance with a relevant standard under this paragraph shall be submitted in writing to the Administrator not later than 120 days after the promulgation date of the standard. The Administrator may grant such an extension if he or she finds that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

(6)(i) The request for a compliance extension under paragraph (a)(4) of this section shall include the following information:

(A) A description of the controls to be installed to comply with the standard;

(B) A compliance schedule, including the date by which each step toward compliance will be reached. At a minimum, the list of dates shall include:

(*1*) The date by which contracts for emission control systems or process changes for emission control will be awarded, or the date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;

(*2*) The date by which on-site construction, installation of emission control equipment, or a process change is to be initiated;

(*3*) The date by which on-site construction, installation of emission control equipment, or a process change is to be completed; and

(*4*) The date by which final compliance is to be achieved.

(C) A description of interim emission control steps, that will be taken during the extension period, including milestones to assure proper operation and maintenance of emission control and process equipment; and

(D) Whether the owner or operator is also requesting an extension of other applicable requirements (e.g., performance testing requirements).

(ii) The request for a compliance extension under paragraph (4)(i) of this section shall include all information needed to demonstrate to the Administrator's satisfaction that the installation of BACT or technology to meet LAER controls the same pollutant (or stream of pollutants) that would be controlled at that source by the relevant emission standard.

(7) Advice on requesting an extension of compliance may be obtained from the Administrator (or the State with an approved permit program).

(8) *Approval of request for extension of compliance.* Paragraphs (a)(9) through (a)(14) of this section concern approval of an extension of compliance requested under paragraphs (a)(4) through (a)(6) of this section.

(9) Based on the information provided in any request made under paragraphs (a)(4) through (a)(6) of this section, or other information, the Administrator (or the State with an approved permit program) may grant an extension of compliance with an emission standard, as specified in paragraphs (a)(4) and (a)(5) of this section.

(10) The extension will be in writing and will—

(i) Identify each affected source covered by the extension;

(ii) Specify the termination date of the extension;

(iii) Specify the dates by which steps toward compliance are to be taken, if appropriate;

(iv) Specify other applicable requirements to which the compliance extension applies (e.g., performance tests); and

(v)(A) Under paragraph (a)(4), specify any additional conditions that the Administrator (or the State) deems necessary to assure installation of the necessary controls and protection of the health of persons during the extension period; or

(B) Under paragraph (a)(5), specify any additional conditions that the Administrator deems necessary to assure the proper operation and maintenance of the installed controls during the extension period.

(11) The owner or operator of an existing source that has been granted an extension of compliance under paragraph (a)(10) of this section may be required to submit to the Administrator (or the State with an approved permit program) progress reports indicating whether the steps toward compliance outlined in the compliance schedule have been reached. The contents of the progress reports and the dates by which they shall be submitted will be specified in the written extension of compliance granted under paragraph (a)(9) of this section.

(12)(i) The Administrator (or the State with an approved permit program) will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (a)(4)(i) or (a)(5) of this section. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains

sufficient information to make a determination, within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 30 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator (or the State with an approved permit program) will notify the owner or operator in writing of the Administrator's (or the State's) intention to issue the denial, together with—

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator (or the State) before further action on the request.

(iv) The Administrator's final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(13)(i) The Administrator will notify the owner or operator in writing of approval or intention to deny approval of a request for an extension of compliance within 30 calendar days after receipt of sufficient information to evaluate a request submitted under paragraph (a)(4)(ii) of this section. The 30-day approval or denial period will begin after the owner or operator has been notified in writing that his/her application is complete. The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application, that is, whether the application contains sufficient information to make a determination, within 15 calendar days after receipt of the original application and within 15 calendar days after receipt of any supplementary information that is submitted.

(ii) When notifying the owner or operator that his/her application is not complete, the Administrator will specify the information needed to complete the application and provide notice of opportunity for the applicant to present, in writing, within 15 calendar days after he/she is notified of the incomplete application, additional information or arguments to the Administrator to enable further action on the application.

(iii) Before denying any request for an extension of compliance, the Administrator will notify the owner or operator in writing of the Administrator's intention to issue the denial, together with—

(A) Notice of the information and findings on which the intended denial is based; and

(B) Notice of opportunity for the owner or operator to present in writing, within 15 calendar days after he/she is notified of the intended denial, additional information or arguments to the Administrator before further action on the request.

(iv) A final determination to deny any request for an extension will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 30 calendar days after presentation of additional information or argument (if the application is complete), or within 30 calendar days after the final date specified for the presentation if no presentation is made.

(14) The Administrator (or the State with an approved permit program) may terminate an extension of compliance at an earlier date than specified if any specification under paragraphs (a)(10)(iii) or (a)(10)(iv) of this section is not met.

(15) [Reserved]

(16) The granting of an extension under this section shall not abrogate the Administrator's authority under section 114 of the Act.

(b) *Waiver of performance tests.*

(1) Until a waiver of a performance testing requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section.

(2) Individual performance tests may be waived upon written application to the Administrator if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) *Request to waive a performance test.*

(i) If a request is made for an extension of compliance under paragraph (a) of this section, the application for a waiver of an initial performance test shall accompany the information required for the request for an extension of compliance. If no extension of compliance is requested or if the owner or operator has requested an extension of compliance and the Administrator is still considering that request, the application for a waiver of an initial performance test shall be submitted at least 60 days before the performance test if a site-specific test plan is not submitted.

(ii) If an application for a waiver of a subsequent performance test is made, the application may accompany any required compliance progress report, compliance status report, or excess emissions and continuous monitoring system performance report, but it shall be submitted at least 60 days before the performance test if a site-specific test plan is not submitted.

(iii) Any application for a waiver of a performance test shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the affected source performing the required test.

(4) *Approval of request to waive performance test.* The Administrator will approve or deny a request for a waiver of a performance test made under paragraph (b)(3) of this section when he/she—

(i) Approves or denies an extension of compliance under paragraph (a) of this section; or

(ii) Approves or disapproves a site-specific test plan; or

(iii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

(iv) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

(c) *Use of an alternative monitoring method.*

(1) *General.* Until permission to use an alternative monitoring method has been granted by the Administrator

under this paragraph, the owner or operator of an affected source remains subject to the requirements of this section and the relevant standard.

(2) After receipt and consideration of written application, the Administrator may approve alternatives to any monitoring methods or procedures of this part including, but not limited to, the following:

(i) Alternative monitoring requirements when installation of a CMS specified by a relevant standard would not provide accurate measurements due to liquid water or other interferences caused by substances within the effluent gases;

(ii) Alternative monitoring requirements when the affected source is infrequently operated;

(iii) Alternative monitoring requirements to accommodate CEMS that require additional measurements to correct for stack moisture conditions;

(iv) Alternative locations for installing CMS when the owner or operator can demonstrate that installation at alternate locations will enable accurate and representative measurements;

(v) Alternate methods for converting pollutant concentration measurements to units of the relevant standard;

(vi) Alternate procedures for performing daily checks of zero (low-level) and high-level drift that do not involve use of high-level gases or test cells;

(vii) Alternatives to the American Society for Testing and Materials (ASTM) test methods or sampling procedures specified by any relevant standard;

(viii) Alternative CMS that do not meet the design or performance requirements in this part, but adequately demonstrate a definite and consistent relationship between their measurements and the measurements of opacity by a system complying with the requirements as specified in the relevant standard. The Administrator may require that such demonstration be performed for each affected source; or

(ix) Alternative monitoring requirements when the effluent from a single affected source or the combined effluent from two or more affected sources is released to the atmosphere through more than one point.

(3) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring method, requirement, or procedure, the Administrator may require the use of a method, requirement, or procedure specified in this section or in the relevant standard. If the results of the specified and alternative method, requirement, or procedure do not agree, the results obtained by the specified method, requirement, or procedure shall prevail.

(4)(i) *Request to use alternative monitoring method.* An owner or operator who wishes to use an alternative monitoring method shall submit an application to the Administrator as described in paragraph (c)(4)(ii) of this section, below. The application may be submitted at any time provided that the monitoring method is not used to demonstrate compliance with a relevant standard or other requirement. If the alternative monitoring method is to be used to demonstrate compliance with a relevant standard, the application shall be submitted not later than with the site-specific test plan required or with the site-specific performance evaluation plan (if requested) or at least 60 days before the performance evaluation is scheduled to begin.

(ii) The application shall contain a description of the proposed alternative monitoring system and a performance evaluation test plan, if required. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility, or the impracticality, of the affected source using the required method.

(iii) The owner or operator may submit the information required in this paragraph well in advance of the submittal dates specified in paragraph (c)(4)(i) above to ensure a timely review by the Administrator in order to meet the compliance demonstration date specified in this section or the relevant standard.

(5) *Approval of request to use alternative monitoring method.*

(i) The Administrator will notify the owner or operator of approval or intention to deny approval of the request to use an alternative monitoring method within 30 calendar days after receipt of the original request and within 30 calendar days after receipt of any supplementary information that is submitted. Before disapproving any request to use an alternative monitoring method, the Administrator will notify the applicant of the Administrator's intention to disapprove the request together with—

(A) Notice of the information and findings on which the intended disapproval is based; and

(B) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request. At the time the Administrator notifies the applicant of his or her intention to disapprove the request, the Administrator will specify how much time the owner or operator will have after being notified of the intended disapproval to submit the additional information.

(ii) The Administrator may establish general procedures and criteria in a relevant standard to accomplish the requirements of paragraph (c)(5)(i) of this section.

(iii) If the Administrator approves the use of an alternative monitoring method for an affected source under paragraph (c)(5)(i) of this section, the owner or operator of such source shall continue to use the alternative monitoring method until he or she receives approval from the Administrator to use another monitoring method as allowed by this subpart or a subpart referenced by this subpart.

(6) *Alternative to the relative accuracy test.* An alternative to the relative accuracy test for CEMS specified in a relevant standard may be requested as follows:

(i) *Criteria for approval of alternative procedures.* An alternative to the test method for determining relative accuracy is available for affected sources with emission rates demonstrated to be less than 50 percent of the relevant standard. The owner or operator of an affected source may petition the Administrator under paragraph (c)(6)(ii) of this section to substitute the relative accuracy test in section 7 of Performance Specification 2 with the procedures in section 10 if the results of a performance test conducted according to the requirements specified in this subpart or subpart referenced by this subpart demonstrate that the emission rate of the pollutant of interest in the units of the relevant standard is less than 50 percent of the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the owner or operator may petition the Administrator to substitute the relative accuracy test with the procedures in section 10 of Performance Specification 2 if the control device exhaust emission rate is less than 50 percent of the level needed to meet the control efficiency requirement. The alternative procedures do not apply if the CEMS is used continuously to determine compliance with the relevant standard.

(ii) *Petition to use alternative to relative accuracy test.* The petition to use an alternative to the relative accuracy test shall include a detailed description of the procedures to be applied, the location and the procedure for conducting the alternative, the concentration or response levels of the alternative relative accuracy materials,

and the other equipment checks included in the alternative procedure(s). The Administrator will review the petition for completeness and applicability. The Administrator's determination to approve an alternative will depend on the intended use of the CEMS data and may require specifications more stringent than in Performance Specification 2.

(iii) *Rescission of approval to use alternative to relative accuracy test.* The Administrator will review the permission to use an alternative to the CEMS relative accuracy test and may rescind such permission if the CEMS data from a successful completion of the alternative relative accuracy procedure indicate that the affected source's emissions are approaching the level of the relevant standard. The criterion for reviewing the permission is that the collection of CEMS data shows that emissions have exceeded 70 percent of the relevant standard for any averaging period, as specified in the relevant standard. For affected sources subject to emission limitations expressed as control efficiency levels, the criterion for reviewing the permission is that the collection of CEMS data shows that exhaust emissions have exceeded 70 percent of the level needed to meet the control efficiency requirement for any averaging period, as specified in the relevant standard. The owner or operator of the affected source shall maintain records and determine the level of emissions relative to the criterion for permission to use an alternative for relative accuracy testing. If this criterion is exceeded, the owner or operator shall notify the Administrator within 10 days of such occurrence and include a description of the nature and cause of the increased emissions. The Administrator will review the notification and may rescind permission to use an alternative and require the owner or operator to conduct a relative accuracy test of the CEMS as specified in section 7 of Performance Specification 2.

(d) *Waiver of recordkeeping or reporting requirements.*

(1) Until a waiver of a recordkeeping or reporting requirement has been granted by the Administrator under this paragraph, the owner or operator of an affected source remains subject to the recordkeeping and reporting requirements of this subpart and any subparts referenced by this subpart.

(2) Recordkeeping or reporting requirements may be waived upon written application to the Administrator if, in the Administrator's judgment, the affected source is achieving the relevant standard(s), or the source is operating under an extension of compliance, or the owner or operator has requested an extension of compliance and the Administrator is still considering that request.

(3) If an application for a waiver of recordkeeping or reporting is made, the application shall accompany the request for an extension of compliance under paragraph (a), any required compliance progress report or compliance status report required under this part or in the source's title V permit, or an excess emissions and continuous monitoring system performance report required under subpart SS or another subpart referenced by this subpart, whichever is applicable. The application shall include whatever information the owner or operator considers useful to convince the Administrator that a waiver of recordkeeping or reporting is warranted.

(4) The Administrator will approve or deny a request for a waiver of recordkeeping or reporting requirements under this paragraph when he/she—

(i) Approves or denies an extension of compliance under paragraph (a); or

(ii) Makes a determination of compliance following the submission of a required compliance status report or excess emissions and continuous monitoring systems performance report; or

(iii) Makes a determination of suitable progress towards compliance following the submission of a compliance progress report, whichever is applicable.

(5) A waiver of any recordkeeping or reporting requirement granted under this paragraph may be conditioned on other recordkeeping or reporting requirements deemed necessary by the Administrator.

(6) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the affected source.

§ 63.1113 Procedures for approval of alternative means of emission limitation.

(a) *Alternative means of emission limitation.* An owner or operator of an affected source may request a determination of alternative means of emission limitation to the requirements of design, equipment, work practice, or operational standards of this subpart or of a subpart referenced by this subpart. If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in HAP emissions at least equivalent to the reduction in emissions from that source achieved under any design, equipment, work practice, or operational standards (but not performance standards) in this subpart, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement.

(1) The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(2) Any such notice shall be published only after public notice and an opportunity for a hearing.

(b) *Content of submittal.*—(1) In order to obtain approval, any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information showing that the alternative means achieves equivalent emission reductions. An owner or operator of an affected source seeking permission to use an alternative means of compliance who has not previously performed testing shall also submit a proposed test plan. If the owner or operator seeks permission to use an alternative means of compliance based on previously performed testing, they shall submit the results of testing, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring.

(2) The owner or operator who requests an alternative means of emissions limitation shall submit a description of the proposed testing, monitoring, recordkeeping, and reporting that will be used and the proposed basis for demonstrating compliance.

(3) For storage vessels, the owner or operator shall include the results of actual emissions tests using full-size or scale-model storage vessels that accurately collect and measure all regulated HAP emissions using a given control technique, and that accurately simulate wind and account for other emission variables such as temperature and barometric pressure, or an engineering analysis that the Administrator determines to be an accurate method of determining equivalence.

(4) For proposed alternatives to equipment leak requirements referenced by this subpart, the owner or operator shall also submit the information specified in and meet the requirements for alternate means of emission limitation specified in the referenced subparts.

[FR Doc. 98–25454 Filed 10–13–98; 8:45 am]

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federal register

Wednesday
October 14, 1998

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 65, 66, and 147

Revision of Certification Requirements: Mechanics and Repairmen; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 65, 66, and 147

[Docket No. 27863; Notice No. 98–5]

RIN 2120–AF22

Revision of Certification Requirements: Mechanics and Repairmen

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for an NPRM that was published on July 9, 1998. In that document, the FAA propose changes to the Federal Aviation Regulations that prescribe the certification and training requirements for mechanics and repairmen. This extension is a result of a formal request from the Professional Aviation Maintenance Association (PAMA) to extend the comment period to the proposal. This extension is necessary to afford all interested parties an opportunity to present their views on the proposed rulemaking.

DATES: Comments must be received on or before January 8, 1999.

ADDRESSES: Comments on this proposal may be delivered or mailed, in triplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Docket No. 27863, Room 915G, 800 Independence Avenue SW., Washington, DC 20591. Comments submitted must be marked: ''Docket No. 27863.'' Comments also may be sent electronically to the following Internet address: 9–nprm-cmts@faa.dot.gov. Comments may be examined in Room 915G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Leslie K. Vipond, AFS–350, Continuous Airworthiness Maintenance Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3269.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. 27863.'' The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the *Government Printing Office's* electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation rulemaking Advisory Committee Bulletin Board service (telephone: (800) 322–2772 or (202) 267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the *Government Printing Office's* electronic webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

On June 26, 1998, the Federal Aviation Administration (FAA) issued Notice No. 98–5, Revision of Certification Requirements: Mechanics and Repairmen (63 FR 37172, July 9, 1998). Comments to that document were to be received on or before November 6, 1998.

By letter dated August 7, 1998, PAMA requested that the FAA extend the comment period for Notice No. 98–5 until January 8, 1999. PAMA stated that the proposal is a highly complex document that affects all aviation maintenance personnel. The association also noted difficulties encountered by its members in obtaining the document and related advisory material. PAMA stated that an extension of the comment period would provide the public with sufficient time to obtain and fully evaluate this proposal before submitting comments to the FAA.

In accordance with § 11.29(c) of Title 14, Code of Federal Regulations, the FAA has reviewed PAMA's petition for extension of the comment period to Notice No. 98–5. PAMA has shown a substantive interest in the proposed rule and good cause for the extension. The FAA also has determined that extension of the comment period is consistent with the public interest.

Extension of Comment Period

The FAA has reviewed the request for consideration of an extended comment period for Notice No. 98–5 and determined that an extension would be in the public interest, and that good cause exists for taking this action. Accordingly, the comment period for Notice No. 98–5 is extended to January 8, 1999. Also, the comments on draft Advisory Circulars (AC): AC 66–XX Part 66—The New Certification Regulations for Aviation Maintenance Personnel, AC 66–XX Recurrent Training for Aviation Maintenance Personnel, and AC 66–XX Approval of Aviation Maintenance Technician (Transport) Training Program Providers is extended until January 8, 1999.

Issued in Washington, DC, October 7, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Services.

[FR Doc. 98–27400 Filed 10–13–98; 8:45 am]

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federal register

Wednesday
October 14, 1998

Part IV

Department of Education

34 CFR Part 361

State Vocational Rehabilitation Services Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 361

RIN 1820–AB14

The State Vocational Rehabilitation Services Program

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing The State Vocational Rehabilitation (VR) Services Program. These amendments are needed to implement changes in the Rehabilitation Act of 1973, as amended (Act). The proposed regulations would establish evaluation standards and performance indicators for The State VR Services Program.

DATES: Comments must be received by the Department on or before November 30, 1998.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Fredric K. Schroeder, Commissioner, Rehabilitation Services Administration (RSA), U.S. Department of Education, 600 Independence Avenue, SW., Room 3028, Mary E. Switzer Building, Washington, DC 20202–2531. Comments transmitted by facsimile should be sent to (202) 205–9772 or (202) 260–7527. Comments may also be sent through the Internet to: comments@ed.gov.

You must include the term ''VR Standards'' in the subject line of your electronic message.

Electronic transmission of comments will facilitate the analysis of comments. Also, comments should be specific and identified by proposed regulatory citation. RSA is not required to consider comments received after the due date for comments noted previously.

Comments that concern information collection requirements must be sent to the Office of Management and Budget (OMB) at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Beverlee Stafford, Policy, Planning and Evaluation Service, Rehabilitation Services Administration, U.S. Department of Education, 600 Independence Avenue, SW., Room 3014 Mary E. Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8831. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 (in the Washington, DC area, telephone (202) 708–9300) between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

For fiscal year (FY) 1996 performance data reports on individual DSUs, please contact Harold Kay, Policy, Planning and Evaluation Service, Rehabilitation Services Administration, Room 3014 Mary E. Switzer Building, 600 Independence Avenue, SW., Washington, DC 20202–2550. Telephone: (202) 205–9883. Internet: Harold__Kay@ed.gov.

SUPPLEMENTARY INFORMATION:

Invitation to Comment:

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. To ensure that public comments have maximum effect in developing the final regulations, the Department urges commenters to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange comments in the same order as the proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3214, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

To assist the department in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

General

These proposed regulations would amend the regulations in Part 361 of the Code of Federal Regulations governing The State Vocational Rehabilitation Services Program (VR program) by adding a Subpart E to implement certain requirements of the Rehabilitation Act Amendments of 1992 (1992 Amendments), Pub. L. 102–569, and the Rehabilitation Act Amendments of 1998 (1998 Amendments), as specified in Title IV of the Workforce Investment Act of 1998 (Workforce Act), Pub. L. 105–220, August 7, 1998. The 1992 Amendments added section 106 to Part A of Title I of the Rehabilitation Act of 1973, as amended, which authorizes the VR program. Title IV of the Workforce Act, which contains the 1998 Amendments, modifies section 106 of the Act to require that, to the maximum extent practicable, the VR standards and indicators be consistent with the core indicators of performance (Core Indicators) established under section 136(b) of the Workforce Act. Section 106 also requires, among other things, the following: (1) The Secretary establishes and publishes in the **Federal Register** evaluation standards and performance indicators for the VR program. (2) The evaluation standards and performance indicators must include outcome and related measures of program performance that facilitate and in no way impede the accomplishment of the purpose and policy of the program. (3) The evaluation standards and performance indicators must be developed with input from designated State units (DSUs) for VR, related professional and consumer organizations, recipients of VR services, and other interested parties. (4) Each DSU shall report to the Secretary after the end of each fiscal year the extent to which it is in compliance with the evaluation standards and performance indicators. (5) The Secretary provides technical assistance to any DSU that performs below the established evaluation standards and develops jointly with a DSU a program improvement plan outlining specific actions to be taken by a DSU to improve program performance. (6) If a DSU that performs below the established evaluation standards fails to enter into a program improvement plan, or is not complying substantially with the terms and conditions of such a program improvement plan, the Secretary reduces or makes no further payments to the DSU until the DSU has entered into an approved program improvement plan or is complying substantially with the terms and conditions of such a

program improvement plan. (7) RSA provides a report to Congress containing an analysis of program performance, including relative State performance, based on the evaluation standards and performance indicators.

These proposed regulations would implement those requirements in section 106.

Executive Order 12866 encourages Federal agencies to facilitate meaningful participation in the regulatory development process. Accordingly, the U.S. Department of Education (Department) has widely consulted with the rehabilitation community during the development of the current proposed evaluation standards and performance indicators. On February 19, 1993, the Department published a notice of intent to regulate in the **Federal Register** (58 FR 9458) to solicit comment on the development of the proposed evaluation standards and performance indicators. The Department also held a public meeting on September 23, 1993, to discuss several issues relating to the development of proposed evaluation standards and performance indicators. Since that time, the Commissioner of RSA has discussed the development of the proposed indicators on many occasions with various members of the rehabilitation community. These proposed regulations contain proposed evaluation standards and performance indicators that reflect the input received through these efforts.

The proposed regulations contain two evaluation standards, each of which has at least two or more implementing performance indicators by which to measure DSU performance. The proposed regulations also contain specific performance levels for each indicator that identify the minimum level of performance that a DSU would need to achieve in order to pass a given indicator. Under these proposed regulations, a DSU would have to pass a minimum of five of the seven performance indicators, including at least two of the three primary indicators, for Evaluation Standard 1, and both performance indicators for Evaluation Standard 2.

The Secretary plans to propose other evaluation standards in addition to the two standards included in these proposed regulations, once appropriate data-gathering instruments and methods for measuring compliance with the additional standards have been developed and tested. The Secretary is considering three additional standards and implementing performance indicators. These ''draft proposed standards and indicators'' are identified and discussed in a separate section of this preamble. The Secretary solicits public comment on issues regarding the validity and feasibility of implementing these draft proposed evaluation standards and performance indicators. The Secretary also requests comments on identifying available data-gathering instruments and methods for measuring compliance with the draft proposed performance indicators. Based on the public comments received and on the results of the data gathering, the Secretary intends to revise these draft proposed standards and indicators and publish them for comment in a future notice of proposed rulemaking (NPRM).

Proposed Evaluation Standards 1 and 2

Background

The following is a brief overview of the evaluation standards and performance indicators included in these proposed regulations (Evaluation Standards 1 and 2; Performance Indicators 1.1 through 1.7 and 2.1 through 2.2), including a discussion of the role of the standards and indicators in the oversight of the VR program.

Accountability for the VR program is established primarily through the Government Performance and Results Act (GPRA), the Title I evaluation standards and performance indicators, DSU State Plans, and program monitoring. GPRA requires that U.S. Government programs provide annual plans that include program outcome indicators. RSA has proposed national aggregate outcome indicators to meet GPRA requirements, and the Title I evaluation standards and performance indicators are closely related to the GPRA indicators. The Title I evaluation standards and performance indicators measure performance at the DSU level, while the GPRA indicators measure the aggregate performance of all DSUs.

Each DSU submits a State Plan containing assurances and specific information demonstrating compliance with the requirements of section 101 of the Act. The 1998 Amendments revised section 101(a)(15) of the Act to require DSUs to use the results of a comprehensive statewide assessment of rehabilitation needs and the Title I evaluation standards and performance indicators as bases for developing DSU goals and priorities. In addition, under section 107(a)(1) of the Act, RSA conducts monitoring to ''determine whether, in the administration of the State Plan, a State is complying substantially with the provisions of such plan and with evaluation standards and performance indicators established under section 106 [of the Act].'' Thus, the Title I evaluation standards and performance indicators are considered a crucial part of a comprehensive, integrated system of accountability for the VR program.

Proposed Evaluation Standard 1, which measures employment outcomes, includes seven performance indicators. Because the Secretary considers three of these performance indicators particularly representative of the central purposes of the VR program, these three performance indicators would be identified as ''primary'' indicators.

Primary indicators address the areas the Secretary considers most significant in evaluating a DSU's success in assisting individuals with disabilities, including individuals with significant disabilities, to achieve high-quality employment outcomes. The first of these primary indicators would measure the percentage of all individuals determined to have achieved an employment outcome who exit the VR program into competitive, self-, or ''Business Enterprise Program'' (BEP) employment with earnings equivalent to at least the minimum wage (Performance Indicator 1.3). The second primary indicator would measure individuals with significant disabilities as a percentage of all individuals who exit the VR program into competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage (Performance Indicator 1.4). The third primary indicator would measure the average hourly earnings of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings levels equivalent to at least the minimum wage as a ratio to the State's average hourly earnings for all individuals in the State who are employed (as derived from the Bureau of Labor Statistics report ''State Average Annual Pay'' for the most recent available year) (Performance Indicator 1.5). The four remaining performance indicators under Evaluation Standard 1 would measure the number of employment outcomes (Performance Indicator 1.1), the percentage of cases with employment outcomes (Performance Indicator 1.2), self-sufficiency resulting from employment (Performance Indicator 1.6), and employment outcomes with medical insurance plans that cover hospitalization (Performance Indicator 1.7). A DSU would have to pass two of the three primary indicators and a total of at least five of the seven performance indicators to meet the performance requirements for Evaluation Standard 1.

These proposed performance indicators are designed to ensure that DSUs assist adequate numbers and proportions of individuals with

disabilities to obtain employment outcomes, gain access to medical insurance plans that cover hospitalization, and become self-sufficient. The proposed performance indicators also emphasize high quality competitive employment outcomes with adequate earnings, particularly for individuals with significant disabilities.

The Secretary recognizes that high performance on some of these proposed performance indicators could result in lower performance on others. The performance indicators have been designed to support those results in appropriate instances. For example, if a DSU decides to focus more of its resources on assisting persons with significant disabilities to achieve high-quality competitive employment outcomes (which would enhance performance on Performance Indicator 1.4), fewer persons with less significant disabilities would be served and the total number of persons achieving employment outcomes (Performance Indicator 1.1) would likely decline. The proposed regulations, therefore, designate Performance Indicator 1.4 (and not Performance Indicator 1.1) as primary in recognition of the difficulty in satisfying both. Designating Performance Indicator 1.4 as primary is also appropriate since it reflects two central purposes of the VR program: addressing the needs of individuals with significant disabilities and facilitating competitive employment outcomes.

A DSU would have to pass both of the performance indicators for proposed Evaluation Standard 2, which measures equality of access to rehabilitation services. The first performance indicator for proposed Evaluation Standard 2 would compare service rates for minorities and non-minorities. The second indicator for proposed Evaluation Standard 2 would compare the percentage of minorities with significant disabilities who exit the VR program after receiving services under an Individualized Plan for Employment (IPE) as a ratio to the percentage of minorities in the State who have reported that a disability prevents them from working.

As required by section 106(a)(1)(C) of the Act, the standards and indicators developed under the VR program must be consistent, to the maximum extent practicable, with the four Core Indicators established under section 136(b) of the Workforce Act. Accordingly, the proposed performance indicators under proposed Evaluation Standard 1 (Employment Outcomes) reflect the first Core Indicator (Core Indicator I—entry into unsubsidized employment) established under section 136(b)(2)(A)(i)(I) of the Workforce Act. In particular, performance indicators 1.3 (percentage of individuals obtaining competitive employment) and 1.4 (percentage of individuals with significant disabilities obtaining competitive employment) are consistent with Core Indicator I since performance indicators 1.3 and 1.4 represent the proportions of individuals and individuals with significant disabilities who obtain competitive employment. ''Competitive employment'' is considered equivalent to ''unsubsidized employment,'' the term used in the Workforce Act to refer to instances in which an individual is self-employed or is paid directly by the individual's employer rather than through a separate source or entity that is subsidizing the employment. On the other hand, performance indicators 1.1 and 1.2 measure the extent to which individuals achieve ''employment outcomes'' generally, which would include both competitive employment outcomes and other outcomes that are not considered unsubsidized employment (e.g., unpaid homemaker or unpaid family worker). Thus, although performance indicators 1.1 and 1.2 are necessary to address the full scope of employment outcomes achieved by participants in the VR program, those indicators are not entirely consistent with Core Indicator I of the Workforce Act. Finally, performance indicators 1.5, 1.6, and 1.7 refer to other key factors associated with a successful VR program—earnings, employment as the main source of support, and employment benefits, respectively—and, therefore, are not necessarily aligned with Core Indicator I.

The core indicators in the Workforce Act do not address equal access to services (Evaluation Standard 2 in the proposed regulations), consumer satisfaction (draft proposed Evaluation Standard 3 in this preamble), or the adequate use of resources (draft proposed Evaluation Standard 5 in this preamble). Thus, although the Secretary believes these measures are (or in the case of the draft proposed standards, could be) important factors to a successful VR program, the performance indicators for each of these standards are not based on the Workforce Act. Draft proposed Evaluation Standard 3 and its attendant performance indicators, however, are related to the customer satisfaction indicator in section 136(b)(2)(B) of the Workforce Act since both measure the satisfaction of service recipients under applicable programs.

The draft proposed performance indicators under draft proposed Evaluation Standard 4 (retention of employment and earnings), which are described in a separate section of this preamble, are consistent with Core Indicators II and III under section 136(b)(2)(A)(i)(II) and (III) of the Workforce Act. Core Indicators II and III measure retention of unsubsidized employment and earnings over a 6-month period, whereas the draft proposed performance indicators would measure retention of competitive employment outcomes (the equivalent of unsubsidized employment), including earnings, over both a 6-and 12-month period in order to address the difficulties experienced by individuals with disabilities in retaining employment over time. The 12-month review under the draft proposed indicator is also based on section 136(d)(2)(D) of the Workforce Act, which requires States to report on participants' retention of employment and earnings received in unsubsidized employment 12 months after entry into employment.

None of the proposed evaluation standards or performance indicators reflect Core Indicator IV under section 136(b)(2)(A)(4) of the Workforce Act (attainment of a recognized credential relating to achievement of educational or occupational skills) since attaining a recognized credential for achieving a skill has not been a stated goal of the VR program. Performance under the VR program is currently based solely on the extent to which individuals achieve and maintain employment. However, for some individuals, attainment of appropriate credentials is a necessary step in achieving their employment goals. Therefore, the Secretary invites comment on the appropriateness of including Core Indicator IV as a key measure of success in meeting the goals of the VR program. If commenters believe that such an indicator would be appropriate, suggestions on how such an indicator might be implemented are invited.

The proposed evaluation standards and performance indicators would be implemented beginning in FY 1999, and DSU data would be due at the end of FY 1999. The data that are necessary to measure compliance with the proposed indicators are currently being collected under existing reporting requirements. Specifically, information contained in the Case Service Report (RSA–911 report), which DSUs submit annually to RSA, will be used to demonstrate performance under proposed Evaluation Standard 1 (Employment outcomes) and

proposed Evaluation Standard 2 (Equal access to services).

Proposed Subpart E also would require that each DSU report selected data to the Secretary after the end of each fiscal year so that the Secretary could determine whether the DSU is in compliance with the proposed evaluation standards and performance indicators. If the performance of any DSU falls below required levels, the Secretary would provide technical assistance to the DSU, and the DSU and the Secretary would jointly develop a program improvement plan outlining the specific actions to be taken by the DSU to improve program performance.

The Secretary would review a DSU's compliance with its program improvement plan on a biannual basis, and, if necessary, the Secretary would request that a DSU make further revisions to the plan to improve performance. If the Secretary establishes new performance levels while a program improvement plan is in effect, the Secretary and the DSU would jointly modify the program improvement plan to meet the new performance levels. Reviews would continue and requests for revisions would be made until the DSU achieved satisfactory performance based on current performance levels over a period of more than one year.

If the Secretary determines that a DSU with less than satisfactory performance has failed to enter into a program improvement plan or comply substantially with the terms and conditions of such a program improvement plan, the Secretary reduces or makes no further payments to the DSU under this program until the DSU has met one of these two requirements or raised its subsequent performance to meet the current overall minimum satisfactory level on the compliance indicators.

Section-by-Section Analysis

Section 361.80—Purpose

Proposed § 361.80 states that the purpose of this new subpart is to establish evaluation standards and performance indicators for The State VR Services Program.

Section 361.81—Applicable Definitions

Proposed § 361.81 contains definitions of terms that apply to the evaluation standards and performance indicators in this new subpart. In addition to the definitions identified in this proposed section, the definitions in § 361.5, including the definitions of ''competitive employment'' and ''employment outcome,'' § 361.5(b)(10) and (15), respectively, apply to the proposed evaluation standards and performance indicators.

The proposed term ''average hourly earnings,'' which is used in proposed Performance Indicator 1.5, § 361.84(c)(1)(v), under Evaluation Standard 1, would be determined by dividing the ''weekly earnings at closure'' data element by the ''hours worked at closure'' data element from the RSA–911 report. An eligible individual's average hourly earnings would be calculated for the week prior to the individual's exiting the VR program after achieving a competitive employment outcome.

The term ''Business Enterprise Program (BEP)'' would be defined as an employment outcome in which an individual with a significant disability operates a vending facility or other small business under the management and supervision of a DSU. This definition would apply only to the individual operating the enterprise under the management and supervision of the DSU and would not apply to wage-earners or other employees who work for the business. This term is used in proposed Performance Indicators 1.3, 1.4, 1.5, and 1.6, § 361.84(c)(1)(iii), (iv), (v), and (vi), respectively, under proposed Evaluation Standard 1 (Employment outcomes), § 361.82(c)(1).

The proposed definition of ''exit the VR program'' is based on the service record closure categories in the RSA–911 report and would apply whenever an individual's record of services is closed because the individual was determined ineligible for VR services; achieved an employment outcome; received services under an IPE but did not achieve an employment outcome; or was determined eligible but did not receive services under an IPE. This term is used in all performance indicators under proposed Evaluation Standard 1 and in Performance Indicator 2.2, § 361.84(c)(2)(ii), under proposed Evaluation Standard 2 (Equal access to services), § 361.82(c)(2).

The proposed definition of ''full-time employment'' is an employment outcome in which an eligible individual worked for a minimum of 35 hours in the week before closure. This term is used in proposed Performance Indicator 1.7, § 361.84(c)(1)(vii), under Evaluation Standard 1.

The proposed definition of ''general or combined DSU'' is a DSU that does not exclusively serve individuals with visual impairments or blindness. This term is used in proposed § 361.86(b)(1) and (2).

The proposed definition of ''individuals from a minority background'' is derived from RSA–911 reporting categories and is consistent with governmentwide classifications of race and ethnicity. This term is used in both performance indicators, § 361.84(c)(2)(i) and (ii), under proposed Evaluation Standard 2, § 361.82(c)(2).

The proposed definition of ''minimum wage'' is the Federal or State minimum wage, whichever is higher. Pursuant to § 361.5(b)(10), ''competitive employment'' is employment in an integrated setting, at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by non-disabled individuals. If a State minimum wage is higher than the Federal, then employment in that State would not be considered competitive if the individual's wage did not equal or exceed the State minimum wage. This term is used in proposed Performance Indicators 1.3, 1.4, 1.5, and 1.6, § 361.84(c)(1)(iii), (iv), (v), and (vi), respectively.

The proposed definition of ''non-minority individuals'' means those individuals who report their race as White. This term is used in proposed Performance Indicator 2.1, § 361.84(c)(2)(i).

The proposed definition of ''performance period'' is the period of time for which a DSU's performance is measured. For general and combined DSUs, that period would be one year and performance data would be aggregated over a one-year period commencing in FY 1999. However, the number of individuals in any single year who exit a program administered by a DSU that serves only individuals with visual impairments or blindness is generally too small to serve as a reliable and valid measure of performance. Thus, for DSUs that serve only individuals with visual impairments or blindness, the performance period would be two years. These DSUs would be required to report two consecutive years of performance data; the first report would include FY 1998 and FY 1999 data. At the end of FY 2000, the general and combined DSUs would report FY 2000 data, and the DSUs that serve only individuals with visual impairments or blindness would report aggregated FY 1999 and FY 2000 data.

The proposed definition of ''primary indicator'' is used to identify those performance indicators that place particular emphasis on the extent to which State VR programs assist individuals, particularly individuals with significant disabilities, to achieve competitive, self-, or BEP employment with earnings equivalent to the minimum wage or higher; and the

average hourly earnings of individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to the minimum wage or higher relate to the State's average hourly earnings for all employed individuals. As discussed previously, the significance accorded these indicators is based on the emphasis the Act places on competitive employment and on serving individuals with significant disabilities.

In addition, emphasizing achievement of competitive, self-, and BEP employment at earnings that are comparable to those achieved by individuals without disabilities is intended as a means of addressing the high unemployment and poverty levels experienced by individuals with disabilities. The Secretary believes achieving these goals would foster increased economic independence and integration into the workforce for individuals receiving services under the VR program. The three proposed ''primary'' indicators are designed to provide an accurate measure of how well a State's VR program addresses these goals. The term ''primary indicator'' is used in proposed 361.86(b)(1).

The proposed definition of ''RSA–911'' is the Case Service Report that DSUs provide to RSA on each individual exiting the VR program. The Case Service Report includes data on employment outcomes, demographic characteristics, and services received by individuals eligible for VR services. This term is used in proposed § 361.88, ''Reporting requirements.''

The proposed definition of ''self-employment'' is consistent with the ''self-employment'' reporting element on the RSA–911 report and is used in proposed Performance Indicators 1.3, 1.4, 1.5, and 1.6.

The proposed definition of ''service rate'' is the number of eligible individuals who exit a VR program after receiving one or more services under an IPE as a percentage of all individuals exiting the program. This term is used in proposed Performance Indicator 2.1.

The proposed term ''State's Average Hourly Earnings'' means the average hourly earnings of all persons in the State in which the DSU is located. Average hourly earnings would be derived by dividing the State's average annual pay, as reported in the Bureau of Labor Statistics report, ''State Average Annual Pay,'' by 2,000—the average number of working hours in a year. This term is used in proposed Performance Indicator 1.5, § 361.84(c)(1)(v), under Evaluation Standard 1.

Section 361.82—Evaluation Standards

Proposed § 361.82 contains the evaluation standards for the VR program. These proposed evaluation standards are based upon the requirement in section 106 of the Act that the evaluation standards and performance indicators facilitate the accomplishment of the policy and purpose of the VR program. Proposed § 361.82(b) would require that a DSU achieve successful performance on both Evaluation Standards 1 and 2.

• *Proposed Evaluation Standard 1 (Employment outcomes)* Proposed Evaluation Standard 1, § 361.82(c)(1), would require a DSU to assist eligible individuals with disabilities, including individuals with significant disabilities, to obtain, maintain, or regain high quality employment outcomes. The quality of an employment outcome is based on whether the outcome is consistent with the individual's vocational choices; is in competitive, self-, or BEP employment; maintains or increases the individual's earnings; and provides medical insurance plans covering hospitalization.

In adopting the 1992 Amendments to the Act, Congress emphasized the need for individuals with disabilities, including individuals with significant disabilities, to become gainfully employed through work that they are both capable of, and interested in, performing. Hence, the Act specifies, in a number of instances, that individuals receiving support under the Act should be able to pursue employment that is consistent with their unique abilities (e.g., sections 100(a)(1)(F) and 102(b)(3)(A)) and their informed choice (e.g., sections 100(a)(3)(C), 101(a)(19), and 102(d)). The Act also places particular emphasis on competitive employment (e.g., in the definition of ''employment outcome'' in section 7(11) and in the annual review of extended employment placements required by section 101(a)(14)). The Secretary believes that these provisions indicate that the success of the VR program is based in large part on the ability of eligible individuals with disabilities to become self-sufficient by working in the competitive labor market. Thus, proposed Evaluation Standard 1 would assess a DSU's success in assisting individuals with disabilities, including individuals with significant disabilities, to achieve employment outcomes with an emphasis on competitive employment outcomes (which includes self-employment and BEP outcomes) in integrated settings.

• *Proposed Evaluation Standard 2 (Equal access to services).* Proposed Evaluation Standard 2, § 361.82(c)(2), would require a DSU to ensure that individuals from minority backgrounds have equal access to VR services. This standard was developed in recognition of congressional findings of past inequities between the treatment received by minorities and non-minorities under the VR program. In addition, the Secretary believes that measuring DSU performance in serving minority populations is consistent with the obligation of a DSU to demonstrate, pursuant to section 21 of the Act, how it will address the needs of individuals with disabilities from minority backgrounds.

Section 361.84—Performance Indicators

Proposed § 361.84 lists the performance indicators that measure minimum compliance with the evaluation standards. There are nine performance indicators, three of which (proposed performance indicators 1.3, 1.4, and 1.5) are primary indicators.

Employment Outcomes

• *Proposed Performance Indicator 1.1.* Proposed Performance Indicator 1.1, § 361.84(c)(1)(i), would compare the total numbers of individuals obtaining an employment outcome during the current and previous performance periods.

• *Proposed Performance Indicator 1.2.* Proposed Performance Indicator 1.2, § 361.84(c)(1)(ii), would measure the number of persons obtaining an employment outcome as a percentage of all persons exiting the program after receiving VR services. This percentage would indicate the proportion of eligible individuals who obtain an employment outcome.

• *Proposed Performance Indicator 1.3.* Proposed Performance Indicator 1.3, § 361.84(c)(1)(iii), would measure the number of persons obtaining a competitive, self-, or BEP employment outcome as a percentage of all persons obtaining any type of employment outcome. This indicator would demonstrate a DSU's success in assisting individuals to obtain competitive, self-, and BEP outcomes. These types of outcomes generally provide individuals with disabilities far greater earnings, economic independence, and social integration into the community than do other available outcomes, such as extended employment, homemaker, or unpaid family worker. As discussed previously, the Secretary recognizes that achieving a high performance on this indicator may lower a DSU's performance on other indicators (e.g., Performance Indicators 1.1 or 1.2). For that reason,

and because this indicator reflects the Act's emphasis on competitive employment, this indicator would be designated as a primary indicator.

• *Proposed Performance Indicator 1.4.* Proposed Performance Indicator 1.4, § 361.84(c)(1)(iv), would measure the percentage of competitively employed individuals who have significant disabilities. Given the challenges associated with competitive work, it is generally more difficult and expensive for DSUs to assist individuals with significant disabilities, as opposed to individuals with non-significant disabilities, to obtain competitive, self, or BEP employment. Therefore, Performance Indicator 1.4 also would be designated as a primary indicator to account for DSUs that make trade-offs in other activities to enhance their performance on this indicator.

• *Proposed Performance Indicator 1.5.* Proposed Performance Indicator 1.5, § 361.84(c)(1)(v), would measure the average hourly earnings of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings levels equivalent to at least the minimum wage as a ratio to the State's average hourly earnings for all individuals in the State who are employed. This performance indicator, also a primary indicator, would reflect the additional time, money, and effort required to assist individuals with disabilities to obtain earnings that are comparable to the earnings of non-disabled persons in the State.

• *Proposed Performance Indicator 1.6.* Proposed Performance Indicator 1.6, § 361.84(c)(1)(vi), would measure the difference between the percentage of individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage who report their own income as their largest single source of economic support and the percentage of individuals in that employment who reported their own income as their largest single source of support at the time they applied for VR services. This indicator would apply to all persons who obtain competitive, self-, or BEP employment at or above the minimum wage and would measure gains in self-sufficiency. As an example in applying this indicator, if 10 percent of competitively employed individuals relied on their own income at the time of application for VR services and 70 percent relied on their own income at the time of closure, the difference between the percentages would be 60 percent. This indicator would demonstrate a DSU's success in assisting individuals with disabilities to become more economically independent as a result of their employment.

• *Proposed Performance Indicator 1.7.* Proposed Performance Indicator 1.7, § 361.84(c)(1)(vii), would measure the extent to which DSUs assist individuals with disabilities to obtain full-time competitive employment with medical insurance plans that cover hospitalization. Many U.S. employers offer their workers a wide variety of medical insurance plans. However, because these plans vary greatly among employers, measuring them in a consistent, non-burdensome manner is very difficult. Persons who obtain self- or BEP employment or who work less than 35 hours per week would not be included in this performance indicator because individuals who work for themselves, operate a business under the management and supervision of a DSU, or work part-time are less likely to secure employer-paid medical insurance plans.

The Secretary invites comment on whether this indicator is a fair measure of a DSU's performance in assisting individuals to obtain successful employment outcomes.

• *Data for Performance Indicators 1.1 through 1.7.* The employment outcomes covered under Performance Indicator 1.1 and in Performance Indicators 1.3 through 1.6 are reported under ''employment status at closure'' in the RSA–911 report. The employment outcomes covered under Performance Indicator 1.2 are reported under ''type of closure'' in the RSA 911. However, competitive, self-, and BEP employment outcomes, as used in Performance Indicators 1.3 through 1.6, apply only to individuals earning at least the minimum wage. An individual's earnings would be determined first by dividing the ''weekly earnings at closure'' RSA–911 data element by the ''hours worked at closure'' RSA–911 data element and then by comparing the resultant hourly earnings with the relevant Federal or State minimum wage.

''Own income as the major source of support'' is currently reported in the RSA–911 report as ''personal income,'' which is an element under ''Primary source of support at application and primary source of support at closure.''

The availability of medical insurance that covers hospitalization also is currently reported in the RSA–911 report. Consistent with the RSA–911 reporting instructions, a DSU would not be required to determine—(a) whether the individual has enrolled or will enroll in such a plan; (b) whether the individual has to pay for all, some, or none of the plan premiums; or (c) how adequate the plan is for the individual's needs. A DSU need only report that such an employment-based plan exists and that the individual exiting the VR program has the option of enrolling in a medical insurance plan that covers hospitalization through his or her employer.

Equal Access to Services

• *Proposed Performance Indicator 2.1.* Proposed Performance Indicator 2.1, § 361.84(c)(2)(i), would measure whether individuals from minority backgrounds have been provided services at the same rate as non-minority individuals. However, if a DSU did not meet the performance level for Performance Indicator 2.1, it would satisfy this indicator by demonstrating that it had made adequate efforts to ensure that individuals from minority backgrounds have equal access to VR services. A DSU that did not meet the performance level for Performance Indicator 2.1 would have to demonstrate that its procedures, policies, and practices, particularly with regard to eligibility determinations and service provision, were not discriminatory. This indicator does not require DSUs to establish numerical quotas for serving individuals from minority backgrounds.

The Secretary solicits comment on this indicator and seeks examples of criteria or methods that might be used to determine whether a DSU's policies, practices, or procedures discriminate against minorities.

• *Proposed Performance Indicator 2.2.* Proposed Performance Indicator 2.2, § 361.84(c)(2)(ii), would compare minorities as a percentage of individuals with significant disabilities exiting the VR program after receiving VR services under an IPE to minorities as a percentage of individuals in the State's working age population (individuals age 16 to 64) reporting a disability that prevents them from working. This indicator would demonstrate a DSU's success in providing VR services under an IPE to individuals from minority backgrounds in proportion to the population of minorities with significant disabilities in the State. However, if a DSU does not meet the performance level of Performance Indicator 2.2, it would meet this indicator by demonstrating that it has undertaken outreach and recruitment activities to ensure that individuals from minority backgrounds have equal access to VR services. This indicator does not require DSUs to establish numerical quotas for serving individuals from minority backgrounds.

• Data for Performance Indicators 2.1 and 2.2. The information that is

necessary for reporting on proposed Evaluation Standard 2 would be obtained from the race and ethnicity data element of the RSA–911 report. The RSA–911 reporting categories for race and ethnicity used for Evaluation Standard 2 are compatible with U.S. Census data categories and have been approved by OMB. In addition, U.S. Census data on the number of minority working age persons in a State who report that their disability prevents them from working make it possible to identify an in-State comparison group to indicate whether minorities with disabilities are underserved in the VR program relative to their percentage in a State's general population.

However, the Secretary notes that the U.S. Bureau of the Census may eliminate from the 2000 Census Survey the current census question related to individuals possessing a disability that prevents them from working. Therefore, the Secretary invites comments identifying alternative measures that could be used to determine compliance with Performance Indicator 2.2. The Secretary also seeks suggested examples of criteria or methods that could be used to evaluate a DSU's outreach and recruitment activities related to individuals from minority backgrounds.

Section 361.86—Establishment of Performance Levels

Proposed § 361.86 would establish compliance levels for the performance indicators. Many commenters urged the Secretary to establish different performance levels for DSUs that serve only individuals who are visually impaired or who are blind. Because these DSUs serve a particular population of individuals with significant disabilities, their level of performance typically differs markedly from that of general or combined DSUs. Past performance data from these agencies support this conclusion. The Secretary, therefore, agrees that separate performance levels for DSUs that serve only individuals who are visually impaired or blind, as proposed in § 361.86(b)(1), are generally warranted. With regard to Performance Indicator 1.1 (under which a DSU has only to equal or exceed previous performance) and Performance Indicators 2.1 and 2.2 (under which a DSU has to provide equal access to minority and non-minority individuals), however, both general and combined DSUs and DSUs that serve only individuals who are visually impaired or blind would be required to meet the same performance levels.

Combined DSUs (i.e., those that serve individuals with blindness, visual impairments, and other non-visual disabilities) suggested that separate performance levels should apply to them as well. However, analysis of existing data indicates that the presence of individuals who are blind has little impact on the overall performance of combined DSUs as compared to the overall performance of general DSUs (i.e., those that do not serve the visually impaired). Accordingly, general and combined DSUs would be subject to the same performance levels.

Some DSUs that operate under an order of selection pursuant to § 361.36(a)(1)(ii) also suggested that separate performance levels be established under Evaluation Standard 1 for those agencies. Again, analysis of existing data indicates that an order of selection has little impact on the overall performance of DSUs on the performance indicators for Evaluation Standard 1. Thus, the NPRM does not include separate performance levels for DSUs operating under an order of selection.

Proposed § 361.86(a)(2) would allow the Secretary to establish new performance levels through the regulatory process after obtaining public comment. The Secretary plans to increase performance levels over time based on experience and considers the performance levels proposed in § 361.86(b)(1) and (2) as only the first step in ensuring improved DSU performance.

Proposed performance levels for Evaluation Standard 1 are presented in § 361.86(b)(1). Each of the proposed levels for the Performance Indicators 1.1 through 1.7 identify the minimum level of performance necessary to pass a given indicator. The Secretary believes that these levels would accurately reflect whether a DSU is successfully assisting individuals with disabilities to achieve employment outcomes consistent with the Act's purposes. To achieve successful performance on Evaluation Standard 1, a DSU would have to meet or exceed the performance levels on at least two of the three primary indicators (1.3, 1.4 and 1.5) and a total of at least five of the seven performance indicators (1.1 through 1.7).

The proposed levels for each of the proposed performance indicators that will be used for determining compliance with the proposed evaluation standards were developed in recognition of the fact that DSUs typically focus their efforts on certain VR program-related areas (e.g., assisting individuals with significant disabilities; maximizing competitive employment outcomes). The proposed regulations also would require DSUs to concentrate, to some extent, on the proposed ''primary indicators'' (indicators 1.3, 1.4, and 1.5), which the Secretary considers the most critical measures of a successful VR program. Consequently, the Secretary expects that DSUs will greatly exceed many of the proposed levels, particularly the levels for those indicators that reflect a DSU's priority areas. As a whole, the levels represent only the minimum level of performance that the Secretary believes is appropriate for each indicator, regardless of whether the DSU focuses most of its efforts elsewhere. In other words, although a DSU can, and to some extent is required to, focus on the purposes reflected in certain indicators (e.g., increasing competitive employment outcomes), the DSU should still be able to perform at the proposed level for the remaining indicators. The specified performance levels were developed following extensive analyses of past DSU performance in each of the areas addressed by the indicators. The Secretary believes that DSUs that fail to satisfy the proposed levels (for two of the three primary indicators or five of the seven indicators total) likely have significant systemic deficiencies and are in need of assistance to improve their program. The proposed minimum levels are designed specifically to identify those DSUs.

Proposed § 361.86(b)(2) would require each DSU to meet the performance level of .80 for both Performance Indicators 2.1 and 2.2, or, in the alternative, describe the actions it has taken and policies it has implemented to ensure that individuals with disabilities from minority backgrounds have equal access to VR services. The Secretary proposes the .80 level, as opposed to the 1.0 full parity level, to reflect the fact that minor deviations in service rates may not be related to any discriminatory policy or practice followed by the DSU. On the other hand, the Secretary believes that the proposed level represents a significant disparity in service rates for minority and non-minority individuals (or in the proportion of minority individuals with significant disabilities receiving VR services relative to their population) and that the existence of such a disparity should result in the DSU's reexamination of its policies and practices to ensure that they do not have a discriminatory effect on individuals from minority backgrounds.

Under § 361.86(b)(2)(i), a DSU would have to demonstrate that it had adopted policies and taken steps to ensure that individuals with disabilities from minority backgrounds have equal access to VR services if its performance did not meet the performance level for proposed

Performance Indicator 2.1. The Secretary proposes to provide this alternative to meeting the performance level to clarify that numerical quotas are not required. In addition, a DSU would have to make the same demonstration if the denominator of a service rate (i.e., individuals exiting the VR program) represents less than 100 cases. If fewer than 100 individuals exit the VR program, slight changes in the number of individuals receiving services would have an inordinate effect on the service rate and would not permit accurate assessment of the DSU's performance.

Under § 361.86(b)(2)(ii), a DSU would have to demonstrate that it had undertaken appropriate actions to ensure, through outreach and recruitment activities, that individuals with disabilities from minority backgrounds have equal access to VR services if the DSU did not meet the performance level for proposed Performance Indicator 2.2. This demonstration requirement also would apply if the denominator of the calculation in the performance indicator represents less than 100 cases in order to ensure that only statistically reliable calculations are used to measure performance.

Section 361.88—Reporting Requirements

Proposed § 361.88 contains DSU reporting requirements related to the proposed evaluation standards and performance indicators. Proposed § 361.88(a) would require each DSU to report, within 60 days after the end of each fiscal year, the extent to which it is in compliance with the evaluation standards and performance indicators and also report the raw performance data (contained in the RSA–911 report) specified in § 361.88(a)(1) through (13). Proposed § 361.88(a)(1) through (13) describe the performance data DSUs would be required to report.

In lieu of the report required under § 361.88(a), proposed § 361.88(b) would permit a DSU to submit its raw RSA–911 performance data on tape, diskette, or any alternative electronic format that is compatible with RSA's capability to process such an alternative. In most instances, a DSU will report raw data to RSA through the RSA–911 report, which is also due 60 days after the end of each fiscal year. RSA will make the appropriate calculations to determine DSU performance. RSA also will collect the relevant census and earnings data for those performance indicators that rely on that data to determine DSU performance. This census and earnings data will be available for review upon request.

Proposed § 361.88(c) would require that the data reported by a DSU be valid, accurate, and in a consistent format. A DSU that fails to submit data that is valid, accurate, and in a consistent format within the 60-day period would be required to develop a program improvement plan pursuant to proposed § 361.89(a).

Section 361.89—Enforcement Procedures

Proposed § 361.89 contains procedures for the enforcement of the evaluation standards and performance indicators. The proposed enforcement procedures, including reduction in or loss of funding, are consistent with section 106(b) and (c) of the Act.

Under proposed § 361.89(a), a DSU that fails to meet the performance level required on both evaluation standards would be required to develop jointly with the Secretary a program improvement plan outlining the specific actions to be taken by the DSU to improve program performance.

Proposed § 361.89(b) would require that the Secretary examine all available, relevant information in connection with the development of a program improvement plan.

Proposed § 361.89(c) would require that program improvement plans be reviewed at least biannually to determine whether the desired performance improvements have occurred or are likely to occur. If necessary, the Secretary would request that the plan be modified to improve performance. In addition, a program improvement plan would have to be modified by the DSU to address any new performance levels established by the Secretary during the time in which the plan is in effect. This requirement is intended to ensure that DSUs meet current, rather than outdated, performance levels. Reviews would continue and requests for revisions would be made until the DSU sustains satisfactory performance over a period of more than one year.

Under proposed § 361.89(d), if the Secretary determines that a DSU with less than satisfactory performance has failed to enter into a program improvement plan or comply substantially with the terms and conditions of such a program improvement plan, the Secretary, consistent with the procedures specified in § 361.11, would reduce or suspend funding to the DSU under the VR program until the DSU has met one of these two requirements or raised its subsequent performance to meet the current overall minimum satisfactory level on the compliance indicators.

Draft Proposed Standards and Indicators on Which the Secretary Seeks Public Comment

Background

In addition to inviting public comment on each of the proposed evaluation standards and performance indicators included in this NPRM, the Secretary also seeks public comment on three draft proposed evaluation standards and their concomitant draft proposed indicators. The Secretary particularly seeks comment on the validity and feasibility of implementing these draft proposed evaluation standards and draft proposed indicators. Further, the Secretary seeks assistance in identifying available instruments and methods that can be used to gather the data necessary to measure performance under these draft proposed evaluation standards and draft proposed indicators and in determining how these data-gathering instruments and methods may be developed. These draft proposed evaluation standards would measure a DSU's performance in three areas: consumer satisfaction with the VR program, retention of employment and earnings by those exiting the VR program after achieving an employment outcome, and the adequate use of VR program resources to support direct services for individuals with disabilities. The Secretary is not proposing to include these draft proposed measures as part of the proposed regulations in this NPRM. Rather, the Secretary is identifying these measures in the preamble in order to obtain public comment on their potential use and appropriateness in measuring the success of the VR program. The Secretary is in the process of developing valid data collection methods and instruments for measuring compliance with the draft proposed performance indicators and seeks input from commenters in identifying instruments that are accurate, reliable, and the least costly to DSUs. Once necessary instruments have been developed, and subsequent tests confirm their reliability, the Secretary will address these evaluation standards and performance indicators in a future rulemaking. The draft proposed evaluation standards and performance indicators are stated and discussed below.

• *Draft Proposed Evaluation Standard 3 (Consumer Satisfaction):* A DSU shall ensure a high level of consumer satisfaction.

Draft proposed Evaluation Standard 3 is based on several provisions of the Act, including sections 101(a)(21)(A)(ii)(III) and 105(c)(4)of the

Act, which require the use of consumer satisfaction surveys as a way of assessing DSU effectiveness. In addition, many individuals in the disability community have commented on the need for an evaluation standard and related performance indicators that measure consumer satisfaction, particularly satisfaction with the level of informed choice afforded consumers during the VR process.

• *Draft Proposed Evaluation Standard 4 (Retention of Employment and Earnings):* A DSU shall assist individuals to achieve competitive, self, or BEP employment outcomes that enable them to maintain their employment and earnings over time.

The Secretary believes that a successful employment outcome is one in which the individual maintains employment and earnings for at least six months after exiting the program. As discussed previously, this standard is consistent with Core Indicators II (retention in unsubsidized employment six months after entry into employment) and III (earnings received in unsubsidized employment six months after entry into the employment) under section 136(b) of the Workforce Act. This standard is also consistent with the reporting requirements in section 101(a)(10)(C) (iii) and (iv) of the Act (employment and earnings of individuals 6 months and 12 months after ending participation in the VR program) and in section 136(d)(2)(D) of the Workforce Act (retention of employment and earnings received in unsubsidized employment 12 months after entry into employment). Thus, under draft proposed Evaluation Standard 4, retention of employment and earnings for individuals who achieved an employment outcome with assistance from a DSU would be evaluated following periods of 6 and 12 months. The Secretary is particularly interested in receiving suggestions on how accurate and reliable data could be collected in a consistent format to measure a DSU's performance on this draft proposed evaluation standard.

• *Draft Proposed Evaluation Standard 5 (Adequate Use of Resources):* A DSU shall focus its Federal VR and State matching funds on direct services for individuals with disabilities.

Draft proposed Evaluation Standard 5 would measure the extent to which a DSU uses its Federal VR and State matching funds to pay for direct services (i.e., VR services authorized under § 361.48(a) and § 361.49(a), except for the construction of facilities) for individuals with disabilities. Section 100(b)(1) of the Act authorizes appropriations for the purpose of making grants ''to assist States in meeting the costs of vocational rehabilitation services.'' The Secretary maintains that the success of the VR program is based on the DSU's ability to provide VR services that enable individuals with disabilities to work. For that reason, draft proposed Evaluation Standard 5 would measure DSU effectiveness in focusing its resources on the direct service needs of individuals with disabilities.

Draft Proposed Performance Indicators

The Secretary plans to propose three performance indicators for draft proposed Evaluation Standard 3, two performance indicators for draft proposed Evaluation Standard 4, and one performance indicator for draft proposed Evaluation Standard 5. Again, data collection methods and instruments have yet to be developed and tested for these performance indicators. Thus, the Secretary is not proposing to establish performance levels for, nor measure compliance with, these draft proposed performance indicators at this time.

Consumer Satisfaction

• *Draft Proposed Performance Indicator 3.1:* Of all individuals receiving VR services, the percentage who are satisfied with their own level of participation in decision-making throughout the development and implementation of their IPE.

Draft proposed Performance Indicator 3.1 would address the extent to which a DSU implements the statutory policy of facilitating informed choice. That policy is reflected, for example, in section 100(a)(3)(C) of the Act, which states that eligible individuals and applicants ''must be active and full partners in the vocational rehabilitation process, making meaningful and informed choices during assessments * * * and in the selection of employment outcomes * * *, services needed to achieve the outcomes, entities providing such services, and the methods used to secure such services.''

• *Draft Proposed Performance Indicator 3.2:* Of all individuals receiving services, the percentage who are satisfied with—

(1) The appropriateness, timeliness, quality, and extent of the services they received;

(2) Their interactions with providers of those services; and

(3) Their interactions with VR counselors and other DSU staff.

Draft proposed Performance Indicator 3.2 is based on statutory requirements that call for consumer satisfaction surveys to be used as measures of DSU effectiveness (e.g., section 105(c)(4) of the Act requiring that State Rehabilitation Councils survey the satisfaction of individuals receiving VR services). Also, section 136(b)(2)(B) of the Workforce Act requires an indicator of ''customer satisfaction of * * * participants with services received'' to be developed for each State.

• *Draft Proposed Performance Indicator 3.3:* Of all individuals who obtain employment, the percentage who are satisfied with their employment.

Draft proposed Performance Indicator 3.3 is based upon the regulatory requirements in § 361.56 that govern whether an individual is considered to ''have achieved an employment outcome.'' In particular, § 361.56(e) of the regulations requires that ''the individual and the rehabilitation counselor or coordinator consider the employment outcome to be satisfactory'' as a condition of determining that the individual has achieved an employment outcome. The Secretary seeks public comment on how this type of consumer satisfaction data could be collected reliably and accurately in a manner that is the least burdensome and costly to DSUs and invites commenters to submit examples of existing State consumer satisfaction surveys and collection methods.

Retention of Employment and Earnings

• *Draft Proposed Performance Indicator 4.1:* Of all individuals who have achieved a competitive, self-, or BEP employment outcome with earnings equivalent to at least the minimum wage, the percentage who have maintained competitive employment, including earnings equivalent to at least the minimum wage, 6 months and 12 months after exiting the VR program.

Retention of employment is an essential issue for both the individual and the VR program that corresponds directly to the employment-related purposes of the VR program. Draft proposed Performance Indicator 4.1 would measure retention 6 months and 12 months after exit from the VR program, which the Secretary views as an appropriate indicator of whether the individual is likely to maintain employment over time.

• *Draft Proposed Performance Indicator 4.2:* Individuals with significant disabilities who have maintained competitive employment, including earnings equivalent to at least the minimum wage, 6 months and 12 months after exiting the VR program as a percentage of all individuals with significant disabilities who achieved a

competitive, self-, or BEP employment outcome with earnings equivalent to at least the minimum wage.

Draft proposed Performance Indicator 4.2 was developed in recognition of the greater barriers to long-term employment retention faced by individuals with significant disabilities.

Adequate Use of Resources

• *Draft Proposed Performance Indicator 5.1:* Of the total amount of all Federal VR and State matching funds spent in support of activities described in the State Plan under section 101 of the Act, the percentage of Federal VR and State matching funds spent on direct services to consumers, including services provided directly by the staff of a DSU.

Draft proposed Performance Indicator 5.1 would address a DSU's success in operating an effective and efficient VR program. The indicator would compare the level of Federal VR and State matching funds that a DSU spends directly on services to individuals with disabilities as a percentage of all Federal VR and State matching funds that it expends for other purposes (e.g., administrative costs). RSA is currently examining reliable methods for identifying direct services costs that do not impose excessive reporting burdens on DSUs.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed regulations would address the National Education Goal that by the year 2000, every adult American, including individuals with disabilities, will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. These proposed regulations would further the objectives of this Goal because the development and implementation of evaluation standards and performance indicators will enhance the accountability and effectiveness of The State Vocational Rehabilitation Services Program, which assists States in operating a comprehensive, coordinated, effective, efficient, and accountable program for vocational rehabilitation designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities so that they may prepare for and engage in gainful employment.

Executive Order 12866

1. Potential Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements are identified and explained elsewhere in this preamble under the heading *Paperwork Reduction Act of 1995.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

The potential costs and benefits of these proposed regulations are discussed elsewhere in this preamble under the following headings: ''Supplementary Information'' and ''Paperwork Reduction Act of 1995.''

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the proposed regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 361.81 Applicable definitions.) (4) Is the description of the proposed regulations in the ''Supplementary Information'' section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the proposed regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (Room 5121, FB–10B), Washington, D.C. 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Because these proposed regulations would affect only States and State agencies, the regulations would not have an impact on small entities. States and State agencies are not defined as ''small entities'' in the Regulatory Flexibility Act.

Paperwork Reduction Act of 1995

Sections 361.82, 361.84, 361.88, and 361.89 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to OMB for its review.

Collection of Information: The State Vocational Rehabilitation Services Program

States are eligible to apply for grants under these proposed regulations. The information to be collected includes data reported to assess compliance with established evaluation standards and performance indicators for the VR program. The Department needs and uses the information to comply with the provisions of section 106 of the Act that mandates the establishment of evaluation standards and performance indicators for the program.

All information is to be collected and reported annually. Annual reporting and recordkeeping burden for this collection of information is estimated to average one hour for each response for

one respondent, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be one hour.

Note: The burden is estimated as one hour because the remaining burden hours are accounted for under a separate OMB control number 1820–0508, which is called the RSA 911 Case Service Report.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC. 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing 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.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://gcs.ed.gov/fedreg.htm
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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Part 361

Reporting and recordkeeping requirements, State-administered grant program—education, Vocational rehabilitation.

Dated: June 2, 1998.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.126—The State Vocational Rehabilitation Services Program)

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Subpart E to Part 361 to read as follows:

PART 361—THE STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

* * * * *

Subpart E—Evaluation Standards and Performance Indicators

Sec.
361.80 Purpose.
361.81 Applicable definitions.
361.82 Evaluation standards.
361.84 Performance indicators.
361.86 Performance levels.
361.88 Reporting requirements.
361.89 Enforcement procedures.

Authority: 29 U.S.C. 711(c), unless otherwise noted.

* * * * *

Subpart E—Evaluation Standards and Performance Indicators

§ 361.80 Purpose.

The purpose of this subpart is to establish evaluation standards and performance indicators for The State Vocational Rehabilitation (VR) Services Program.

(Authority: 29 U.S.C. 726(a))

§ 361.81 Applicable definitions.

In addition to those definitions in § 361.5(b), the following definitions apply to this subpart:

Average hourly earnings means the average per hour earnings in the week prior to exiting the VR program of an eligible individual who has achieved a competitive employment outcome.

Business Enterprise Program (BEP) means an employment outcome in which an individual with a significant disability operates a vending facility or other small business under the management and supervision of a designated State unit (DSU). This term includes home industry, farming, and other enterprises.

Exit the VR program means that a DSU has closed the individual's record of VR services in one of the following categories:

(1) Ineligible for VR services.

(2) Received services under an individualized plan for employment (IPE) and achieved an employment outcome.

(3) Received services under an IPE but did not achieve an employment outcome.

(4) Eligible for VR services but did not receive services under an IPE.

Full-time employment means an employment outcome in which an eligible individual worked for pay for a minimum of 35 hours in the week before closure.

General or combined DSU means a DSU that does not serve exclusively individuals with visual impairments or blindness.

Individuals from a minority background means individuals who report their race or ethnicity as Black,

American Indian, Alaskan Native, Asian, Pacific Islander, or of Hispanic origin.

Minimum wage means the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) (i.e., the Federal minimum wage) or applicable State minimum wage law.

Non-minority individuals means individuals having ethnicity or race reported as White.

Performance period is the reporting period during which a DSU's performance is measured. For Evaluation Standards 1 and 2, performance data must be aggregated and reported for each fiscal year commencing with fiscal year 1999. However, DSUs that exclusively serve individuals with visual impairments or blindness shall report each year aggregated data for the two previous years for Performance Indicators 1.1 through 1.7; the second year must coincide with the performance period for general or combined DSUs.

Primary indicators means Performance Indicators 1.3, 1.4, and 1.5, which are specifically designed to measure—

(1) The achievement of competitive, self-, or BEP employment with earnings equivalent to the minimum wage or higher, particularly by individuals with significant disabilities; and

(2) The ratio between the average hourly earnings of individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to the minimum wage or higher and the State's average hourly earnings for all employed individuals.

RSA–911 means the Case Service Report that is submitted annually by a DSU as approved by the Office of Management and Budget (OMB).

Self-employment means an employment outcome in which the individual works for profit or fee in his or her own business, farm, shop, or office, including sharecroppers.

Service rate means the result obtained by dividing the number of individuals who exit the VR program after receiving one or more services under an IPE during any reporting period by the total number of individuals who exit the VR program (as defined in this section) during that reporting period, including individuals who were determined ineligible for services.

State's average hourly earnings means the average hourly earnings of all persons in the State in which the DSU is located.

(Authority: 29 U.S.C. 726(a))

§ 361.82 Evaluation standards.

(a) The Secretary establishes two evaluation standards to evaluate the performance of each DSU that receives funds under this part. The evaluation standards assist the Secretary and each DSU to evaluate a DSU's performance in serving individuals with disabilities under the State VR Services Program.

(b) A DSU shall achieve successful performance on both evaluation standards during each performance period.

(c) The evaluation standards for The State VR Services Program are—

(1) *Evaluation Standard 1—Employment outcomes.* A DSU shall assist any eligible individual, including an individual with a significant disability, to obtain, maintain, or regain high-quality employment.

(2) *Evaluation Standard 2—Equal access to services.* A DSU shall ensure that individuals from minority backgrounds have equal access to VR services.

(Authority: 29 U.S.C. 726(a))

§ 361.84 Performance indicators.

(a) The performance indicators establish what constitutes minimum compliance with the evaluation standards.

(b) The performance indicators require a DSU to provide information on a variety of factors to enable the Secretary to measure compliance with the evaluation standards.

(c) The performance indicators are as follows:

(1) *Employment outcomes.*

(i) *Performance Indicator 1.1.* The number of individuals exiting the VR program who achieved an employment outcome during the current performance period compared to the number of individuals who exit the VR program after achieving an employment outcome during the previous performance period.

(ii) *Performance Indicator 1.2.* Of all individuals who exit the VR program after receiving services, the percentage who are determined to have achieved an employment outcome.

(iii) *Performance Indicator 1.3.* Of all individuals determined to have achieved an employment outcome, the percentage who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage.

(iv) *Performance Indicator 1.4.* Of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage, the percentage who are individuals with significant disabilities.

(v) *Performance Indicator 1.5.* The average hourly earnings of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings levels equivalent to at least the minimum wage as a ratio to the State's average hourly earnings for all individuals in the State who are employed (as derived from the Bureau of Labor Statistics report ''State Average Annual Pay'' for the most recent available year).

(vi) *Performance Indicator 1.6.* Of all individuals who exit the VR program in competitive, self-, or BEP employment with earnings equivalent to at least the minimum wage, the difference between the percentage who reported their own income as the largest single source of economic support at exit and the percentage who reported their own income as the largest single source of support at application.

(vii) *Performance Indicator 1.7.* Of all individuals exiting the VR program in full-time competitive employment, the percentage exiting the VR program in full-time competitive employment who can enroll in a medical insurance plan that covers hospitalization and is made available through the individual's place of employment.

(2) *Equal access to services.*

(i) *Performance Indicator 2.1.* The service rate for all individuals with disabilities from minority backgrounds as a ratio to the service rate for all non-minority individuals with disabilities.

(ii) *Performance Indicator 2.2.* The percentage of individuals with significant disabilities who exit the VR program after receiving services under an IPE who are minorities as a ratio to the percentage of individuals in the State's working age population (individuals age 16 to 64) reporting a disability that prevents them from working (as reported in U.S. Bureau of Census, Public Use Microdata System (PUMS), 1990 Decennial Census) who are minorities.

(Authority: 29 U.S.C. 726(a))

§ 361.86 Performance levels.

(a) *General.* (1) Paragraph (b) of this section establishes performance levels for—

(i) General or combined DSUs; and

(ii) DSUs serving exclusively individuals who are visually impaired or blind.

(2) The Secretary may establish, by regulations, new performance levels.

(b) *Performance levels for each performance indicator.* (1) To achieve successful performance on Evaluation Standard 1 (Employment outcomes), a DSU must meet or exceed the performance levels established for five of the seven performance indicators in the evaluation standard, including

meeting or exceeding the performance levels for two of the three primary indicators (Performance Indicators 1.3, 1.4 and 1.5). The performance levels for Performance Indicators 1.1 through 1.7 are—

Performance indicator	Performance level by type of DSU	
	General/combined	Blind
1.1	Equal or exceed previous performance period.	
1.2	55.8%	68.9%
1.3	72.6%	35.4%
1.4	62.4%	89.0%
1.5	.52 (Ratio)	.59
1.6	53.0 (math. difference)	30.4
1.7	50.6%	49.3%

(2) To achieve successful performance on Evaluation Standard 2 (Equal access), DSUs must meet or exceed the performance level established for Performance Indicator 2.1 or meet the performance requirement in paragraph (b)(2)(i) of this section. DSUs must also meet or exceed the performance level established for Performance Indicator 2.2 or meet the performance requirement in paragraph (b)(2)(ii) of this section. The performance levels for Performance Indicators 2.1 and 2.2 are—

Performance indicator	Performance levels
2.1 (Ratio)	.80
2.2 (Ratio)	.80

(i) If a DSU's performance does not meet or exceed the performance level required for Performance Indicator 2.1, or if a DSU has less than 100 cases in the denominator of a service rate, the DSU shall describe the policies it has adopted and the steps it has taken to ensure that individuals with disabilities from minority backgrounds have equal access to VR services.

(ii) If a DSU's performance does not meet or exceed the performance level required for Performance Indicator 2.2, or if a DSU has less than 100 cases in the denominator of the calculation, a DSU shall describe the outreach and recruitment activities it has undertaken and the policies and other practices it has adopted to ensure that individuals with disabilities from minority backgrounds have equal access to VR services.

(Authority: 29 U.S.C. 726(a))

§ 361.88 Reporting requirements.

(a) The Secretary requires that each DSU report within 60 days after the end of each fiscal year the extent to which the State is in compliance with the evaluation standards and performance indicators and include in this report the following RSA–911 data:

(1) The number of individuals who exited the VR program in each closure category as specified in the definition of ''Exit the VR program'' under § 361.81.

(2) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(3) The number of individuals with significant disabilities who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(4) The weekly earnings and hours worked of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage.

(5) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage whose primary source of support at application was ''personal income.''

(6) The number of individuals who exited the VR program in competitive, self-, or BEP employment with earnings at or above the minimum wage whose primary source of support at closure was ''personal income.''

(7) The number of individuals exiting the VR program in full-time competitive employment.

(8) The number of individuals exiting the VR program in full-time competitive employment who have health insurance that covers hospitalization available through their job.

(9) The total number of individuals exiting the VR program who are individuals from a minority background.

(10) The total number of non-minority individuals exiting the VR program.

(11) The total number of individuals from a minority background exiting the VR program after receiving services under an IPE.

(12) The total number of non-minority individuals exiting the VR program after receiving services under an IPE.

(13) The number of individuals from a minority background who are individuals with significant disabilities and exit the VR program after receiving services under an IPE.

(b) In lieu of the report required in paragraph (a) of this section, a DSU may submit its RSA–911 data on tape, diskette, or any alternative electronic format that is compatible with RSA's capability to process such an alternative, as long as the tape, diskette, or alternative electronic format includes the data that—

(1) Are required by paragraph (a)(1) through (13) of this section; and

(2) Meet the requirements of paragraph (c) of this section.

(c) Data reported by a DSU must be valid, accurate, and in a consistent format. A DSU's failure to submit data that are valid, accurate, and in a consistent format within the 60-day period will require the DSU to develop a program improvement plan pursuant to § 361.89(a).

(Authority: 29 U.S.C. 726(b))

§ 361.89 Enforcement procedures.

(a) If a DSU fails to meet the established performance levels on both evaluation standards as required by § 361.82(b), the Secretary and the DSU jointly develop a program improvement plan that outlines the specific actions to be taken by the DSU to improve program performance.

(b) In developing the program improvement plan, the Secretary considers all available and relevant data and information related to the DSU's performance.

(c) When a program improvement plan is in effect, review of the plan is conducted on a biannual basis. If necessary, the Secretary requests that a DSU make further revisions to the plan to improve performance. If the Secretary establishes new performance levels under § 361.86(a)(2), the Secretary and the DSU jointly shall modify the program improvement plan based on the new performance levels. The Secretary continues reviews and requests revisions until the DSU sustains satisfactory performance based on the

current performance levels over a period of more than one year.

(d) If the Secretary determines that a DSU with less than satisfactory performance has failed to enter into a program improvement plan or comply substantially with the terms and conditions of the program improvement plan, the Secretary, consistent with the procedures specified in § 361.11, reduces or makes no further payments to the DSU under this program until the DSU has met one of these two requirements or raised its subsequent performance to meet the current overall minimum satisfactory level on the compliance indicators.

(Authority: 29 U.S.C. 726(b) and 726(c))

[FR Doc. 98–27421 Filed 10–13–98; 8:45 am]

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federal register

Wednesday
October 14, 1998

Part V

The President

Proclamation 7135—Leif Erikson Day, 1998

Proclamation 7136—Columbus Day, 1998

Federal Register
Vol. 63, No. 198
Wednesday, October 14, 1998

Presidential Documents

Title 3—

The President

Proclamation 7135 of October 8, 1998

Leif Erikson Day, 1998

By the President of the United States of America

A Proclamation

Almost a thousand years ago, the great Norse explorer Leif Erikson first set foot on the North American continent. In commemorating Leif Erikson Day each year, we honor the pioneering spirit of this son of Iceland and grandson of Norway. We recall the daring of the Viking seafarers, who saw the ocean not as a boundary but as a gateway to another world, and we pay tribute to the courage of their descendants who, centuries later would brave their own ocean journeys to find a new life in America.

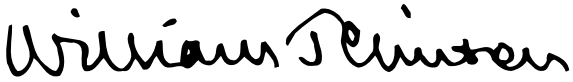
This thirst for adventure has remained a fundamental trait of the American character since our earliest days as a Nation. But men and women of the Nordic countries brought other important strengths to their adopted land as well: resourcefulness, self-reliance, determination, a willingness to work hard, a love of freedom, and a belief in human dignity.

Leif Erikson's arrival in North America brought not only the explorer's passion to our country, but also laid the foundations of the friendship the United States enjoys today with the Nordic countries. Building on the values we share, our nations have made a powerful commitment to protect and expand political, religious, and economic freedom to peoples around the world. Staunch allies in times of peace and war, the United States and the countries of Scandinavia look forward to the year 2000 when we will commemorate together the 1000th anniversary of Leif Erikson's historic voyage to our continent and celebrate the important and lasting contributions the sons and daughters of Iceland, Norway, Sweden, Denmark, and Finland have made to the history and heritage of our Nation.

In honor of Leif Erikson, the Congress, by joint resolution approved on September 2, 1964 (Public Law 88–566), has authorized and requested the President to proclaim October 9 of each year as ''Leif Erikson Day.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 9, 1998, as Leif Erikson Day. I encourage the people of the United States to observe this occasion with appropriate ceremonies and activities commemorating our rich Nordic-American heritage.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.



[FR Doc. 98–27746
Filed 10–13–98; 8:52 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7136 of October 9, 1998

Columbus Day, 1998

By the President of the United States of America

A Proclamation

Today our Nation stands on the threshold of a new millennium, an uncharted time of great challenge and opportunity. To fulfill the promise of this new era, we must be adventurous, willing to leave known shores, and eager to embrace change. To find inspiration for this momentous journey, we need only look to the example of Christopher Columbus, who helped usher in a similar Age of Discovery more than 500 years ago.

A skilled and experienced seaman, Columbus pushed back the boundaries of the known world and charted a safe course across the ocean to a new continent. He was a master at reading and using the winds and discovered the best westward and eastward passages between Europe and North America. As Daniel Boorstin wrote in *The Discoverers*, ''. . . a sailing vessel today, after all that has been learned in the last five centuries, could not do better than follow Columbus' route.'' Explorers, adventurers, and traders from many nations would follow his lead across the Atlantic, as would millions of immigrants in the centuries following his voyages. Although both a dreamer and a visionary, Columbus—a son of Italy whose enterprise was funded by the Spanish crown—could never have foreseen the multicultural, multiracial Nation that would ultimately emerge in the New World he helped to discover.

As we enter a new era, let us embrace Columbus' spirit of discovery and embrace as well the great diversity of cultures, religions, and ethnic traditions that we enjoy because so many have followed his course to this great land.

In tribute to Columbus' many achievements, the Congress, by joint resolution of April 30, 1934 (48 Stat. 657), and an Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as ''Columbus Day.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 12, 1998, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 98–27747
Filed 10–13–98; 8:52 am]
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federal register

Wednesday
October 14, 1998

Part VI

The President

Proclamation 7137—National School Lunch Week, 1998

Proclamation 7138—General Pulaski Memorial Day, 1998

Proclamation 7139—National Children's Day, 1998

Federal Register
Vol. 63, No. 198
Wednesday, October 14, 1998

Presidential Documents

Title 3—

The President

Proclamation 7137 of October 9, 1998

National School Lunch Week, 1998

By the President of the United States of America

A Proclamation

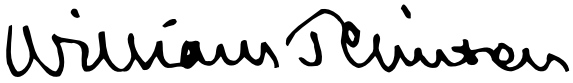
When the National School Lunch Program was established by President Truman in 1946, it built upon decades of local commitment by parents, educators, and community leaders who recognized a simple but important fact: hungry children can't learn. Today, for millions of students, the National School Lunch Program provides nutritious meals that serve as a vital foundation for learning and growing. Many of these children receive their only nutritious meal of the day at school. Thanks to this practical and effective program, children and adolescents in school cafeterias across our country not only have the opportunity to enjoy a wholesome and balanced meal each day, but they also begin to understand the importance of making healthy eating choices.

Unfortunately, the eating habits of America's children and adolescents often fall short. Parents, educators, school administrators, food service professionals, and community leaders must work in partnership to ensure that our youth learn the importance of good nutrition to overall good health. Learning about nutrition in school and having the daily opportunity to eat a well-balanced meal can help children develop the eating habits necessary to excel in the classroom and in life.

In recognition of the contributions of the National School Lunch Program to the health, education, and well-being of our Nation's children, the Congress, by joint resolution of October 9, 1962 (Public Law 87–780), has designated the week beginning on the second Sunday in October of each year as ''National School Lunch Week'' and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 11 through October 17, 1998, as National School Lunch Week. I call upon all Americans to join the dedicated individuals who lead child nutrition programs at the State and local levels in appropriate activities and celebrations that promote these programs.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.



[FR Doc. 98–27792
Filed 10–13–98; 11:43 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7138 of October 9, 1998

General Pulaski Memorial Day, 1998

By the President of the United States of America

A Proclamation

Two hundred nineteen years ago, General Casimir Pulaski selflessly gave his life on an American battlefield, far from his native soil, in a struggle dedicated to the principles of freedom and self-governance. Each year on October 11, America solemnly marks the anniversary of the death of this hero, a man whose devotion to liberty recognized no national boundary.

Born in Poland in 1747, Pulaski first joined the fight against tyranny and oppression at his father's side, defending their beloved homeland against Prussian and Imperial Russian aggression. At the age of 21, Pulaski took command of a detachment of rebel forces and proved his valor and strategic skill as he led freedom fighters into numerous battles. Struggling against insurmountable odds, he and his fellow rebels were ultimately defeated, and Pulaski was forced into exile.

Carrying the cause of freedom to foreign shores, Pulaski came to America to offer his services to George Washington in our country's struggle for independence. He wrote to General Washington, ''I came here, where freedom is being defended, to serve it, and to live or die for it.'' He proved true to his word. Washington was so impressed with Pulaski's abilities during the battle of Brandywine Creek that he recommended that the Continental Congress appoint Pulaski as general of the American cavalry. Pulaski and the special infantry and cavalry unit he formed fought bravely at the front lines of the Revolutionary War. And during the siege of Savannah, Casimir Pulaski gave his life so that our Nation might live in freedom.

Every year on this date, Americans across our country commemorate General Pulaski and draw inspiration from his life and the principles for which he fought. As we reflect on how far liberty and democracy have advanced across the globe, we know that General Pulaski's gallant and determinedspirit continues to live. It is this very spirit that kept alive the dream of freedom in the hearts and minds of the Polish people during the darkest days of Nazi and Communist oppression. Today, thanks to the enduring resolve and sacrifices of modern heroes following Pulaski's example, Europe is free, and the United States and Poland, as staunch friends and future NATO allies, look forward to a new millennium bright with the prospects of peace and prosperity.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Sunday, October 11, 1998, as General Pulaski Memorial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 98–27793
Filed 10–13–98; 11:43 am]
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Presidential Documents

Proclamation 7139 of October 9, 1998

National Children's Day, 1998

By the President of the United States of America

A Proclamation

One of the most important measures of our success as a Nation is the well-being of our children. As a society, we have no more important responsibility than to help our families raise healthy, happy, loving children in an environment that allows kids to reach their full potential. My Administration is committed to this goal, and we have made significant progress over the past five and a half years through initiatives and legislation designed to strengthen families, protect our children's health, and invest in their education.

By providing a tax credit of $500 per child to 26 million families, increasing the minimum wage, and cutting taxes through extending the Earned Income Tax Credit, we have helped millions of working families. We have dramatically increased Federal funding for child care and proposed additional subsidies and tax credits to help families pay for such care.

Through the Family and Medical Leave Act, we have made it easier for working parents to take as much as 12 weeks of unpaid leave to care for a new baby or a sick child without jeopardizing their jobs. And the landmark Adoption and Safe Families Act I signed into law last year helps the thousands of children in foster care by working to reunite them with their families, where possible, or move them more quickly into secure, permanent adoptive families when that is the best option.

To meet our commitment to the health of all our children, we have extended health care coverage to millions of previously uninsured children through the Children's Health Insurance Program (CHIP), the largest national investment in children's health care in more than 30 years. Children with health insurance get a healthier start in life because they receive regular checkups and routine immunizations. We are working with the States to ensure that every child eligible for CHIP is enrolled, and we are focusing on enrolling the more than 4 million uninsured children who are currently eligible for health coverage under the Medicaid program.

To empower America's children with the skills and knowledge they need to make the most of their lives, our Nation has also made the largest investment in education in more than a generation. Today, more than 800,000 children are enrolled in Head Start, receiving the attention and training they need to start school ready to learn. We are also working with the Congress to pass legislation that will provide public schools with more teachers, smaller class sizes, new or renovated buildings, and the latest in information technology.

Children are our greatest blessing, and raising them well is the most challenging and rewarding task any of us will ever undertake. On National Children's Day, let us recommit ourselves—as loving parents and caring citizens—to ensure that all of America's children grow up in truly nurturing environments where their needs are met and where they have every opportunity to make the most of their lives.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 11, 1998, as National Children's Day. I urge the American people to express their love and appreciation for children on this day and on every day throughout the year. I invite Federal officials, local governments, communities, and particularly all American families to join together in observing this day with appropriate ceremonies and activities that honor our Nation's children. I also urge all Americans to reflect upon the importance of children to our families, the importance of strong families to our children, and the importance of each to America.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of October, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

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H.R. 6/P.L. 105–244

Higher Education Amendments of 1998 (Oct. 7, 1998; 112 Stat. 1581)

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