2–11–99
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federal register

Thursday
February 11, 1999

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WASHINGTON, DC

WHEN: February 23, 1999 at 9:00 am.

WHERE: Office of the Federal Register
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800 North Capitol Street, NW.
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RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

Presidential Determination No. 99–12 of February 3, 1999

Vietnamese Cooperation in Accounting for United States Prisoners of War and Missing in Action (POW/MIA)

Memorandum for the Secretary of State

As provided under section 609 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999, as contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277, I hereby determine, based on all information available to the United States Government, that the Government of the Socialist Republic of Vietnam is fully cooperating in good faith with the United States in the following four areas related to achieving the fullest possible accounting for Americans unaccounted for as a result of the Vietnam War:

1) resolving discrepancy cases, live sightings, and field activities;

2) recovering and repatriating American remains;

3) accelerating efforts to provide documents that will help lead to the fullest possible accounting of POW/MIAs; and,

4) providing further assistance in implementing trilateral investigations with Laos.

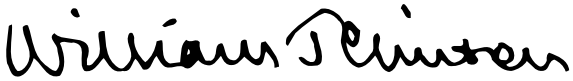
I further determine that the appropriate laboratories associated with POW/MIA accounting are thoroughly analyzing remains, material, and other information and fulfilling their responsibilities as set forth in subsection (B) of section 609, and information pertaining to this accounting is being made available to immediate family members in compliance with 50 U.S.C. 435 note.

I have been advised by the Department of Justice that section 609 is unconstitutional because it purports to use a condition on appropriations as a means to direct my execution of responsibilities that the Constitution commits exclusively to the President. I am providing this determination as a matter of comity with the Congress, while reserving the position that the condition enacted in section 609 is unconstitutional.

In making this determination, I have taken into account all information available to the United States Government as reported to me, including the full range of ongoing accounting activities in Vietnam, joint and unilateral Vietnamese efforts, and the concrete results we have attained as a result of these efforts.

Finally, in making this determination, I wish to reaffirm my continuing personal commitment to the entire POW/MIA community, especially to the immediate families, relatives, friends, and supporters of these brave individuals, and to reconfirm that the central, guiding principle of my Vietnam policy is to achieve the fullest possible accounting of our prisoners of war and missing in action.

You are authorized and directed to report this determination to the appropriate committees of the Congress and to publish it in the **Federal Register.**



THE WHITE HOUSE,
Washington, February 3, 1999.

[FR Doc. 99–3504
Filed 2–10–99; 8:45 am]
Billing code 4710–10–M

Presidential Documents

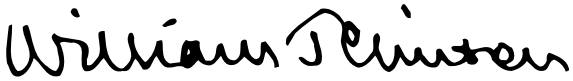
Presidential Determination No. 99–13 of February 4, 1999

Designations Under the Iraq Liberation Act of 1998

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President of the United States, including under section 5 of the Iraq Liberation Act of 1998 (Public Law 105–338) (the ''Act''), I hereby determine that each of the following groups is a democratic opposition organization and that each satisfies the criteria set forth in section 5(c) of the Act: the Iraqi National Accord, the Iraqi National Congress, the Islamic Movement of Iraqi Kurdistan, the Kurdistan Democratic Party, the Movement for Constitutional Monarchy, the Patriotic Union of Kurdistan, and the Supreme Council for the Islamic Revolution in Iraq. I hereby designate each of these organizations as eligible to receive assistance under section 4 of the Act.

You are authorized and directed to report this determination and designation to the Congress and arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
Washington, February 4, 1999.

[FR Doc. 99–3505
Filed 2–10–99; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 64, No. 28
Thursday, February 11, 1999

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

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

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA66

Fees for Official Inspection and Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) published in the **Federal Register** of December 23, 1998, a document increasing fees, effective February 1, 1999, for certain official inspection and weighing services it performs in the United States under the United States Grain Standards Act. Inadvertently, in paragraphs (3)(i) and (ii) of Table 2, Schedule A, of § 800.71(a), the minimum fees for stowage examinations were misstated. This document corrects those minimum fees.

EFFECTIVE DATE: Effective on February 11, 1999.

FOR FURTHER INFORMATION CONTACT: George Wollam, USDA, GIPSA, ART, 1400 Independence Avenue, SW, Stop 3649, Washington, D.C. 20250–3649, or telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Background

GIPSA published a document (FR Doc. 98–33921) in the **Federal Register** of December 23, 1998 (63 FR 70090), that revised fees for certain services performed under the United States Grain Standards Act. Inadvertently, the minimum fees for original ship stowage examinations and subsequent examinations were incorrectly stated in paragraphs (3)(i) and (ii) of Table 2, Schedule A, of § 800.71(a). This document places in the CFR the correct minimum fees for those exams.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grain.

Accordingly, 7 CFR Part 800 is corrected by making the following correcting amendments:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

§ 800.71 [Amended]

2. In § 800.71(a), in Schedule A, Table 2, at (3)(i) Ship, change ''(minimum $275 per ship)'' to read ''(minimum $252.50 per ship)'' and at (3)(ii) Subsequent ship examinations, change ''(minimum $175 per ship)'' to read ''(minimum $151.50 per ship).''

Dated: February 4, 1999.

Neil E. Porter,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 99–3337 Filed 2–10–99; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA14

United States Standards for Barley; Correction

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule revising the United States Standards for Barley which was published in the **Federal Register** of April 26, 1996, and became effective June 1, 1997. That rule, among other things, amended the breakpoint for dockage and established new breakpoints for malting barley to conform with changes made to the United States Standards for Barley.

EFFECTIVE DATE: February 11, 1999.

FOR FURTHER INFORMATION CONTACT: Sharon Vassiliades, USDA, GIPSA, ART, 1400 Independence Avenue, SW, Stop 3649, Washington, D.C. 20250–3649, or telephone 202–720–1738.

SUPPLEMENTARY INFORMATION:

Background

GIPSA published a document (FR Doc. 96–10305) in the **Federal Register** of April 26, 1996 (61 FR 18486) revising the United States Standards for Barley. The final rule became effective June 1, 1997 (May 16, 1996, 61 FR 24669). The final rule revised, among other things, Table 4 of 7 CFR 800.86(c)(2) and inadvertently deleted portions of that table from the CFR. This correction returns to the CFR those deleted portions of Table 4 as they appeared at the time of the April 26, 1996, publication.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grain.

Accordingly, 7 CFR Part 800 is corrected by making the following correcting amendments:

PART 800 —GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.)

2. Revise paragraph (c)(2) Table 4 of § 800.86 to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

* * * * *

(c) * * *

(2) * * *

TABLE 4.—BREAKPOINTS FOR BARLEY SPECIAL GRADES AND FACTORS

Special grade or factor	Grade or range limit	Breakpoint
Dockage	As specified by contract or load order	0.23
Two-rowed Barley	Not more than 10.0% of Six-rowed in Two-rowed	1.8
Six-rowed Barley	Not more than 10.0% of Two-rowed in Six-rowed	1.8

TABLE 4.—BREAKPOINTS FOR BARLEY SPECIAL GRADES AND FACTORS—Continued

Special grade or factor	Grade or range limit	Breakpoint
Malting (Blue Aleurone Layers)	Not less than 90.0%	−1.3
Malting (White Aleurone Layers)	Not less than 90.0%	−1.3
Smutty	More than 0.20%	0.06
Garlicky	3 or more in 500 grams	2⅓
Ergoty	More than 0.10%	0.13
Infested	Same as in § 810.107	0
Blighted	More than 4.0%	1.1
Injured-by-Frost Kernels	Not more than 1.9%	0.1
Injured-by-Heat Kernels	Not more than 0.2%	0.04
Frost-damaged Kernels	Not more than 0.4%	0.05
Heat-damaged Kernels	Not more than 0.1%	0.1
Other Grains	Not more than 25.0%	2.4
Moisture	As specified by contract or load order grade	0.5

* * * * *

Dated: February 4, 1999.

Neil E. Porter,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 99–3336 Filed 2–10–99; 8:45 am]

BILLING CODE 3410–EN–P

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AB71

Organization; Balloting and Stockholder Reconsideration Issues; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under part 611 on November 24, 1998 (63 FR 64841). This final rule will amend Farm Credit Administration (FCA or Agency) regulations concerning Farm Credit System (System or FCS) ballots and the effective dates for mergers, consolidations, or transfers of direct lending authority. The amendments allow the use of identity codes on ballots, as long as the votes are tabulated by an independent third party; limit the scope of the regulation to System banks and associations; and remove descriptions of specific balloting procedures from the regulations. The amendments also reduce the earliest effective date of a merger, consolidation, or transfer of lending authority. The amendments provide more flexibility to institutions and stockholders when stockholder votes occur, extend security and confidentiality requirements to all stockholder votes of banks and associations, limit such requirements to banks and associations, and accelerate the effective date of certain corporate actions. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is February 11, 1999.

EFFECTIVE DATE: The regulation amending 12 CFR part 611 published on November 24, 1998 (63 FR 64841) is effective February 11, 1999.

FOR FURTHER INFORMATION CONTACT:

Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498;

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: February 4, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–3370 Filed 2–10–99; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–28–AD; Amendment 39–11029; AD 99–04–05]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Pratt & Whitney (PW) JT9D series turbofan engines, that requires a fluorescent penetrant inspection (FPI) of the rear skirt of the diffuser case for cracks, and, if necessary, blending down to minimum wall thickness to remove cracks and subsequent FPI to determine if cracks have been removed, polishing, and shotpeening. If the cracks are shown by subsequent FPI not to have been removed, this AD requires removing the diffuser case from service and replace with a serviceable part. This amendment is prompted by a report of a diffuser case rupture during takeoff roll that resulted in damage to the aircraft. The actions specified by this AD are intended to prevent diffuser case rupture due to cracks, which can result in an uncontained engine failure and damage to the aircraft.

DATES: Effective April 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)

that is applicable to certain Pratt & Whitney (PW) JT9D series turbofan engines was published in the **Federal Register** on August 31, 1998 (63 FR 46200). That action proposed to require fluorescent penetrant inspection (FPI) of the rear skirt of the diffuser case for cracks, and, if necessary, blending down to minimum wall thickness, to remove cracks, subsequent FPI to determine if cracks have been removed, and polishing and shotpeening. If the cracks are shown by subsequent FPI not to have been removed, the proposed AD would require removing the diffuser case from service for possible weld repair or replacement with serviceable parts. The actions would be required to be accomplished in accordance with PW Service Bulletin (SB) No. JT9D–6329, dated May 20, 1998.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that the proposed AD only requires blending out if an indication of a crack is found. The AD should be amended to require blending out of all tooling and other surface marks at piece-part exposure, whether or not cracks are found, in order to remove the danger of them becoming crack initiation sites at a future date. The FAA does not concur. The referenced SB explains that scratches and toolmarks can lead to cracking. The criteria in the SB also state any questionable indications be marked as a crack. Although surface tooling mark conditions may exist in other locations on the diffuser case, there has been no field experience to indicate that an unsafe condition exists in other locations.

The same commenter states the proposed AD concentrates solely on the area around the dog bone bosses. With a highly stressed part such as a diffuser casing, attention should be paid to the whole component and the AD should be amended to reflect this. The FAA concurs in part. Paragraph (a) of the AD has been changed to reflect the intent of the SB to perform an FPI of the rear skirt of the diffuser case with particular attention to the area around the dogbone location because it is a high stress area. At this time, however, the FAA has determined that it is not necessary to require an FPI of the entire diffuser case. The JT9D Engine Manual (Part Number (P/N) 777210) Inspection –01 Task 72–41–03–22–000 contains a full diffuser case FPI as a prerequisite procedure for visual and dimensional inspection per SPOP 82. That inspection procedure also contains cautionary note to pay particular attention to the rear rail.

Two commenters have no objection to the proposed AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 566 engines of the affected design in the worldwide fleet. The FAA estimates that 157 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 68 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $640,560.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–04–05 Pratt & Whitney: Amendment 39–11029 Docket 98–ANE–28–AD.

Applicability: Pratt & Whitney (PW) Model JT9D–7Q, –7Q3, –59A, and –70A turbofan engines, with diffuser cases, part numbers (P/Ns) 772173, 772173–001, 772173–002, 782222, 782222–001, and 782222–002, installed. These engines are installed on but not limited to Boeing 747 series, McDonnell Douglas DC–10 series, and Airbus A300 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent diffuser case rupture due to cracks, which can result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) At the next piece-part exposure of the diffuser case after the effective date of this AD, accomplish the following in accordance with PW Service Bulletin (SB) No. JT9D–6329, dated May 20, 1998:

(1) Perform a fluorescent penetrant inspection (FPI) for cracks in accordance with the procedures and criteria stated in the SB of the diffuser case rear skirt paying particular attention to areas around the dog bone-shaped bosses identified in the SB.

(2) If no indications of cracks are found in accordance with the procedures and criteria stated in the SB, no further action is required.

(3) If indications of cracks are found in accordance with the procedures and criteria stated in the SB, remove the diffuser case from service, replace with a serviceable part, or blend the cracks as needed down to the minimum wall thickness to remove cracks in accordance with the procedures and criteria stated in the SB.

(4) After blending down in accordance with the procedures and criteria stated in the SB, perform a subsequent etch and FPI for cracks, as follows:

(i) If no indications of cracks are found in accordance with the procedures and criteria stated in the SB, polish and shot-peen the area around each dog bone boss in accordance with the procedures and criteria stated in the SB.

(ii) If indications of cracks are found in accordance with the procedures and criteria

stated in the SB, remove the diffuser case from service and replace with a serviceable part.

(b) For the purpose of this AD, piece-part exposure is defined as when the part is considered completely disassembled when done in accordance with the disassembly instructions in the engine manufacturer's manual, to give access to the dog bone-shaped bosses in the diffuser case rear skirt.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) 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.

(e) The actions required by this AD shall be done in accordance with the following PW SB:

Document No.	Pages	Date
JT9D 6329 ..... Total Pages: 42.	1–42	May 20, 1998.

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 Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 12, 1999.

Issued in Burlington, Massachusetts, on February 1, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–3038 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–08–AD; Amendment 39–11027; AD 99–04–03]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG (IAE) V2500–A5/–D5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to International Aero Engines AG (IAE) V2500–A5/–D5 series turbofan engines, that requires the removal from service of certain high pressure compressor (HPC) stage 9–12 drums prior to reaching the new reduced cyclic life limits, and replacement with serviceable parts. This amendment is prompted by the reduction of the life limit for certain IAE V2500 HPC stage 9–12 drums due to higher stresses in this part than originally predicted. The actions specified by this AD are intended to prevent high pressure compressor (HPC) stage 9–12 drum failure, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective date April 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce Commercial Aero Engine Limited, P.O. Box 31, Derby, England, DE2488J, Attention: Publication Services ICL–TP. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to International Aero Engines AG (IAE) V2500–A5/–D5 series turbofan engines was published in the **Federal Register** on September 28, 1998 (63 FR 51545). That action proposed to require removal from service of certain HPC stage 9–12 drums prior to reaching new, reduced cyclic life limits, and replacement with serviceable parts in accordance with IAE Service Bulletin (SB) No. V2500–ENG–72–0293, dated December 19, 1997.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter identifies a typographical error in paragraph (a) of the Compliance section and requests that ''Remove for service'' be changed to ''Remove from service.'' The FAA concurs. The typographical error has been corrected to ''Remove from service.''

Two commenters express concern about the clarity and intent of paragraph (d) of the Compliance section. They believed that the second sentence of paragraph (d) suggested a life limit of all part number (P/N) stage 9–12 drums are limited by the requirements of the proposed AD. They are concerned that this could be interpreted to mean that future stage 9–12 drums would have their life limits controlled by this proposed AD. The FAA concurs. Paragraph (d) has been changed to add ''P/N 6A4156'' to the end of the sentence. The last sentence will now state ''Thereafter, except as provided in paragraph (e) of this AD, no alternative cyclic retirement life limits may be approved for HPC stage 9–12 drum, P/N 6A4156.''

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 400 International Aero Engines AG (IAE) V2500–A5/–D5 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 162 engines installed on airplanes of U.S. registry will be affected by this AD and that it will take no additional work hours per engine to accomplish the required actions. Required parts, on a prorated basis, will cost approximately $49,000 per engine. Based on these figures, the total cost impact of the AD

on U.S. operators is estimated to be $7,900,000

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–04–03 International Aero Engines: Amendment 39–11027. Docket 98–ANE–08–AD.

Applicability: International Aero Engines AG (IAE) Models V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2530–A5, V2533–A5, V2525–D5, V2528–D5 turbofan engines, installed on but not limited to Airbus Industrie A319, A320, A321 series and McDonnell Douglas MD–90 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 (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 high pressure compressor (HPC) stage 9–12 drum failure, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) Remove from service HPC stage 9–12 drums, part number (P/N) 6A4156, operated in a single engine model at a single thrust rating prior to accumulating the new, reduced cyclic life limits, which are dependent upon the engine installation and thrust rating, as described in Table 1 of IAE Service Bulletin (SB) No. V2500–ENG–72–0293, dated December 19, 1997, and replace with a serviceable part.

(b) Remove from service HPC stage 9–12 drums, P/N 6A4156, installed in engines which operate at a mixture of thrust ratings, prior to accumulating the cyclic life limit of the highest thrust rating employed, as described in Table 1 of IAE SB No. V2500–ENG–72–0293, dated December 19, 1997, and replace with a serviceable part. The use of an HPC stage 9–12 drum, P/N 6A4156, at a higher thrust rating for even a single flight invokes the cyclic life limit applicable for the higher thrust rating.

(c) Remove from service HPC stage 9–12 drums, P/N 6A4156, removed from one engine model and installed into another engine model or operated at different thrust ratings prior to accumulating the applicable component cyclic life limit for the engine model with the highest thrust rating, as described in Table 1 of IAE SB No. V2500–ENG–72–0293, dated December 19, 1997, regardless of the cycles in service at this rating, and replace with a serviceable part.

(d) This AD establishes new cyclic retirement life limits for HPC stage 9–12 drums, part number (P/N) 6A4156. Thereafter, except as provided in paragraph (e) of this AD, no alternative cyclic retirement life limits may be approved for HPC stage 9–12 drums, P/N 6A4156.

(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, Engine 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, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(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 aircraft to a location where the requirements of this AD can be accomplished.

(g) The cyclic retirement life limits shall be determined in accordance with the following International Aero Engines SB:

Document No.	Pages	Revision	Date
V2500–ENG–72–0293 ..... Total pages: 7	1–7	Original	December 19, 1997.

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 Rolls-Royce Commercial Aero Engine Limited, P. O. Box 31, Derby, England, DE2488J, Attention: Publication Services ICL–TP. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on April 12, 1999.

Issued in Burlington, Massachusetts, on February 1, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–3037 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–163–AD; Amendment 39–11034; AD 99–04–10]

RIN 2120–AA64

Airworthiness Directives; Transport Category Airplanes Equipped With Day-Ray Products, Inc., Fluorescent Light Ballasts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to any transport category airplane that is equipped with certain Day-Ray fluorescent light ballasts installed in the upper and/or lower cabin sidewall, that requires a visual inspection to determine the type of fluorescent light ballasts installed in the cabin sidewall, and the replacement of suspect ballasts with new or serviceable ballasts. This amendment is prompted by reports of smoke, fumes, and/or electrical fire emitting from the baggage bin of the aft passenger compartment due to the failure of the fluorescent light ballasts. The actions specified by this AD are intended to prevent fire in the passenger compartment resulting from failure of the fluorescent light ballast of the cabin sidewall.

DATES: Effective March 18, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Day-Ray Products, Inc., 1133 Mission Street, South Pasadena, California 91031; or Hexcel Corporation, Heath Tecna Interiors, 3225 Woburn Street, Bellingham, Washington 98226; or The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60); or Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: J. Kirk Baker, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5345; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to any transport category airplane that is equipped with certain Day-Ray fluorescent light ballasts installed in the upper and/or lower cabin sidewall was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 19, 1998 (63 FR 8374). That action proposed to require a visual inspection to determine the type of fluorescent light ballasts installed in the cabin sidewall, and the replacement of suspect ballasts with new or serviceable ballasts.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Several commenters support the proposed rule.

Request To Revise Cost Impact Information

One commenter states that, based on prior experience with replacing the light ballasts on its airplanes, the work hours necessary to accomplish the proposed replacement is greater than the estimate of 50 work hours per airplane, and the parts cost is greater than the estimate of $8,550 per airplane (which were the estimates provided in the proposed rule). The FAA infers that the commenter is requesting that the estimates for the work hours and parts cost specified in the cost impact information of the proposed rule be revised upward in the final rule.

The FAA does not concur with the commenter's request to revise the cost impact information. As stated in the supplemental NPRM, the FAA used an average of $150 per ballast parts cost and 57 light ballasts per airplane to estimate the cost impact of the proposal. Also, the estimate of 50 work hours necessary for the replacement is based on the estimated average number of 57 ballasts per airplane. The FAA recognizes that actual per-airplane costs will vary, because different airplane models have different numbers of ballasts, and the cost of parts and the number of work hours necessary to install those parts are different for different airplane models. Also, because this final rule is applicable to all transport category airplanes that are equipped with Day-Ray fluorescent light ballasts having certain part numbers, and is not limited to specific airplane models, it is not possible for the FAA to provide precise cost estimates for all affected airplanes. For these reasons, the FAA finds that no change to the cost impact information stated in the final rule is necessary.

Request To Remove Airplanes From Applicability

Several commenters request that McDonnell Douglas DC–9–80 series airplanes and MD–88 airplanes be excluded from the applicability of the proposed rule. The commenters state that AD 97–08–07, amendment 39–9995 (62 FR 28798, May 28, 1997), already requires the removal and replacement of Day-Ray ballasts from those airplanes.

The FAA concurs with the commenters' request to remove McDonnell Douglas DC–9–80 series airplanes and MD–88 airplanes from the applicability of this AD. The FAA finds that these airplanes are subject to the requirements of AD 97–08–07. Therefore, the applicability statement of this final rule has been revised to eliminate reference to McDonnell Douglas DC–9–80 series airplanes and MD–88 airplanes. Also, Table 2 of this final rule has been revised to remove two service bulletins that were listed in the proposed rule as appropriate sources of service information for the

replacement of light ballasts on McDonnell Douglas DC–9–80 series airplanes and MD–88 airplanes.

Request To Reference New Service Information

One commenter requests that the supplemental NPRM be revised to reference McDonnell Douglas Service Bulletin DC9–33–111, dated May 6, 1997, in lieu of McDonnell Douglas Service Bulletin DC9–33–103, dated May 30, 1996, which was cited in the supplemental NPRM as the appropriate source of service information for accomplishment of certain proposed actions. The commenter notes that McDonnell Douglas Service Bulletin DC9–33–103 provides an option to install a protective cover over the subject light ballast; however, the FAA issued the supplemental NPRM to eliminate the option to install such protective covers. The commenter states that the effectivity listing is the same in both service bulletins.

The FAA partially concurs with the commenter's request. The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–33–111, and has determined that, for McDonnell Douglas Model DC–9–30, –40, and –50 series airplanes, replacement of existing Day-Ray light ballasts with new or serviceable light ballasts in accordance with that service bulletin is an acceptable method of compliance for the requirements of this AD.

However, the FAA's intent is that McDonnell Douglas Service Bulletin DC9–33–103 is an acceptable source of service information for accomplishment of the requirements of paragraph (a) of this AD, provided that no protective covers are installed. Therefore, Table 2 of the final rule has been revised to add McDonnell Douglas Service Bulletin DC9–33–111 as an acceptable source of service information for accomplishment of the requirements of this AD. In addition, NOTE 2 has been added to the final rule to specify that, ''Replacement of light ballasts on McDonnell Douglas Model DC–9–30, –40, and –50 series airplanes; in accordance with McDonnell Douglas Service Bulletin DC9–33–103, dated May 30, 1996; is acceptable for compliance with the requirements of paragraph (a) of this AD, provided that no protective covers are installed on the light ballasts.''

Request To Allow Records Search in Lieu of Inspection

One commenter requests that the FAA allow operators to search their airplane records to determine if suspect ballasts are installed, in lieu of performing the inspection specified in paragraph (a) of the supplemental NPRM. The commenter provides no justification for its request.

The FAA does not concur with the commenter's request to allow a records search in lieu of the inspection. The FAA finds that, although some operators' records may be excellent, a records search may not provide an adequate level of safety assurance for all airplanes in the transport fleet. No change to the final rule is necessary in this regard.

Request To Extend Compliance Time

Two commenters request that the compliance time for the replacement of suspect ballasts be extended beyond the proposed 12 months to allow accomplishment of the replacement during regularly scheduled ''C'' checks. One of the commenters notes that there has not been a single incident of a fire on McDonnell Douglas DC–10 series airplanes that was attributed to the subject light ballast.

The FAA does not concur with the commenters' request to extend the compliance time. The FAA has considered the severity of the unsafe condition (fire in the passenger compartment resulting from failure of the fluorescent light ballast of the cabin sidewall) and has determined that 12 months after the effective date of this AD represents an appropriate compliance time to ensure the safety of the transport airplane fleet. The FAA also has determined that a sufficient supply of parts is available to allow for accomplishment of the replacement within that timeframe. No change to the final rule is necessary in this regard. However, under the provisions of paragraph (c) of this final rule, the FAA may approve requests for adjustment of the compliance time in cases where the operator presents evidence that an alternate method of compliance would provide an acceptable level of safety.

Request To Allow Use of Alternative Type of Replacement Ballast

One commenter requests that the FAA allow a new type of replacement ballast, manufactured by Day-Ray, to be installed as an alternative to the light ballasts manufactured by Bruce Industries that were specified in paragraph (a) of the supplemental NPRM. The commenter states that it anticipates FAA approval of the design prior to issuance of the final rule.

The FAA does not concur with the commenter's request to approve the use of a new Day-Ray ballast. The new replacement ballast to which the commenter refers has not been approved as of the issuance of this final rule, and the FAA cannot approve the installation of a particular part prior to design approval of that part. Furthermore, the FAA finds that to delay this rulemaking action would be inappropriate in light of the identified unsafe condition. However, once a new ballast has been approved, under the provisions of paragraph (c) of this final rule, the FAA may approve requests for an alternative method of compliance to allow use of such a new ballast. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,500 transport category airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,800 airplanes of U.S. registry will be affected by this AD.

It will take approximately 25 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,500 per airplane.

Should an operator be required to accomplish the replacement of the light ballasts, it will require approximately 50 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will average approximately $8,550 per airplane, which represents a cost of $150 per ballast and an average of 57 ballasts per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $11,550 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–04–10 Transport Category Airplanes: Amendment 39–11034. Docket 96–NM–163–AD.

Applicability: Airplanes equipped with Day-Ray Products, Inc., cabin sidewall fluorescent light ballasts having part numbers listed in Table 1 of this AD; including, but not limited to, McDonnell Douglas Model DC–9, DC–10, and C–9 (military) series airplanes; and Boeing Model 707, 727, and 737 series airplanes; certificated in any category.

TABLE 1.—FLUORESCENT LIGHT BALLASTS SUBJECT TO THIS AD

Name	Part No.
Day-Ray	69–10 69–10–1 69–68 69–68–1 69–69 69–69–1 70–94 70–94–1 83–12 83–12–1

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fire in the passenger compartment resulting from failure of the fluorescent light ballast of the cabin sidewall, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a one-time visual inspection to determine the type of fluorescent light ballasts installed in the upper and lower cabin sidewall. If any ballast installed has a part number that is listed in Table 1 of this AD, prior to further flight, remove the Day-Ray light ballast and replace it with a light ballast manufactured by Bruce Industries, in accordance with the applicable service bulletin(s) listed in Table 2 of this AD.

TABLE 2.—SERVICE BULLETINS CONTAINING INSTRUCTIONS FOR ACCOMPLISHING THE REQUIREMENTS OF THIS AD

Service bulletin number and date	Affected airplanes
McDonnell Douglas, DC–9 Service Bulletin DC9–33–103, May 30, 1996.	Model DC–9–30, –40, and –50 series airplanes listed in effectivity of service bulletin.
McDonnell Douglas, DC–9 Service Bulletin DC9–33–111, May 6, 1997	Model DC–9–30, –40, and –50 series airplanes listed in effectivity of service bulletin.
McDonnell Douglas, DC–10 Service Bulletin DC10–33–073, June 18, 1996.	Model DC–10–10, –15, –30, and –40 series airplanes and KC–10A airplanes listed in effectivity of service bulletin.
Heath Tecna, Alert Service Bulletin MarkI–33–A2, Revision 1, July 24, 1996.	McDonnell Douglas Model DC–8 series airplanes retrofitted with Heath Tecna Mark I interior.
Heath Tecna, Alert Service Bulletin MarkI–33–A3, Revision 1, July 24, 1996.	Boeing Model 707 series airplanes retrofitted with the Heath Tecna Mark I interior.
Heath Tecna, Alert Service Bulletin MarkI–33–A4, Revision 1, July 24, 1996.	Boeing Model 727 series airplanes retrofitted with the Heath Tecna Mark I interior.
Heath Tecna, Alert Service Bulletin MarkI–33–A5, Revision 1, July 24, 1996.	Boeing Model 737 series airplanes retrofitted with the Heath Tecna Mark I interior.
Heath Tecna, Alert Service Bulletin Spmk–33–A1, Revision 1, July 24, 1996.	Boeing Model 727 series airplanes, retrofitted with the Heath Tecna Spacemaker II or Spacemaker IIa interior.
Heath Tecna, Alert Service Bulletin Spmk–33–A2, Revision 1, July 24, 1996.	Boeing Model 737 series airplanes, retrofitted with the Heath Tecna Spacemaker II or Spacemaker IIa interior.

Note 2: Replacement of light ballasts on McDonnell Douglas Model DC–9–30, –40, and –50 series airplanes; in accordance with McDonnell Douglas Service Bulletin DC9–33–103, dated May 30, 1996; is acceptable for compliance with the requirements of paragraph (a) of this AD, provided that no protective covers are installed on the light ballasts.

(b) As of the effective date of this AD, no person shall install in the upper or lower cabin sidewall of any airplane a Day-Ray fluorescent light ballast having a part number listed in Table 1 of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles 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, Los Angeles ACO.

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

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

(e) The replacement shall be done in accordance with the following McDonnell Douglas and Heath Tecna service bulletins, as applicable, which contain the specified list of effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
McDonnell Douglas, DC9–33–103, May 30, 1996	1–10	Original	May 30, 1996.
McDonnell Douglas, DC9–33–111, May 6, 1997	1–10	Original	May 6, 1997.
McDonnell Douglas, DC10–33–073, June 18, 1996	1–9	Original	June 18, 1996.
Heath Tecna, Alert Service Bulletin, MarkI–33–A2, Revision 1, July 24, 1996	1–3,5	New	April 3, 1996.
	4	1	July 24, 1996.
Heath Tecna, Alert Service Bulletin, MarkI–33–A3, Revision 1, July 24, 1996	1–2	New	April 4, 1996.
	3–4	1	July 24, 1996.
Heath Tecna, Alert Service Bulletin, MarkI–33–A4, Revision 1, July 24, 1996	1–2	New	April 8, 1996.
	3–4	1	July 24, 1996.
Heath Tecna, Alert Service Bulletin, MarkI–33–A5, Revision 1, July 24, 1996	1–2	New	April 9, 1996.
	3–4	1	July 24, 1996.
Heath Tecna, Alert Service Bulletin, Spmk–33–A1, Revision 1, July 24, 1996	1–2	New	April 10, 1996.
	3–4	1	July 24, 1996.
Heath Tecna, Alert Service Bulletin, Spmk–33–A2, Revision 1, July 24, 1996	1–2	New	April 11, 1996.
	3–4	1	July 24, 1996.

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 Day-Ray Products, Inc., 1133 Mission Street, South Pasadena, California 91031; or Hexcel Corporation, Heath Tecna Interiors, 3225 Woburn Street, Bellingham, Washington 98226; or The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60); or Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on March 18, 1999.

Issued in Renton, Washington, on February 4, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–3189 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–258–AD; Amendment 39–11035; AD 99–04–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, and –800 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–600, –700, and –800 series airplanes, that requires repetitive inspections to detect damage of the aft strut insulation blanket. This AD also requires eventual replacement of the insulation blankets with new, improved blankets, which constitutes terminating action for the requirements of this AD. This amendment is prompted by reports of damaged aft strut insulation blankets. The actions specified by this AD are intended to prevent such damage, which could result in exposure of the lower surface of the strut to extreme high temperatures, consequent creation of a source of fuel ignition, and increased risk of a fuel tank explosion and fire.

DATES: Effective March 18, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bernie Gonzalez, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2682; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, –700, and –800 series airplanes was published in the **Federal Register** on October 15, 1998 (63 FR 55343). That action proposed to require repetitive inspections to detect damage of the aft strut insulation blanket. That action also proposed to require eventual replacement of the insulation blankets with new, improved blankets, which would constitute terminating action for the requirements of the AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters express no objection to the proposed rule, and one commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 33 Model 737–600, –700, and –800 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 26 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $1,560, or $60 per airplane, per inspection cycle.

It will take approximately 1 work hour per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $1,560, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–04–11 Boeing: Amendment 39–11035. Docket 98–NM–258–AD.

Applicability: Model 737–600, –700, and –800 series airplanes, line numbers 1 through 64 inclusive, 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 damage of the aft strut insulation blankets, which could result in exposure of the lower surface of the strut to extreme high temperatures, consequent creation of a source of fuel ignition, and increased risk of a fuel tank explosion and fire, accomplish the following:

(a) Within 500 flight hours since date of manufacture of the airplane, or within 30 days after the effective date of this AD, whichever occurs later, perform a visual or borescope inspection to detect damage (cracks greater than 2.00 inches and/or separation of the face sheet) of the aft strut insulation blanket, part number (P/N) S315A213–42, in accordance with Boeing Alert Service Bulletin 737–54A1038, dated May 7, 1998, as revised by Notice of Status Change 737–54A1038 NSC 01, dated June 18, 1998. Thereafter, repeat the visual or borescope inspection at intervals not to exceed 250 flight hours.

(b) If damage (cracks greater than 2.00 inches and/or separation of the face sheet) of any aft strut insulation blanket is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace any damaged insulation blanket having P/N S315A213–42 with a new insulation blanket having P/N S315A213–42, in accordance with Boeing Alert Service Bulletin 737–54A1038, dated May 7, 1998, as revised by Notice of Status Change 737–54A1038 NSC 01, dated June 18, 1998. Thereafter, repeat the visual or borescope inspection required by paragraph (a) of this AD at intervals not to exceed 250 flight hours. Or

(2) Replace any damaged insulation blanket having P/N S315A213–42 with a new, improved insulation blanket having P/N S315A213–47, in accordance with Boeing Alert Service Bulletin 737–54A1038, dated May 7, 1998, as revised by Notice of Status Change 737–54A1038 NSC 01, dated June 18, 1998. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements of this AD.

(c) Within 18 months after the effective date of this AD, replace any aft strut insulation blanket having P/N S315A213–42 with a new, improved insulation blanket having P/N S315A213–47, in accordance with Boeing Alert Service Bulletin 737–54A1038, dated May 7, 1998, as revised by Notice of Status Change 737–54A1038 NSC 01, dated June 18, 1998. Accomplishment of this replacement constitutes terminating action for the 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, 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.

(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.

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–54A1038, dated May 7, 1998, as revised by Notice of Status Change 737–54A1038 NSC 01, dated June 18, 1998. 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 18, 1999.

Issued in Renton, Washington, on February 4, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–3188 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWA–4]

RIN 2120–AA66

Establishment of Class C Airspace and Revocation of Class D Airspace, Austin-Bergstrom International Airport, TX; and Revocation of Robert Mueller Municipal Airport Class C Airspace; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class C airspace area and revokes the existing Class D airspace area at the Austin-Bergstrom International Airport, Austin, TX. In addition, this action revokes the existing Class C airspace area at the Robert Mueller Municipal Airport, Austin, TX. The FAA is taking this action in support of the planned closure of the Robert Mueller Municipal Airport, and the transfer of airport operations from the Robert Mueller Municipal Airport to the Austin-Bergstrom International Airport. The Austin-Bergstrom International Airport is a public-use facility serviced by a Level IV control tower and a Radar Approach Control. The establishment of this Class C airspace area will require pilots to maintain two-way radio communications with air traffic control (ATC) while in Class C airspace. Implementation of the Class C airspace area will promote the efficient use of airspace, and reduce the risk of midair collision in the terminal area. Additionally, this action corrects the coordinates for the Austin-Bergstrom International Airport.

EFFECTIVE DATE: 0601 UTC, May 2, 1999.

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

SUPPLEMENTARY INFORMATION:

Background

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the ATC system. Among the main objectives of the NAR was the improvement of the ATC system by increasing efficiency and reducing complexity. In its review of terminal airspace, NAR Task Group 1–2 concluded that Terminal Radar Service Areas (TRSA's) should be replaced. Four types of airspace configurations were considered as replacement candidates and Model B, the Airport Radar Service Area (ARSA) configuration, was recommended by a consensus of the task group.

The FAA published NAR Recommendation 1–2.2–1, ''Replace Terminal Radar Service Areas with Model B Airspace and Service'' in Notice 83–9 (48 FR 34286, July 28, 1983), proposing the establishment of ARSA's at the Robert Mueller Municipal Airport, Austin, TX, and the Port of Columbus International Airport, Columbus, OH. ARSA's were designated at these airports on a temporary basis by Special Federal Aviation Regulation No. 45 (48 FR 50038; October 28, 1983) to provide operational confirmation of the ARSA concept for potential application on a national basis.

Following a confirmation period of more than a year, the FAA adopted the NAR recommendation and, on February 27, 1985, issued a final rule (50 FR 9252; March 6, 1985) defining ARSA airspace and prescribing rules for operation within such an area.

Concurrently, by separate rulemaking action, ARSA's were permanently established at the Austin, TX, Columbus, OH, and the Baltimore/Washington International Airports (50 FR 9250; March 6, 1985). The FAA stated that future notices would propose ARSA's for other airports at which TRSA procedures were in effect.

Additionally, the NAR Task Group recommended that the FAA develop quantitative criteria for establishing ARSA's at locations other than those which were included in the TRSA replacement program. The task group recommended that these criteria include, among other things, traffic mix, flow and density, geographical features, collision risk assessment, and ATC capabilities to provide service to users. These criteria have been developed and are published via the FAA directives system (Order 7400.2, Procedures for Handling Airspace Matters).

The NAR Task Group also recommended that each ARSA be of the same airspace configuration insofar as is practicable. The FAA adopted this recommendation. The standard ARSA consists of airspace within 5 nautical miles (NM) of the primary airport, extending from the surface to an altitude of 4,000 feet above airport elevation (AEE), and that airspace between 5 and 10 NM from the primary airport from 1,200 feet above ground level to an altitude of 4,000 feet AEE. Proposed deviations from this standard have been necessary at some airports because of adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Related Rulemaking Actions

On December 17, 1991 the FAA published the Airspace Reclassification Final Rule (56 FR 65638). This rule, in part, discontinued the use of the term ''airport radar service area (ARSA)'' and replaced it with the designation ''Class C airspace area.'' This change in terminology is reflected in the remainder of this final rule.

Public Input

As announced in the **Federal Register** on June 10, 1998 (63 FR 31678), pre-NPRM airspace meetings were held on August 11, 1998, in Georgetown, TX; August 12, in Austin, TX; and August 13, in San Marcos, TX. These meetings provided local airspace users an opportunity to present input on the design of the planned establishment of the Austin-Bergstrom International Airport Class C airspace area.

On July 30, 1998, the FAA proposed to amend 14 CFR part 71 as follows: (1) establish a Class C airspace area at the Austin-Bergstrom International Airport; (2) revoke the Class D airspace area at the Austin-Bergstrom International Airport; and (3) revoke the Class C airspace area at the Robert Mueller Municipal Airport (63 FR 40668, Notice 97–AWA–4). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class C airspace area and revokes the existing Class D airspace area at the Austin-Bergstrom International Airport located in Austin, TX. In addition, this action revokes the existing Class C airspace area at the Robert Mueller Municipal Airport

located in Austin, TX. The FAA is taking this action in support of the planned closure of the Robert Mueller Municipal Airport, and the transfer of airport operations from the Robert Mueller Municipal Airport to the Austin-Bergstrom International Airport. The Austin-Bergstrom International Airport is a public-use facility serviced by a Level IV control tower and a Radar Approach Control. The establishment of this Class C airspace area will require pilots to establish two-way radio communications with the ATC facility providing air traffic services prior to entering the airspace and thereafter maintain those communications while within the Class C airspace area. Implementation of the Class C airspace area will promote the efficient use of airspace and reduce the risk of midair collision in the terminal area.

The establishment of a Class C airspace area and revocation of the Class D airspace area at the Austin-Bergstrom International Airport, as well as the revocation of the Robert Mueller Municipal Airport Class C airspace area, will be effective on May 2, 1999. The effective date for this final rule does not correspond with a scheduled publication date for the appropriate aeronautical chart for this area. The Austin-Bergstrom International Airport Class C airspace area will, therefore, be published on the San Antonio Sectional Aeronautical Chart effective May 20, 1999, and the Houston Sectional Aeronautical Chart effective October 7, 1999. In the interim, the FAA will disseminate information regarding the implementation of the Austin-Bergstrom Class C airspace area in the Notices to Airmen publication and will publish a special notice in the Airport/Facility Directory to ensure that pilots and airspace users are advised of the status. Additionally, the FAA's Southwestern Regional Office will distribute Letters to Airmen that will advertise the implementation of the airspace area. The revocation of the Austin-Bergstrom International Airport Class D airspace area, as well as the revocation of the Robert Mueller Municipal Airport Class C airspace area, coincides with the effective date for the Austin-Bergstrom International Airport Class C airspace area.

Additionally, this action corrects the coordinates for the Austin-Bergstrom International Airport. Except for editorial changes and the correction to the airport coordinates, this amendment is the same as that proposed in the notice.

Definitions and operating requirements applicable to Class C airspace can be found in section 71.51 of part 71 and sections 91.1 and 91.130 of part 91 of Title 14 Code of Federal Regulations (14 CFR). The coordinates for this airspace docket are based on North American Datum 83. Class C and Class D airspace designations are published, respectively, in paragraphs 4000 and 5000 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR Section 71.1. The Class C airspace designation listed in this document will be published subsequently in the Order, and the Class C, as well as the Class D airspace designation listed in this document will be removed subsequently from the Order.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule is not ''a significant regulatory action'' as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This final rule will not have a significant impact on a substantial number of small entities, will not constitute a barrier to international trade, and does not contain any Federal intergovernmental or private sector mandate. These analyses, available in the docket, are summarized below.

The final rule will effectively move the Class C airspace area, presently located at the Robert Mueller Municipal Airport, 5 miles to the south to the Austin-Bergstrom International Airport when Robert Mueller Municipal Airport closes (in May 1999) and all operations are transferred to Austin-Bergstrom International Airport.

Costs of approximately $850 will be incurred by the FAA in order to send a Letter to Airmen to pilots within a 50-mile radius of the Austin-Bergstrom International Airport informing them of the airspace change. The FAA will not incur any other costs for ATC staffing, training, or equipment. Changes to sectional charts will occur during the chart cycle and will cause no additional costs beyond the normal update of the charts. Any public meeting and safety seminar will not result in costs to the aviation community because they will occur regardless of this final rule. Aircraft owners and operators will not incur costs for equipment because they are already operating in Class C airspace at the Robert Mueller Municipal Airport. As for Austin-Bergstrom International Airport, though it is currently surrounded by Class D airspace, most of its air traffic comes from cargo aircraft. These aircraft already have the necessary equipment to transition Class C airspace.

The FAA contends that moving the Class C airspace area from Robert Mueller Municipal Airport to Austin-Bergstrom International Airport will maintain the level of safety for the operations that will be transferred from Robert Mueller Municipal Airport to Austin-Bergstrom International Airport when Robert Mueller Municipal Airport closes and Austin-Bergstrom International Airport opens for air carrier operations. Furthermore, using Austin-Bergstrom International Airport, instead of Robert Mueller Municipal Airport, as the primary commercial airport will allow future airport expansion that is not possible at Robert Mueller Municipal Airport. Therefore, the FAA has determined that the final rule will be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include

a statement providing the factual basis for this determination, and the reasoning should be clear.

All commercial and general aviation operators who presently use the Robert Mueller Municipal Airport are currently equipped to use the Austin-Bergstrom International Airport. As for Austin-Bergstrom International Airport, though it is currently surrounded by Class D airspace, most of its air traffic comes from cargo aircraft. These aircraft already have the necessary equipment to transition Class C airspace. Those general aviation operators who currently transit the Austin-Bergstrom International Airport terminal area without Mode C transponders can circumnavigate the Austin-Bergstrom Class C airspace area at negligible cost, without significantly deviating from their regular flight paths. For those aircraft operators who choose not to circumnavigate or fly below the Class C airspace, standard procedures may be used to enter the Austin-Bergstrom Class C airspace area. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by state, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of state, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon state, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for those small governments to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ASW TX C Austin-Bergstrom International Airport, TX [New]

Austin-Bergstrom International Airport, TX
(Lat. 30°11′41″ N., long. 97°40′12″ W.)
AUS

That airspace extending upward from the surface to, and including, 4,500 feet MSL within a 5-mile radius of the Austin-Bergstrom International Airport, and that airspace extending upward from 2,100 feet MSL to and including 4,500 feet MSL within a 10-mile radius of the Austin-Bergstrom International Airport.

* * * * *

ASW TX C Austin, Robert Mueller Municipal Airport, TX [Removed]

* * * * *

Paragraph 5000—Subpart D—Class D Airspace

* * * * *

ASW TX D Austin Bergstrom, TX [Removed]

* * * * *

Issued in Washington, DC, on February 4, 1999.

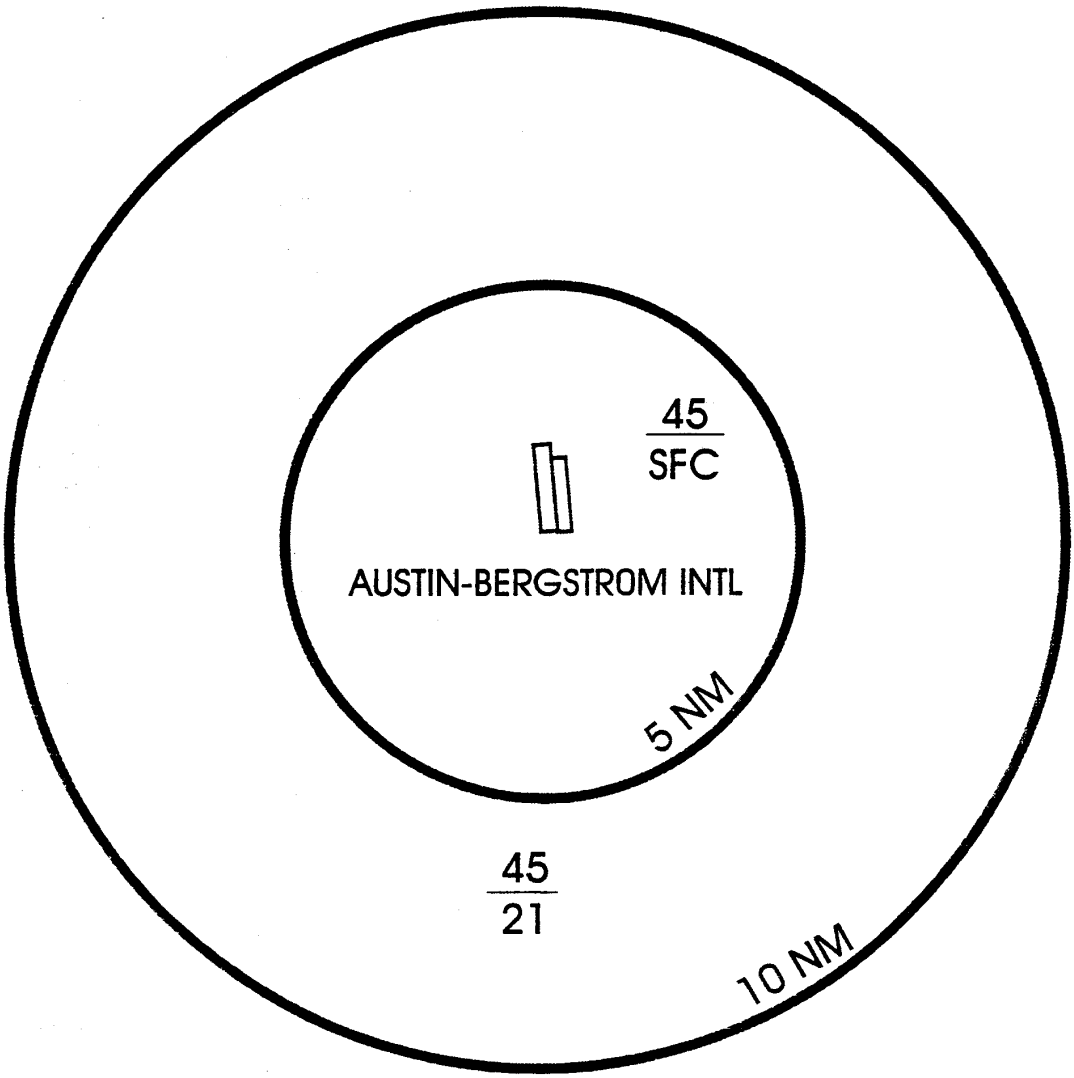
Nancy B. Kalinowski,

Acting Program Director for Air Traffic Airspace Management.

BILLING CODE 4910–13–P

AUSTIN-BERGSTROM INTERNATIONAL AIRPORT, TX CLASS C AIRSPACE AREA

(Not to be used for navigation)



Prepared by the

FEDERAL AVIATION ADMINISTRATION

Air Traffic Publications
ATA-10

[FR Doc. 99–3359 Filed 2–10–99; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–20]

Establishment of Class D Airspace; Lawrenceville, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes Class D airspace at Lawrenceville, GA. An automated weather observing system has been installed in the Gwinnett County-Briscoe Field Airport Traffic Control Tower, which transmits required weather observations. Therefore, the airport now meets the criteria for Class D airspace. The Class D airspace will consist of that airspace extending upward from the surface to and including 3,600 feet MSL within a 4.6-mile radius of the Lawrenceville/Gwinnett County-Brisco Field Airport.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On December 24, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Lawrenceville, GA, (63 FR 71233). This action provides adequate Class D airspace for IFR operations at Gwinnett County-Briscoe Field Airport. Designations for Class D airspace extending upward from the surface of the earth are published in FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class D designation listed in this document will be published subsequently in the Order.

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

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Lawrenceville, GA for the Gwinnett County-Briscoe Field Airport. An automated weather observing system has been installed in the Gwinnett County-Briscoe Field Airport Traffic Control Tower, which transmits the required weather observations. Therefore, the airport now meets the criteria for Class D airspace.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class E Airspace

* * * * *

ASO GA D Lawrenceville, GA [New]

Gwinnett County-Briscoe Field Airport
(Lat. 33°58′41″ N, long. 83°57′45″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 4.6-mile radius of the Lawrenceville/Gwinnett County-Briscoe Field Airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on February 1, 1999.

Richard K. McLean,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–3363 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–49]

Amendment to Class D and Class E Airspace; St. Joseph, MO

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D and Class E airspace areas at St. Joseph, MO. A review of the airspace designations for Rosecrans Memorial Airport, St. Joseph, MO indicates it does not comply with the criteria of FAA Order 7400.2D. This action will provide additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) for Instrument Flight Rules (IFR) at Rosecrans Memorial Airport.

In addition, a minor correction is also being made to the geographic position coordinates of the Rosecrans Memorial Airport.

EFFECTIVE DATE: 0901 UTC March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On December 2, 1998, the FAA proposed to amend 14 CFR part 71 of the Federal Regulations (14 CFR part 71) by amending the Class D and Class E airspace areas at St. Joseph, MO (63 FR 66502). The proposed action would provide additional controlled airspace to accommodate instrument operations at the Rosecrans Memorial Airport. A minor correction is also being made to the geographic coordinates of the airport.

Interested parties were invited to participate in this rulemaking proceeding by submitting written

comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace areas are published in paragraph 5000, Class E airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Regulations (14 CFR part 71) amends the Class D and Class E airspace areas at St. Joseph, MO, by providing additional controlled airspace for aircraft executing instrument approach procedures at Rosecrans Memorial Airport. This action also corrects the geographic position coordinates for the airport.

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

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace

* * * * *

ACE MO D St. Joseph, MO [Revised]

Rosecrans Memorial Airport, MO
(Lat. 39°46′19″ N., long. 94°54′35″ W.)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4.2-mile radius of the Rosecrans Memorial Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area

* * * * *

ACE MO E4 St. Joseph, MO [Revised]

Rosecrans Memorial Airport, MO
(Lat. 39°46′19″N., long. 94°54′35″W.)
St. Joseph VORTAC
(Lat. 39°57′38″N., long. 94°55′31″W.)
TARIO LOM
(Lat. 39°40′33″N., long. 94°54′25″W.)
St. Joseph ILS
(Lat. 39°47′16″N., long. 94°54′25″W.)

That airspace extending upward from the surface within 1.8 miles each side of the St. Joseph ILS localizer south course extending from the 4.2-mile radius of Rosecrans Memorial Airport to the TARIO LOM and within 1.8 miles each side of the St. Joseph VORTAC 175° radial extending from the 4.2-mile radius of the airport to 5.8 miles north of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ACE MO E5 St. Joseph, MO [Revised]

Rosecrans Memorial Airport, MO
(Lat. 39°46′19″N., long. 94°54′35″ W.)
St. Joseph VORTAC
(Lat. 39°57′38″N., long. 94°55′31″ W.)
TARIO LOM
(Lat. 39°40′33″N., long. 94°54′25″ W.)
St. Joseph ILS
(Lat. 39°47′16″N., long. 94°54′25″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Rosecrans Memorial Airport and within 2.0 miles each side of the 175° radial of the St. Joseph VORTAC extending from the 6.8-mile radius to the VORTAC and within 4 miles east and 6 miles west of the St. Joseph ILS localizer south course, extending from the 6.8-mile radius to 10.5 miles south of the TARIO LOM.

* * * * *

Issued in Kansas City, MO on January 13, 1999.

Thomas G. Klocek,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–3352 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–26]

Amendment of Class E Airspace; Griffin, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Class E airspace at Griffin, GA. A Non-Directional Beacon (NDB) Runway (RWY) 32 Standard Instrument Approach Procedure (SIAP) has been developed to the Griffin-Spalding County Airport. The out-bound course from the Griffin NDB for the NDB RWY 32 SIAP is the 141 degree bearing. As a result, the length of the Class E airspace extension southeast of the NDB has increased from 6.3 miles to 10.5 miles and the width of the airspace extension is 5.2 miles.

EFFECTIVE DATE: 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On December 24, 1998, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Griffin, GA, (63 FR 71236). This action provides adequate Class E airspace for IFR operations at Griffin-Spalding County Airport. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in FAA Order 7400.9F,

dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

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

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E airspace at Griffin, GA for the Griffin-Spaulding Airport.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ASO GA E5 Griffin, GA [Revised]

Griffin-Spalding County Airport
(Lat. 33°13′37″ N, long. 84°16′30″ W)
Griffin NDB
(Lat. 33°11′03″ N, long. 84°13′39″ W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 6.3-mile radius of Griffin-Spalding County Airport and within 2.6 miles from either side of the 141 degree bearing from the Griffin NDB, extending from the 6.3-mile radius to 10.5 miles southeast of the NDB.

* * * * *

Issued in College Park, Georgia, on February 1, 1999.

Richard K. McLean,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–3364 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–4]

Amendment to Class E Airspace; Mexico, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Mexico Memorial Airport, Mexico, MO. A review of the Class E airspace area for Mexico Memorial Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, May 20, 1999.

Comments for inclusion in the Rules Docket must be received on or before March 15, 1999.

ADDRESSES: Send comments regarding the rule in triplicate: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–4, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Mexico, MO. A review of the Class E airspace for Mexico Memorial Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Mexico Memorial Airport, MO, will provide additional airspace aircraft operating under IFR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriated aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. 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, an 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 a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action 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. 99–ACE–4.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 the 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 Department of Transportation (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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

ACE MO E5 Mexico, MO [Revised]

Mexico Memorial Airport, MO
(Lat. 39°09′27″ N, long. 91°49′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Mexico Memorial Airport.

* * * * *

Issued in Kansas City, MO, on January 19, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–3353 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–45]

Amendment to Class E Airspace; Burlington, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Burlington, KS.

DATES: The direct final rule published at 63 FR 64180 is effective on 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on November 19, 1998 (63 FR 64180). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on March 25, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on January 15, 1999.

Thomas G. Klocek,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–3350 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 146

[T.D. 98–74]

RIN 1515–AB99

Lay Order Period; General Order; Penalties; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the document published in the **Federal Register** that adopted as a final rule, with some changes, proposed amendments to the Customs Regulations regarding, among other things, the obligation of the owner, master, pilot, operator, or agent of an arriving carrier to provide notice to Customs and to a bonded warehouse of the presence of merchandise or baggage that has remained at the place of arrival or unlading beyond the time period provided by regulation without entry having been completed. The correction involves a conforming change to the Customs Regulations pertaining to foreign trade zones.

EFFECTIVE DATE: This correction is effective February 11, 1999.

FOR FURTHER INFORMATION CONTACT: For legal matters: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings (202) 927–2344. For operational matters: Steven T. Soggin, Office of Field Operations, (202) 927–0765.

SUPPLEMENTARY INFORMATION:

Background

On September 25, 1998, Customs published in the **Federal Register** (63 FR 51283) T.D. 98–74 which adopted as a final rule, with some changes, proposed amendments to the Customs Regulations regarding the obligation of the owner, master, pilot, operator, or agent of an arriving carrier to provide notice to Customs and to a bonded warehouse of the presence of merchandise or baggage that has remained at the place of arrival or unlading beyond the time period provided by the regulatory amendments (that is, the fifteenth calendar day after landing) without entry having been completed. The final regulatory texts specifically require one of the arriving carrier's obligated parties, or any party who takes custody from the arriving carrier under a Customs-authorized permit to transfer or in-bond entry, to provide notice of the unentered merchandise or baggage to Customs and to a bonded warehouse no later than 20 calendar days after landing or after receipt under the permit to transfer or after arrival at the port of destination. The notice to the bonded warehouse proprietor initiates his obligation to arrange for transportation and storage of the unentered merchandise or baggage at the risk and expense of the consignee. The final regulatory texts also provide for penalties or liquidated damages against the owner or master of any conveyance, or agent thereof, for failure to provide the required notice to Customs or to a bonded warehouse proprietor. The final regulations further provide for the assessment of liquidated damages against any party who accepts custody of the merchandise or baggage under a Customs-authorized permit to transfer or in-bond entry and who fails to notify Customs and a bonded warehouse of the presence of such unentered merchandise or baggage and also against the warehouse operator who fails to take required possession of the merchandise or baggage.

The final regulatory texts as summarized above resulted from amendments to the underlying statutory authority effected by sections 656 and 658 contained within the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057) and are primarily reflected in a revised § 4.37 (19 CFR 4.37) and in new §§ 122.50 and 123.10 (19 CFR 122.50 and 123.10), each of which is entitled ''[g]eneral order.'' (T.D. 98–74 also included a number of conforming changes to the Customs Regulations in order to reflect a number of other statutory amendments and repeals effected by the Customs Modernization provisions and in order to reflect the recent recodification and reenactment of title 49, United States Code; the correction contained in this document bears no relationship to those other regulatory amendments.)

Although T.D. 98–74 also included a number of conforming regulatory changes to ensure consistency with the terms of revised § 4.37 and new §§ 122.50 and 123.10 (involving, for example, the removal or replacement of obsolete references to a ''5-day'' or ''lay order'' period or ''extension'' thereof), § 146.40(c)(3) of the Customs Regulations (19 CFR 146.40(c)(3)) was overlooked in this regard. This provision concerns the treatment of general order merchandise in a foreign trade zone context. The present text, by referring to merchandise not admitted into a subzone or zone within ''5 working days after its arrival there'' and to an ''extension of the 5 working day period,'' is inconsistent with, and thus could give rise to uncertainty regarding the proper and intended applicability of, §§ 4.37, 122.50 and 123.10 in a foreign trade zone context. Therefore, T.D. 98–74 should have included an appropriate revision of § 146.40(c)(3) to clarify the operation of those general order provisions in that specific context. This document corrects this oversight.

Correction of Publication

In the document published in the **Federal Register** as T.D. 98–74 on September 25, 1998 (63 FR 51283), on page 51290, in the third column, the following is added after the amendment to § 127.28:

Part 146—Foreign Trade Zones

1. The authority citation for Part 146 continues to read as follows:

Authority: 19 U.S.C. 66, 81a-81u, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. In § 146.40, paragraph (c)(3) is revised to read as follows:

§ 146.40 Operator responsibilities for direct delivery.

* * * * *

(c) * * *

(3) *General order.* Merchandise not admitted into a subzone or zone site as provided in this section within 15 calendar days after its arrival there shall be disposed of in accordance with the applicable procedures in § 4.37 or § 122.50 or § 123.10 of this chapter.

* * * * *

Dated: February 5, 1999.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 99–3305 Filed 2–10–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 564

[Docket No. 95N–0313]

Standards for Animal Food and Food Additives in Standardized Animal Food; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of January 28, 1999 (64 FR

4293). The document amended the regulations to remove the animal food standards regulations. The document was published with an inadvertent error. This document corrects that error.

EFFECTIVE DATE: February 11, 1999.

FOR FURTHER INFORMATION CONTACT: Silvia R. Fasce, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 99–2057 appearing on page 4293 in the **Federal Register** of Thursday, January 28, 1999, the following correction is made:

On page 4294, in the third column, at the end of the document, ''Associate Deputy Commissioner for Policy'' is corrected to read ''Acting Deputy Commissioner for Policy.''

Dated: February 5, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–3390 Filed 2–10–99; 8:45 am]

BILLING CODE 4160–01–F

POSTAL SERVICE

39 CFR Part 111

Corrections to Location-Based Fee Assignments and Selected Fees for Postage and Insured Mail

AGENCY: Postal Service.

ACTION: Final Rule; Correction.

SUMMARY: This notice makes minor corrections to Final Rules published in 63 FR 71374 and 63 FR 37946.

EFFECTIVE DATE: January 10, 1999.

FOR FURTHER INFORMATION CONTACT: John Dorsey, (202) 268–2255.

SUPPLEMENTARY INFORMATION: On July 14, 1998, the Postal Service published a Final Rule (63 FR 37946) for the rate, fee, and classification changes that resulted from the R97–1 rate filing. That Final Rule contained an error in the denomination for Express Mail postage stamps and an error in the rates for bulk insurance. These errors are corrected in this Final Rule.

On December 28, 1998, the Postal Service published a Final Rule (63 FR 71374) that outlined new location-based post office box fees. That Final Rule contained some slight errors that are corrected in this Final Rule.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as set forth below:

Domestic Mail Manual (DMM)

D Deposit, Collection and Delivery

* * * * *

D900 Other Delivery Services

* * * * *

910 Post Office Box Service

* * * * *

5.0 FEE GROUP ASSIGNMENTS

* * * * *

5.3 Location-Based Box Fees

[In Exhibit 5.3b, correct the ZIP Codes for postal facilities to read as follows:]

Wellesley Hills ..	337 Washington Street, Wellesley, MA 02481.
Wellesley	1 Grove Street, Wellesley, MA 02482.

[In Exhibit 5.3b, delete the following postal facilities:]

Port Authority ...	76 9th Avenue, New York, NY 10011.
Morningside	232 W. 116th Street, New York, NY 10026.
Island	694 Main Street, New York, NY 10044.

[In Exhibit 5.3b, move the following postal facility from Group B to Group C:]

Wellesley	1 Grove Street, Wellesley, MA 02482.

* * * * *

R Rates and Fees

* * * * *

R000 Stamps and Stationery

* * * * *

4.0 POSTAGE STAMPS

[Correct the first entry in the table to read as follows:]

Purpose	Form	Denomination
Regular Postage	Panes of up to 100	$0.01, .02, .03, .04, .05, .10, .15, .20, .22, .23, .25, .28, .29, .30, .32, .33, .40, .45, .46, .50, .52, .55, .60, .75, .77, .78, $1, $2, $3.20, $5, $11.75.

* * * * *

R900 Services

* * * * *

9.0 INSURED MAIL

[Correct the last entry in the table to read as follows:]

Insurance coverage desired	Fee	Bulk insurance fee [1]
* *	* * * *	* * *
1,000.01 to 5,000.00	10.35 plus $0.95 for each $100 or fraction thereof over $1,000 in desired coverage.	9.95 plus $0.95 for each $100 or fraction thereof over $1,000 in desired coverage.

[1] Includes discount of $0.40 per piece.

Stanley F. Mires,
Chief Counsel, Legislative.
[FR Doc. 99–3342 Filed 2–10–99; 8:45 am]
BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 164–0112a; FRL–6227–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP). The revisions concern rules from the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and the Sacramento Metropolitan Air Management Control District (SMAQMD). SJVUAPCD's Rule 4352 controls oxides of nitrogen (NO_X) emissions from solid fuel fired boilers, steam generators and process heaters. SMAQMD's Rule 413 control NO_X emissions from stationary gas turbines operations. This action will incorporate these rules into the Federally approved SIP.

The intended effect of approving these rules is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on April 12, 1999 without further notice, unless EPA receives adverse comments by March 15, 1999. If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721.

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

FOR FURTHER INFORMATION CONTACT: Max. A. Fantillo Jr, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: SJVUAPCD's Rule 4352, Solid Fuel Fired Boilers, Steam Generators and Process Heaters, and SMAQMD's Rule 413, Stationary Gas Turbines. The SJVUAPCD rule was submitted by the California Air Resources Board (CARB) to EPA on March 26, 1996 and the SMAQMD rule was submitted on May 18, 1998.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a proposed rule entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes and provides guidance on the requirements of section 182(f). The November 25, 1992 proposed rule should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. The San Joaquin Valley Area is classified as serious; the Sacramento Metro Area is classified as severe;[1] therefore these areas were subject to the RACT requirements of section 182(b)(2), cited below and the November 15, 1992 deadline.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC emissions (not covered by a pre-enactment control techniques guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions, are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but not later than May 31, 1995.

The State of California submitted many revised RACT rules for incorporation into its SIP on March 26, 1996 and May 18, 1998, including the rules being acted on in this document. This document addresses EPA's direct-final action for SJVUAPCD Rule 4352, Solid Fuel Fired Boilers, Steam Generators and Process Heaters, and SMAQMD Rule 413, Stationary Gas Turbines. SJVUAPCD adopted Rule 4352 on October 19, 1995 and SMAQMD adopted Rule 413 on May 1, 1997. These submitted rules were found to be complete on May 5, 1996 and July 17, 1998 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V[2] and are being finalized for approval into the SIP. By today's document, EPA is taking direct final action to approve these rules into the Federally approved SIP.

NO_X emissions contribute to the production of ground level ozone and smog. SJVUAPCD's Rule 4352 controls emissions of NO_X from solid fuel fired boilers, steam generators and process heaters and SMAQMD's 413 controls emissions of NO_X from stationary gas turbine operations. The rules were adopted as part of SJVUAPCD's and SMAQMD's efforts to achieve the National Ambient Air Quality Standards (NAAQS) for ozone and in response to the CAA requirements cited above. The

[1] San Joaquin Valley Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991). The Sacramento Metro Area was reclassified from serious to severe on June 1, 1995. See 60 FR 20237 (April 25, 1995).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110, and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents.[3] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting state and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble, cited above (57 FR 55620). In the NO_X Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA has issued alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs do not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

Rule 4352 limits emissions of oxides of nitrogen (NO_X) and carbon monoxide (CO) from solid fuel fired boilers, steam generators, and process heaters within the San Joaquin Valley Area.

The SIP version of Rule 4352 has emission limits that was previously determined to meet the reasonably available control technology (RACT) requirements. The rule also has enforceability elements such as applicability, definitions, recordkeeping, test methods, and compliance schedule.

Rule 4352 was revised to allow the use of CARB Method 100, an alternative test method, to provide flexibility to owners/operators and simplify the compliance determination. This alternative test method may be used for measuring NO_X and CO emissions, and for measuring the stack gas oxygen. CARB Method 100 has been approved by EPA.

Rule 413 limits NO_X emissions from stationary gas turbines with ratings equal or greater than 0.3 megawatt (MW) within the SMAQMD area.

The current version of Rule 413 has provisions for emission limits that meets the California Air Resources Board (CARB) reasonably available control technology and best available retrofit control technology (RACT/BARCT) emission limits for gas turbines. The rule also has enforceability elements such as applicability, definitions, monitoring, recordkeeping, test methods, and compliance schedules. All these elements are already in the SIP approved version of the rule.

Rule 413 is being revised to change and improve clarity to some provisions in the rule. Specifically, the changes are the following: (1) exempts emergency standby units from the requirement to install continuous emission monitoring systems (CEM); instead, these units will install meters to record the time they operate; (2) exempt units removed from service by May 31, 1997 from the requirement to install CEMs; (3) identifies clearly exempted emergency standby units according to the type of emergency and established limits for the total hours of operation allowed per year for each unit.

A more detailed discussion of the sources controlled, the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Documents (TSDs) for SJVUAPCD's Rule 4352 and SMAQMD's Rule 413, dated January 20, 1999.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD's Rule 4352, Solid Fuel Fired Boiler, Steam Generators and Process Heaters, and SMAQMD's Rule 413, Stationary Gas Turbines are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_X Supplement to the General Preamble.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve SIP revision should adverse comments be filed. This rule will be effective April 12, 1999 without further notice unless the agency receives adverse comments by March 15, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this action will be effective April 12, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

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

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

G. Submission to Congress and the Comptroller General

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

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound. Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 14, 1999.

Felicia Marcus,

Regional Administrator, Region 9.

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

PART 52—[AMENDED]

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

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

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(230)(i)(D)(*1*) and (255)(i)(A)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(230) * * *

(i) * * *

(D) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4352, amended on October 19, 1995.

* * * * *

(255) * * *

(i) * * *

(A) * * *

(*4*) Rule 413, amended May 1, 1997.

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[FR Doc. 99–3143 Filed 2–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–6232–3]

RIN 2050–AE61

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Exemption for Leachate from Non-Hazardous Waste Landfills; Final Rule.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today EPA is temporarily deferring from the definition of hazardous waste landfill leachate and landfill gas condensate derived from previously disposed wastes that now meet the listing descriptions of one or more of the recently added petroleum refinery wastes (waste codes K169, K170, K171, and K172, promulgated August 6, 1998, 63 FR 42110). Pending further study of this issue, this deferral is provided to landfill leachate and gas condensate that is subject to regulation under the Clean Water Act (CWA). EPA is also stipulating that as one condition of this deferral, this leachate may not ordinarily be managed in surface impoundments or otherwise placed on the land after February 13, 2001.

EFFECTIVE DATE: This rule is effective February 5, 1999.

ADDRESSES: 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 Docket Identification Number is F–1999–PR3F–FFFFF. 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. The index and some supporting materials are available electronically. See the Supplementary Information section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: 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. For more detailed information on specific aspects of this rulemaking, contact Ross Elliott, Office of Solid Waste 5304W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, 703 308–8748, elliott.ross@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

The index and the following supporting materials are available on the Internet: Response to Comment Document. Follow these instructions to access the information electronically: *www.epa.gov/epaoswer/hazwaste/id/petroleum/* FTP: ftp.epa.gov, Login: anonymous, Password: your Internet address, Files are located in /pub/epaoswer.

In addition, the document entitled *Development Document for Proposed Effluent Limitations Guidelines and Standards for the Landfills Point Source Category*, EPA–821–R–97–022, January 1998, placed in the docket for this notice, can be obtained through the internet at *www.epa.gov/OST/guide/2lndfls/techdev.html.*

The contents of the preamble to this final rule are listed in the following outline:

I. Affected Entities
II. Legal Authority and Background
III. Summary of NODA and Proposed Temporary Deferral
IV. Today's Action
V. Response to Comments
VI. Administrative Assessments
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Unfunded Mandates Reform Act
D. Paperwork Reduction Act
E. Executive Order 12875: Enhancing the Intergovernmental Partnership
F. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Risks and Safety Risks
H. National Technology Transfer and Advancement Act of 1995
I. Executive Order 12898: Environmental Justice
VII. The Congressional Review Act
VIII. Rationale for Immediate Effective Date

I. Affected Entities

Entities potentially affected by this action are those landfills, both commercial and government-owned, that historically received one or more of the newly-listed petroleum refinery wastes (K169–K172) and that generate landfill leachate or landfill gas condensate.

II. Legal Authority and Background

These regulations are being promulgated under the authority of sections 2002(a) and 3001(a), (b) and (e)(2), 3004(g) and (m) of the Solid Waste Disposal Act (commonly referred to as RCRA), as amended, 42 U.S.C. 6912(a), and 6921(b) and (e)(2).

As described in the August 6, 1998 NODA, very late in the process of promulgating four new hazardous waste listings, the Agency was alerted to the concern that any new listings for petroleum wastes may have potentially significant impacts on the management of leachate collected from certain non-hazardous waste landfills. Specifically, one company that owns and operates non-hazardous waste landfills expressed concern that because some of their facilities have historically received and disposed of some or all of the waste streams listed in the final rulemaking published August 6, 1998 (i.e., K169, K170, K171, and K172), the leachate that is collected and managed from these landfills would be classified by these same waste codes after the effective date of the new petroleum waste listings. 63 FR 42190. However, if Subtitle C regulation were to apply to leachate generated from such landfills, leachate now trucked to POTWs would likely no longer be managed by POTWs, since POTW owner/operators (understandably) would not wish their facilities to become subject to RCRA Subtitle C regulation. This company argued that this could lead to vastly

increased treatment and disposal costs without necessarily any environmental benefit.

Why Would This Leachate be Regulated as Hazardous Waste?

As discussed in the NODA, leachate that is derived from the treatment, storage, or disposal of listed hazardous wastes is classified as a hazardous waste by virtue of the ''derived-from'' rule in 40 CFR 261.3(c)(2). The Agency has been very clear in the past on the applicability of hazardous waste listings to wastes disposed of prior to the effective date of a listing, even if the landfill ceases disposal of the waste when the waste becomes hazardous. 53 FR 31147 (August 17, 1988). EPA also has a well-established interpretation that listings likewise apply to leachate derived from the disposal of listed hazardous wastes, including leachate derived from wastes disposed before a listing effective date which meet the listing description. *Id.* EPA's interpretations were upheld by the Court of Appeals for the District of Columbia Circuit in *Chemical Waste Management, Inc.* v. *EPA*, 869 F.2d 1526, 1536–37 (D.C. Cir. 1989). (These points are restated here to provide context. EPA is not reconsidering or in any other way reopening these principles for comment or review.)

Of course, as set out in detail in the August 17, 1988 notice, this does not mean that landfills holding wastes which are now listed as hazardous become subject to Subtitle C regulation. However, previously disposed wastes now meeting the listing description, including residues such as leachate which are derived from such wastes and are actively managed, do become subject to Subtitle C regulation. 53 FR 31149. In many cases, indeed most circumstances, no significant regulatory consequences under RCRA result from leachate management. Active management of hazardous leachate would often be exempt from Subtitle C regulation because the usual pattern of management is discharge either to POTWs via the sewer system (where leachate mixes with domestic sewage) or to navigable waters, where in both instances the leachate is excluded from RCRA jurisdiction.[1] In addition, management of leachate in wastewater treatment tanks prior to discharge under the CWA is exempt from RCRA regulation (40 CFR 264.1(g)(6)). However, some management practices, such as leachate being transported off site to a POTW in a truck, would not be exempt from Subtitle C regulation as described in more detail elsewhere in today's document.

III. Summary of NODA and Proposed Temporary Deferral

EPA requested comment in the NODA on whether it would be appropriate to defer temporarily the application of the new petroleum waste codes to such leachate in order to avoid disruption of ongoing leachate management activities while the Agency decides how to integrate the two regulatory schemes (RCRA and CWA), consistent with RCRA section 1006(b)(1) (which requires EPA to integrate regulations under RCRA with those of the other statutes implemented by EPA, and to avoid duplication, to the maximum extent possible consistent with the goals and policies of RCRA and the other statutes). 63 FR 42192. EPA specifically requested comment on exempting leachate that would only be defined as hazardous waste because it was derived from the disposal of one or more of the newly-listed petroleum refining wastes (K169–K172), where these wastes were disposed of prior to, and not after, the effective date of the listing. EPA also solicited comment on the exemption being conditioned on the leachate being subject to regulation under the CWA. Finally, EPA asked whether or not the exempt leachate should be allowed to be managed in non-subtitle C surface impoundments, a practice which presently occurs at some landfill facilities.

How is Leachate Currently Being Evaluated Under Clean Water Act Regulations?

As noted in the August 6, 1998 **Federal Register**, EPA's Office of Water recently proposed national effluent limitations guidelines and pretreatment standards for wastewater discharges—most notably, leachate—from certain types of landfills, including those that would be covered by this notice. 63 FR 6426 (February 6, 1998). In support of this proposal, EPA conducted a study of the volume and chemical composition of wastewaters generated by both Subtitle C (hazardous waste) and Subtitle D (non-hazardous waste) landfills, including treatment technologies and management practices currently in use. EPA proposed effluent limitations (for nine pollutants in the Non-Hazardous Subcategory) for direct dischargers. 63 FR 6463. Most pertinently for today's notice, EPA did not propose pretreatment standards for Subtitle D landfill wastewaters sent to POTWs because the Agency's information indicated that such standards were not required due to several factors, including (1) raw leachate data were below published biological inhibition levels, and (2) other information indicated a lack of ''pass-through'' of toxics (including lack of showing of adverse impact on POTW sludge quality). 63 FR 6444. For example, the EPA initially determined, among other things, that the majority of pollutants typically found in raw, non-hazardous landfill leachate were at relatively low concentrations that can be adequately treated by a POTW.

EPA's concern is that what appears to be a proper and reasonable means of managing leachate would be undermined if the leachate becomes a hazardous waste. This is because some POTWs would become subject to RCRA permitting requirements if they accepted the leachate, and would surely cease to accept it, even though (if the CWA proposal is correct) POTWs can treat the leachate effectively without even the necessity of pretreatment. Landfills no longer able to send leachate to POTWs would be forced to develop some sort of alternative arrangement—any of which, it appears to EPA, would result in undesirable ''duplication'' and disruption which section 1006 (b) seeks to prevent. EPA's resolution of this problem is set out in the following section.

IV. Today's Action

A. Temporary Deferral of the Listing for Leachate

After consideration of information and comments received in response to the NODA, the Agency is today temporarily deferring from the hazardous waste regulations leachate derived from landfills that have historically received petroleum refining wastes (i.e., wastes that meet the listing description of one or more of the newly-listed K wastes), provided the leachate is subject to regulation under the Clean Water Act requirements, and is not managed in surface impoundments after February 13, 2001. This deferral will remain in place while EPA continues to examine the specific aspects of how this leachate is currently managed, whether subtitle C regulation is appropriate or inappropriate, and (in particular) how the eventual Clean Water Act effluent limitation guidelines and standards for landfill wastewaters will bear on these questions.

Today's deferral does not exempt leachate from being hazardous waste if the leachate exhibits any of the hazardous waste characteristics or is

[1] See RCRA Section 1004(27) and 40 CFR 261.4(a)(1) (domestic sewage exclusion); see also RCRA Section 1004(27) and 40 CFR 261.4(a)(2) (industrial point source exclusion).

derived from any waste codes other than the four petroleum refinery wastes described in the deferral, and any residues from treating exempt leachate would need to be evaluated against the hazardous waste characteristics.

EPA is deferring the listing's applicability to the leachate to avoid the problems alluded to above. Specifically, EPA believes that current indirect dischargers would have to create some type of unnecessarily duplicative way of managing the leachate if it becomes a listed hazardous waste. The most likely alternatives are a sewer hookup with the POTW or construction of an on-site wastewater treatment system. It appears that any alternative would be unnecessarily duplicative (putting aside for the moment the issue of management in surface impoundments), assuming the rationale of the proposed CWA rule holds, because POTWs can already fully treat the leachate without need for treatment by any other entity. Indeed, this same concern is expressed in the Clean Water Act, which states that pretreatment standards are only to be established for pollutants which interfere with, pass through or otherwise are incompatible with treatment by the POTW. CWA section 307(b)(1). Put another way, EPA is concerned about forcing pretreatment of leachate even though pretreatment is neither required by the CWA nor needed. EPA is also concerned about other potential disruption of existing, reasonable methods of leachate management. The Agency believes that the issue of whether disruptions can be minimized through integration of CWA and RCRA rules will be more amenable to resolution once the CWA rulemaking in completed.

EPA is therefore acting to prevent this potential needless duplication and disruption by deferring the applicability of the listing to leachate which is subject to regulation under the CWA, which in this case includes not only direct discharges under NPDES and indirect discharges to POTWs through a sewer system, but also transfers to POTWs by truck, rail, or dedicated pipeline (a chief concern motivating today's rule). Therefore, today's regulatory text specifically mentions transfers of leachate to POTWs by truck, rail, or dedicated pipeline as a means to satisfy the condition of managing leachate subject to regulation under the CWA. Since this deferral is directly tied to the on-going CWA rulemaking for landfill wastewaters, the deferral will last at least until that rulemaking is completed.

However, the Clean Water Act rules, because they apply to leachate when it is discharged, do not on their own assure safe management upstream of that point. These rules on their own, therefore, do not address the prime RCRA concern: assuring safety of wastes when they are land disposed, particularly when disposed in surface impoundments. Such disposal is a key RCRA concern. See RCRA section 1002 (b)(7) (''certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes, and to avoid substantial risk to human health and the environment, reliance on land disposal should be minimized or eliminated and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes''); see also, *American Mining Congress* v. *EPA*, 907 F. 2d 1179, 1187 (D.C. Cir. 1990) (statutory antipathy to management in surface impoundments). It is also clear that section 1006(b) cannot be invoked to ''wholly circumvent'' critical statutory provisions. *Chemical Waste Management* v. *EPA*, 976 F. 2d 2, 25 (D.C. Cir. 1992). The fact that the leachate may not warrant pretreatment before discharge of course does not mean that the leachate can be safely discharged into groundwater via leaking impoundments. On August 6, 1998 EPA listed four petroleum refining process wastes as hazardous (63 FR 42110). Under the derived-from rule, EPA presumes that the leachate derived from these listed wastes may pose risks, particularly when managed in land-based units such as surface impoundments. In light of this, EPA believes the approach that best integrates RCRA and the CWA during EPA's examination of a long-term accommodation, is to condition the deferral on replacing existing surface impoundment storage with storage in tanks (or operate with fully regulated subtitle C impoundments). The EPA intends to continue studying the broader issue of the risks that may be posed by managing wastewaters in surface impoundments, and is conducting a surface impoundment study that will characterize these types of risks. The scope of this study will include surface impoundments in use at various types of facilities, including certain landfills that manage industrial and municipal solid waste.

EPA received support for this position from commenters. One commenter representing a national environmental organization strongly favored this result. Some MSWLF owner/operators also stated that they would replace their surface impoundments with leachate storage tanks, provided sufficient time is allowed to retrofit.

EPA agrees that surface impoundments cannot be replaced immediately. The statute, in fact, contemplates a four year period to replace or retrofit impoundments. See RCRA section 3005(j)(1). EPA believes further, however, that a period shorter than four years is appropriate here. Based on the information received during the comment period, it appears that the use of surface impoundments at MSWLFs to manage this leachate is not widespread (e.g., approximately 8 impoundments were identified out of 52 ''affected'' landfills)[2]. Given the reported volumes of leachate generated from MSWLFs that were identified in comments as affected by the new petroleum refinery waste listings, the projected size of these impoundments also is relatively small. One commenter representing a large number of affected landfills in fact stated that 24 months was adequate time to allow for the construction and operation of tanks to replace the impoundments at those MSWLFs that are affected by the petroleum refinery waste listings and are presently using impoundments to manage some or all of their leachate. EPA therefore believes that two years is a reasonable time for impoundment replacement and accordingly is providing in today's rule that the temporary deferral applies to leachate derived exclusively from the newly-listed petroleum wastes, and that the deferral is conditioned on managing the leachate in tanks or other non-land disposal units. This condition takes effect in two years. During the two year period, the temporary deferral applies to the leachate even if managed in impoundments. Impoundments which stop receiving the leachate (or any other hazardous waste) after two years are inactive units which are not subject to subtitle C requirements. See generally 55 FR 39409 (Sept. 27, 1990) (disposal units holding hazardous wastes on date of listing or identification of that waste as hazardous are not subject to subtitle C requirements so long as additional hazardous wastes are not added to the unit and the hazardous wastes in the unit are not actively managed). Should the impoundments receive hazardous waste (including leachate which otherwise would be subject to this temporary deferral) after the two year date, the impoundment unit would

[2] Comments PR3A–00002, 00007, L0001, L0002, L0003; also, Notes from Meeting Between EPA and Representatives of Landfill Industry, Memo to Docket F–98-PR3A-FFFFF from Ross Elliott, January 16, 1999.

become a regulated unit subject to all subtitle C requirements. The EPA feels that this approach minimizes the immediate disruption that would occur should these impoundments suddenly be forced to close, while providing an environmentally beneficial result in the expeditious conversion of these impoundments to tanks.

V. Response to Comments

EPA was specific in stating in the NODA that the scope of this proceeding is the narrow classification and management of leachate generated from landfills that disposed of one or more of the newly-listed petroleum wastes prior to the effective date, where the leachates are not defined as hazardous for any other reason, and are (in particular) being managed pursuant to Clean Water Act requirements. The EPA received comments primarily on this issue, and is responding to those comments in this preamble. EPA is not addressing comments raising regulatory and policy issues not directly related to the temporary deferral. EPA is retaining those comments as part of the record of this action.

A. Need for Temporary Deferral

Nearly all commenters agreed that a deferral for landfill leachate, that would otherwise be classified as listed hazardous waste due to the new petroleum refinery listings, was necessary to avoid disrupting current leachate management practices while allowing the EPA to evaluate the issue more carefully.

One commenter, however, found the Agency's record in support of the NODA to be lacking sufficient information to determine whether a deferral is necessary. This comment seemed to state that there should be more available information before EPA makes a risk-based determination regarding whether to regulate these leachates. Today's action is a narrower determination, however, and rests on bases fully set out in the NODA. EPA is issuing the temporary deferral to avoid the potential duplication and disruption which could be created when integrating the requirements imposed on leachate management by the petroleum listing rule, and the pending Clean Water Act regulation. EPA needs to take action now since affected persons would face a shutdown of current leachate management systems (in particular, by POTWs receiving trucked leachate) and be forced immediately to construct alternative leachate treatment facilities which could well prove to be unnecessary. There will be opportunities to revisit the temporary deferral, most logically at the conclusion of the Clean Water Act rulemaking.

B. What Are the Implications of the Temporary Deferral for Related Management Practices Preceding Discharge Pursuant to CWA Limitations and Standards?

1. Landfill Gas Condensate

One commenter asked whether landfill gas condensate would be regulated as a derived-from hazardous waste, should the landfill owner/operator determine that the landfill disposed of any of the petroleum refinery wastes prior to, but not after, the effective date. Landfill gas condensate is the liquid (primarily water) from moisture within the landfill gas being recovered, which is generated as a result of gas recovery processes at the municipal solid waste landfill (see 40 CFR 258.28(c)(2)) (see item B.4. below). The commenter stated that landfill gas condensate is often co-managed with leachate, by either treatment and discharge under the Clean Water Act, or by recirculation (discussed in more detail later). Based on the limited data currently available, it appears that this condensate is substantially identical (in terms of identity and concentration of hazardous constituents) to the leachate. In fact, EPA's proposed rule on effluent guidelines and pretreatment standards for landfills includes condensate along with leachate in the group of ''landfill wastewaters'' subject to that rulemaking. 63 FR 6429. Therefore, the Agency is including landfill gas condensate along with landfill leachate in the scope of today's deferral.

2. Leachate Collected and Recirculated Within the Landfill

Two commenters also questioned how a temporary deferral would affect leachate (and condensate) which is recirculated within the landfill, a relatively common practice (see 56 FR 51055 (October 9, 1991)). Under existing interpretations, movement of waste within a land disposal unit is not itself land disposal. See, e.g., 55 FR 8758–8760 (March 8, 1990); 55 FR 30843 (July 27, 1990). Consequently, such activity would not result in subtitle C regulation of the unit so long as the leachate was merely recirculated in the unit. 55 FR 8760; 55 FR 30843. This would be the result whether or not EPA adopted the temporary deferral in today's rule.[3]

3. Wastes Derived From the Leachate

Two commenters asked about the status of solids generated from on-site wastewater treatment (e.g., filter cake). They stated that this is particularly important because these solids are put back into the landfill from which the leachate was collected for treatment. Because today's deferral applies at the point of generation of the leachate, which would be prior to any wastewater treatment the leachate might undergo as part of compliance with the CWA (including on-site wastewater treatment), these solids would be derived from treating a non-listed waste. Therefore, assuming the conditions of the deferral promulgated today for leachate apply (and therefore the leachate is temporarily not a listed waste), solids from treating this leachate would only be hazardous wastes if they are listed independently (which they are not under existing rules), or exhibit a characteristic of hazardous waste. EPA considered whether there should be a concern about the fate of the hazardous constituents that might be contained in the solids, particularly if the source of the constituents was from the previously disposed refinery wastes. EPA believes this concern is reduced, however, because the hazardous constituents of concern that caused most of these newly-listed petroleum wastes to be listed (benzene and arsenic) are covered by the Toxicity Characteristic (TC). Further, an estimate of the volume of sludges generated from treating leachate (using leachate volumes submitted to EPA in comments, and assuming a 0.1% solids content and a 50% recovery efficiency) is about 100 metric tons per year, much lower than the volume of the newly-listed refinery wastes used in the risk assessment in support of the listings (70,300 metric tons per year in 1992).

4. Landfill Gas Management

Landfills can generate gas, which is derived not from the leachate but from the disposed solid wastes. It is highly desirable to control these gaseous emissions both for safety reasons (to avoid potential fires and explosions) and to prevent air pollution (especially from methane, a significant greenhouse gas). Municipal landfills do typically monitor and control the emission of explosive gases (methane in particular). See 40 CFR 258.23. Clean Air Act regulations further require municipal landfills above a given design capacity (2.5 million megagrams and 2.5 million cubic meters) to capture and control

[3] EPA thus disagrees with the implication of the comment that a section 1006 rationale would not apply to such recirculation, since the comment's premise is that recirculation of collected leachate within the landfill automatically makes the landfill a regulated unit if the leachate is a hazardous waste.

non-methane organic compounds (NMOCs) if greater than 50 megagrams of NMOCs per year are emitted. See 40 CFR part 60, subparts Cc and WWW (implementing section 111 of the Clean Air Act). EPA does not regard any of these salutary landfill gas management techniques as constituting active management of the landfilled waste which could result in subtitle C regulation of the landfill. See generally 54 FR 36597 (Sept. 1, 1989; 55 FR 39409 (Sept. 27, 1990). The concept does not include management of releases from otherwise inactive units. Indeed, a different reading would create an incentive not to control such releases. EPA consequently does not view the August 6, 1998 listing rule as triggering subtitle C regulation of landfill gas control operations at landfills which previously received the listed wastes. (It should also be noted that the burning of landfill gas for energy recovery, even if the gas is hazardous waste, is exempt from Subtitle C regulation. 56 FR 7203, February 21, 1991.)

C. Conditions of Temporary Deferral

As described earlier in this document, EPA requested comment on several conditions of the temporary deferral. The question of whether the proposed deferral should apply to impoundments managing the leachate generated comments on both sides of the issue. Some commenters felt that well-designed surface impoundments located at municipal solid waste landfills provided adequate protection to groundwater. As discussed earlier, EPA generally disagrees and has conditioned the temporary deferral on cessation of use of surface impoundments within two years. There is one type of impoundment, however, that could continue to receive the leachate without losing the benefit of the temporary deferral. A commenter stated that one of their landfill facilities historically received some of the newly-listed petroleum refinery wastes, and that facility maintains a surface impoundment with the capacity to store 30 days worth of leachate accumulation in the event of an emergency shutdown of the treatment plant located on site. The commenter stated that this impoundment has not been used in over two years, is constructed with two synthetic liners, and has a floating roof. The commenter explained that requiring this impoundment to be replaced with tanks would be an unnecessary expense with little environmental benefit. The Agency agrees with this commenter that it may not make sense to replace an impoundment that is not in use, or that is used infrequently in emergency situations, while this temporary deferral is in effect. This is because the critical risk normally posed by impoundments, creation of a pressure head that forces downward dispersion of leachate and other liquid in the impoundment (see Chemical Manufacturers Ass'n v. EPA, 919 F. 2d 158, 166–67, (D.C. Cir. 1990)) would be less present for this type of emergency impoundment since by definition it is only used in emergency situations, and therefore will not contain liquid most of the time. It seems better policy not to require replacement of this type of impoundment pending more analysis of the leachate. Therefore, the EPA is adding a provision to the temporary deferral to allow the use of surface impoundments for the non-routine, emergency storage of leachate exempted under today's final rule, provided the exempt leachate is removed from the impoundments and either returned to the tank-based wastewater treatment system, or otherwise discharged under the CWA, as soon as practicable after the emergency ends.

D. Determining Whether a Landfill Previously Received the Newly Listed Wastes

One commenter requested that EPA clarify what specific records or other information are required to determine whether a landfill historically received and disposed of one or more of the newly-listed petroleum wastes. Specifically, the commenter cited a situation where several petroleum refineries are located within a landfill's service area, and whether they must presume that the landfill accepted the refinery wastes that the Agency later listed as hazardous. Determining whether a landfill accepted a particular listed waste is a case-by-case factual determination. Ordinarily, however, the presence of a petroleum refinery in the general service area of the landfill, without more information, would not require a determination that the listed wastes were disposed at the facility. See 53 FR 51444 (Dec. 21, 1988); 55 FR 8758 (Mar. 9, 1990); also 61 FR 18805 (April 29, 1996), 63 FR 28619 (May 26, 1998).

VI. Administrative Assessments

A. Executive Order 12866

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to OMB review and the other provisions of the Executive Order. A significant regulatory action is defined by Executive Order 12866 as one that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations or 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 Executive Order 12866.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because of policy issues arising out of legal mandates. The leachate management option elected by the Agency does not, since its expected annual cost is so low (see Economic Analysis for explanation), affect the Executive Order 12866 determination that would otherwise be made. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

1. Economic Analysis

Background

Common disposal practices for the four petroleum refining wastes are off-site disposal in industrial and municipal solid waste landfills. Design criteria require the installation of leachate collection systems at new landfills (or lateral expansions of existing landfills). Subsequently, leachate derived from the four petroleum wastes has traditionally been collected and recirculated, treated, or discharged under the Clean Water Act. As described in more detail in the August 6, 1998 NODA, as well as in today's rule, the listing for the four petroleum refinery wastes on August 6, 1998 (63 FR 42110), results in leachate that is actively managed from these landfills to be hazardous under the derived-from rule. Also, when the leachate from these four wastes mixes with leachate from other wastes disposed in these landfills, the entire leachate quantity is considered hazardous under the mixture rule. By changing the regulatory status of this leachate to be covered under Subtitle C of RCRA, these landfills may bear an increase in management costs. EPA estimates that between 58 to 125 landfills may be affected. The range

reflects the difference between known recipients of the wastes (based on information received in comments), and information about other landfills that possibly received the wastes, from the economic analysis in support of the petroleum waste listing rulemaking.

Regulatory Options

The following two regulatory actions have been evaluated:

1. Temporary Deferral (including Surface Impoundments Converted to Tanks within 2 Years): Upon signature the leachate is exempt from being regulated as hazardous under RCRA Subtitle C if it is appropriately managed under the Clean Water Act (e.g., NPDES discharge, POTW disposal via pipeline, and trucking to an off-site POTW). After two years, surface impoundments will no longer be allowed to manage exempt leachate. If the leachate is managed in a surface impoundment after two years the impoundment will be subject to regulation under Subtitle C. This regulatory option assumes that landfill operators will avoid Subtitle C regulation by building tank systems to replace their impoundments before the two-year deadline. However, after two years impoundments can still be used for emergency storage of exempt leachate and it will continue to remain exempt from Subtitle C regulation.

2. Standard Listing: Treat the Leachate as Hazardous Waste and Subject to Subtitle C Regulation under the Derived-From and Mixture Rules. Existing exemptions apply under the Standard Listing regulatory option including the wastewater treatment unit exemption (on-site tanks and associated piping are not Subject to Subtitle C permits and standards if they meet the definition of wastewater treatment unit, discussed in detail in the August 6, 1998 NODA). In addition, leachate collection sumps are considered to be an integral part of the leachate collection system at Subtitle C landfills and do not need to meet Subpart J standards for tanks. Leachate collected and recirculated back into the landfill the Agency considers not to be ''actively managed'' and therefore does not trigger listing regulations. Indirect discharge of leachate through the sewer to non-POTWs, and transfer of leachate to a POTW by truck, rail, or dedicated pipe, are both practices under which the leachate would not be excluded from the definition of solid waste; transfer of non-exempt leachate off-site for treatment is a practice that would preclude the wastewater treatment unit exemption at the landfill site; and management of leachate in surface impoundments is a management practice that is not exempt.

Cost Methodology

The basic cost methodology involved the following steps:

1. Estimate number of facilities involved. The uncertainty in this is the primary reason for the costs range given below.

2. Estimate current or baseline costs. These include costs based on data provided in comments submitted by industry, and reflect costs prior to the date on which the petroleum listings become effective (February 8, 1999).

3. Determine procedures for the management of the wastes under proposed regulatory option(s). Many steps are involved in this waste management train.

4. Determine leachate quantities involved.

5. Determine costs to manage leachate under the proposed option(s).

6. Determine the incremental cost associated with each option.

Compliance Cost Estimates

Table 1 below presents estimated incremental costs for the two options noted. The very marked difference between the costs of the two options is attributable largely to the costs associated with trucking hazardous leachate to commercial wastewater treatment facilities instead of POTWs, costs which are not relevant under the Temporary Deferral option. The difference between ''known'' and ''worst case'' costs is attributable to the uncertainty in landfill count as noted above. The following summarizes Table 1:

Incremental compliance costs for the known (58 landfills) and estimated worst case (125 landfills) population of affected landfills that received these four waste streams are estimated to range from $62 to $219 million under the Standard Listing regulatory option. This range is due to the two different populations of affected landfills used (i.e., known and worst case), and also reflects a 10-year period of leachate generation and a 20-year amortization period. However, the upper bound of this cost range may be considerably lower as the result of possible savings gained through contract negotiations for repeat customers who provide consistent revenue streams to shipping companies through their regularly scheduled shipments of leachate. The Cost Impact Analysis background document prepared in support of today's rule contains additional incremental cost estimates under the Standard Listing option, using differing periods of leachate generation and cost amortization.

Incremental costs are estimated to be between $130,000 and $280,000 annually for the Clean Water Act Exemption with Two-year Impoundment Replacement Deferral regulatory option, with only 8 to 17 of the affected landfills expected to currently operate a surface impoundment.

TABLE 1.—COMPLIANCE COSTS ESTIMATED FOR LANDFILLS THAT RECEIVED PETROLEUM (K169—K172) WASTES

	Trucked to POTW	Truck to POTW/Recirculate	Recirculate only	POTW hardpipe	NPDES	Evaporation pond	No leachate or condensate	Total
STANDARD LISTING REGULATORY OPTION								
Incremental Average Annual Compliance Cost per Landfill. ($million/landfill)	$2.64–$4.34	$2.16–$3.54	0	0	$0.01	$0.01	0	
Known Total ($ million/year)	$47–$78 (18 LF; 0 SI)	$15–$25 (7 LF; 1 SI)	0 (11 LF; 2 SI)	0 (12 LF; 0 SI)	$0.05 (5 LF; 4 SI)	$0.01 (1 LF; 1 SI)	0 (4 LF; 0 SI)	$62–$103 (58 LF; 8 SI)
Worst Case ($ million/year)	$103–$169 (39 LF; 0 SI)	$30–$50 (14 LF; 2 SI)	0 (23 LF; 4 SI)	0 (27 LF; 0 SI)	$0.11 (11 LF; 9 SI)	$0.02 (2 LF; 2 SI)	0 (9 LF; 0 SI)	$133–$219 (125 LF; 17 SI)
TEMPORARY DEFERRAL REGULATORY OPTION (Surface Impoundments Converted to Tank Systems w/in 2 Years)[1]								
Incremental Average Annual Compliance Cost per Landfill. ($million/landfill)	0	$0.006	$0.002	0	$0.012	$0.009	0	
Known Total ($ million/year)	0 (18 LF; 0 SI)	$0.042 (7 LF; 1 SI)	$0.022 (11 LF; 2 SI)	0 (12 LF; 0 SI)	$0.060 (5 LF; 4 SI)	$0.009 (1 LF; 1 SI)	0 (4 LF; 0 SI)	$0.13 (58 LF; 8 SI)

TABLE 1.—COMPLIANCE COSTS ESTIMATED FOR LANDFILLS THAT RECEIVED PETROLEUM (K169—K172) WASTES—Continued

	Trucked to POTW	Truck to POTW/Recirculate	Recirculate only	POTW hardpipe	NPDES	Evaporation pond	No leachate or condensate	Total
Worst Case ($ million/year)	0 (39 LF; 0 SI)	$0.084 (14 LF; 2 SI)	$0.046 (23 LF; 4 SI)	0 (27 LF; 0 SI)	$0.132 (11 LF; 9 SI)	$0.018 (2 LF; 2 SI)	0 (9 LF; 0 SI)	$0.28 (125 LF; 17 SI)

[1] This regulatory option assumes that surface impoundments will be closed and replaced with newly constructed tank systems w/in 2 years. It assumes that an exemption from Subtitle C regulation is granted up until the point the leachate enters any impoundment.

B. Regulatory Flexibility Act

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

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination.

The Regulatory Flexibility Act (RFA) of 1980 requires Federal agencies to consider impacts on ''small entities'' throughout the regulatory process. Section 603 of the RFA calls for an initial screening analysis to be performed to determine whether small entities will be adversely affected by the regulation. Larger, regional landfills are more likely to have managed industrial waste along with municipal waste (and therefore be potentially affected by this rule), and are typically entities of larger business organizations. However, the costs for the selected management option are very low, even for those small and municipally-owned landfills that have determined they are affected by today's deferral (the average annual cost of the selected management option is approximately $15,000/year per facility for those facilities managing leachate in surface impoundments). Therefore, EPA concludes that there will be no significant impact on small entities from the regulatory action selected.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The Agency's analysis of compliance with the Unfunded Mandates Reform Act (UMRA) of 1995 found that the proposed action imposes no enforceable duty on any State, local or tribal governments or the private sector; thus today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

D. Paperwork Reduction Act

This rule does not contain any new information collection requirements subject to OMB review under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Facilities will have to comply with the existing Subtitle C recordkeeping and reporting requirements for the newly listed waste streams.

To the extent that this rule imposes any information collection requirements under existing RCRA regulations promulgated in previous rulemakings, those requirements have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control numbers 2050–0009 (ICR no. 1573, Part B Permit Application, Permit Modifications, and Special Permits); 2050–0120 (ICR 1571, General Facility Hazardous Waste Standards); 2050–0028 (ICR 261, Notification of Hazardous Waste Activity); 2050–0034 (ICR 262, RCRA Hazardous Waste Permit Application and Modification, Part A); 2050–0039 (ICR 801, Requirements for Generators, Transporters, and Waste Management Facilities under the Hazardous Waste Manifest System); 2050–0035 (ICR 820, Hazardous Waste Generator Standards); and 2050–0024 (ICR 976, 1997 Hazardous Waste Report.

E. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their

concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

F. 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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 officials 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. There is no impact to tribal governments as the result of the leachate management action selected. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

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

''Protection of Children from Environmental Health Risks and Safety Risks'' (62 *FR* 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involved technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

I. Executive Order 12898: Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. To address this goal, EPA considered the impacts of this final rule on low-income populations and minority populations and concluded that the leachate management option selected by the Agency for this final rule would have no impact on nearby minority and low income populations.

VII. The Congressional Review Act

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

VIII. Rationale for Immediate Effective Date

Because this rule eliminates possible regulation, the regulated community does not need 6 months to comply, so that the rule may be made effective immediately pursuant to RCRA section 3010 (b) (1). For the same reason, it is not necessary to delay the rule's effectiveness for 30 days pursuant to 5 U.S.C. 553 (b) (1).

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

Dated: February 5, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.4 is amended by adding paragraph (b)(15) to read as follows.

§ 261.4 Exclusions

* * * * *

(b) * * *

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, and K172 if these wastes had been generated after the effective date of the listing (February 8, 1999);

(ii) The solid wastes described in paragraph (b)(15)(i) of this section were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) After February 13, 2001, leachate or gas condensate will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

* * * * *

[FR Doc. 99–3426 Filed 2–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6232–1]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Whittaker Corporation Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Whittaker Corporation Superfund Site in Minnesota from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Minnesota, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Minnesota have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: February 11, 1999.

FOR FURTHER INFORMATION CONTACT: Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: Minnesota Pollution Control Agency, 520 Lafayette Rd. North, St. Paul, Minnesota 55155–4194. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Whittaker Corporation located in Minneapolis, Minnesota. A Notice of Intent to Delete for this site was published December 14, 1998 (63 FR 68714). The closing date for comments on the Notice of Intent to Delete was January 12, 1999. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: January 27, 1999.

William E. Muno,

Acting Regional Administrator, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site ''Whittaker Corp., Minneapolis, Minnesota.''

[FR Doc. 99–3142 Filed 2–10–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–144; Amendment 195–65]

[RIN 2137–AC78]

Risk-Based Alternative to Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines Rule; Correction

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published November 4, 1998 (63 FR 59475). This final rule allows operators of older hazardous liquid and carbon dioxide pipelines to elect a risk-based alternative in lieu of the existing hydrostatic pressure test rule. This document makes a minor correction by removing an unrelated sentence that

inadvertently appeared in Table 4 of the Appendix B.

EFFECTIVE DATE: February 11, 1999.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, or e-mail: mike.israni@rspa.dot.gov.

SUPPLEMENTARY INFORMATION: When RSPA published the final rule in the **Federal Register**, it inadvertently included an unrelated sentence ''This section has been revised to include reference to ANSI/NFPA 59A in paragraph (a) as follows:'' in the 'Indicator' column of Table 4 in Appendix B. This document corrects the text in Table 4 of Appendix B by removing that sentence. RSPA regrets any confusion this erroneous sentence may have caused.

Correction of Publication

Accordingly, the publication on November 4, 1998, of the final rule, in the **Federal Register** (63 FR 59475) is corrected as follows:

* * * * *

Appendix B [Corrected]

On page 59482, in the Table 4, 'Indicator' column is corrected to read as follows:

* * * * *

TABLE 4.—PRODUCT INDICATORS

Indicator	Considerations	Product Examples
H	Highly volatile and flammable	(Propane, butane, Natural Gas Liquid (NGL), ammonia).
	Highly toxic	(Benzene, high Hydrogen Sulfide content crude oils).
M	Flammable—flashpoint <100F	(Gasoline, JP4, low flashpoint crude oils).
L	Non-flammable—flashpoint 100+F	(Diesel, fuel oil, kerosene, JP5, most crude oils).
	Highly volatile and non-flammable/non-toxic	Carbon Dioxide.

* * * * *

Issued in Washington, D.C. on February 3, 1999.

Kelley S. Coyner,

Administrator, Research and Special Programs Administration.

[FR Doc. 99–3428 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. NHTSA–99–5047]

RIN 2127–AG65

Vehicle Certification; Contents of Certification Labels for Multipurpose Passenger Vehicles and Light Duty Trucks

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends NHTSA's regulations on vehicle certification that specify the contents of the certification labels that manufacturers are required to affix to new motor vehicles. The amendment requires the certification label for multipurpose passenger vehicles (MPVs) and trucks with a gross vehicle weight rating (GVWR) of 6,000 pounds or less to specify that the vehicle complies with all applicable Federal motor vehicle safety and theft prevention standards. Under the prior regulations, the certification labels on these vehicles needed only to state that the vehicles comply with all applicable Federal motor vehicle safety standards. The amendment conforms the certification requirements to legislation making the theft prevention standard applicable to MPVs and trucks rated at 6,000 pounds or less.

DATES: The amendment established by this final rule will be effective on June 11, 1999. As such, the amendment applies to MPVs and trucks with a GVWR of 6,000 pounds or less that are manufactured on or after that date.

Any petitions for reconsideration must be received by NHTSA not later than March 29, 1999.

ADDRESSES: Any petitions for reconsideration should refer to the docket number above and be submitted to Administration, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. (202–366–5238).

SUPPLEMENTARY INFORMATION:

A. Background

This rule was preceded by a notice of proposed rulemaking (NPRM) that NHTSA published on June 25, 1998 (63 FR 34623). As explained in the NPRM, in June 1996, NHTSA received a letter from American Honda Motor Co., Inc. (Honda) seeking clarification of certain vehicle certification requirements in 49 CFR Part 567. The letter noted that section 567.4(g)(5)(ii) of those regulations requires the certification label on 1987 and subsequent model year passenger cars manufactured on or after April 24, 1986, to state that the vehicle ''conforms to all applicable Federal motor vehicle safety, bumper, and theft prevention standards in effect on the date of manufacture . . . .'' Honda's letter further noted that under a provision of the Anti Car Theft Act of 1992 now codified at 49 U.S.C. 33101, the definition of vehicles subject to the major parts marking requirements of the theft prevention standard was expanded to include ''a multi-purpose passenger vehicle or light duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight.'' This prompted Honda to observe that the language prescribed for certification labels at 49 CFR 567.4(g)(5) may have to be amended to reflect these vehicles' conformity with the theft prevention standard.

In its response to Honda's letter, NHTSA noted that although the Anti Car Theft Act of 1992 contains no explicit requirement for such an amendment to the vehicle certification regulations, the agency agreed that this amendment should be made so that the certification requirements for MPVs and trucks with a GVWR of 6,000 pounds or less are consistent with those in sections 567.4(g)(5)(i) and (ii) that apply specifically to passenger cars.

Accordingly, the NPRM proposed to amend the certification regulations to require the certification label for MPVs and trucks with a GVWR of 6,000 pounds or less to specify that the vehicle complies with all applicable Federal motor vehicle safety and theft prevention standards. The NPRM also stated that this requirement would apply to vehicles manufactured on or after January 1, 1999 so that affected manufacturers would have adequate lead time to exhaust their existing inventory of certification labels and

have new labels printed if the amendment were adopted.

B. Comments

Three comments were submitted in response to the NPRM. The first of these was from Mercedes-Benz of North America, Inc. (Mercedes-Benz) on behalf of its parent company, Daimler-Benz AG of Stuttgart, Germany. In this comment, Mercedes-Benz stated that it supported the proposal to amend 49 CFR Part 567 to require the certification label for MPVs and trucks with a GVWR of 6,000 pounds or less to specify that the vehicle complies with all applicable Federal motor vehicle safety and theft prevention standards. Mercedes-Benz observed that if a vehicle is subject to the parts marking requirements of the theft prevention standard, or is exempted from those requirements as a result of a petition submitted to NHTSA under 49 CFR Part 543, *Exemption From Vehicle Theft Prevention Standard,* the manufacturer should be able to identify this information on the certification label, as Mercedes-Benz claims is presently done for passenger cars.

The agency notes that there is no provision within Part 543 for a certification label to reflect that a vehicle has been exempted from the theft prevention standard. In the final rule establishing that part, published on September 8, 1988 at 52 FR 33821, NHTSA discussed the generally unfavorable comments that it had received from vehicle manufacturers on whether the certification label should reflect the exempt status of a high theft line vehicle. The agency concluded that it is unnecessary to require such a statement on the certification label because such information would only be of benefit to law enforcement officials, and those officials could obtain information on exempt high theft lines from alternate sources, including the agency's annual publication of the list of high theft lines in Appendix A to 49 CFR Part 541. See 52 FR 338222–23.

The second comment was submitted by the Association of International Automobile Manufacturers (AIAM), which identified itself as a trade association that represents companies that sell passenger cars and light trucks in the United States that are manufactured both here and abroad. In this comment, AIAM observed that if January 1, 1999 were retained as the effective date of the final rule, as proposed in the NPRM, manufacturers would not have sufficient lead time to comply with the new requirement. AIAM requested that manufacturers be given 120 days lead time to implement the proposed changes and to exhaust their existing supply of certification labels. AIAM noted that a minimum of 120 days is typically needed following the promulgation of a final rule for a manufacturer to coordinate the needed design change, certification activities, and parts changes with suppliers and assembly plants. AIAM also noted that delaying implementation of the final rule for 120 days will give manufacturers sufficient time to exhaust their supply of the existing label.

NHTSA recognizes the validity of the issue raised by AIAM. Accordingly, the agency had delayed the effective date of this final rule until 120 days after the date of its publication.

The third comment was submitted by John Russell Deane III, who identified himself as the General Counsel of the Speciality Equipment Market Association (SEMA). In his comment, Mr. Deane recommended that NHTSA amend 49 CFR 567.7, the provision in the certification regulations that prescribes requirements for persons who alter certified vehicles, so that it is consistent with the amendments to the certification requirements for manufacturers proposed in the NPRM. Mr. Deane noted that although vehicle alterers have a statutory responsibility to certify that any vehicle they alter that is subject to the theft prevention standard remains in compliance with that standard following the completion of the alterations, section 567.7 has never been amended to reflect that requirement.

Because NHTSA did not propose an amendment to section 567.7 in the NPRM, it is now constrained from amending that section as part of this final rule. The agency recognizes, however, the validity of the issues raised by Mr. Deane, and will commence rulemaking shortly to address the disparity that now exists between the certification responsibilities for manufacturers and those for alterers with regard to the theft prevention standard.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rule was not reviewed under E.O. 12866. NHTSA has analyzed this rule and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment resulting from this final rule will not have a significant economic impact on a substantial number of small entities. Motor vehicle manufacturers who will be affected by the rule typically would not qualify as small entities. This amendment will also have no effect on small businesses, small organizations, and small governmental units. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws will be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that the rule would not significantly affect the human environment.

5. Civil Justice Reform

This rule does not have any retroactive effect. It modifies an existing Federal regulation to make it consistent with a statutory requirement. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws or regulations on the same subject, except that it does preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

List of Subjects in 49 CFR Part 567

Labeling, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, § 567.4, *Requirements for manufacturers of motor vehicles,* in Title 49 of the Code of Federal Regulations at Part 567 is amended as follows:

PART 567—[AMENDED]

1. The authority citation for part 567 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, and 30115, 30117, 30166, 32502, 32504, 33101–33104, and 33109; delegation of authority at 49 CFR 1.50.

2. Section 567.4 is amended by adding a new paragraph (g)(5)(iii), to read as follows:

§ 567.4 Requirements for manufacturers of motor vehicles.

* * * * *

(g) * * *

(5) * * *

(iii) In the case of multipurpose passenger vehicles (MPVs) and trucks with a GVWR of 6,000 pounds or less manufactured on or after June 11, 1999, the expression ''and theft prevention'' shall be included in the statement following the word ''safety''.

* * * * *

Issued on: February 4, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–3291 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 64, No. 28
Thursday, February 11, 1999

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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1651

Death Benefits

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a proposed amendment to the Board's death benefit regulations. Under the proposed amendment, if a participant dies with any portion of his or her Thrift Savings Plan (TSP) account in an investment fund other than the G Fund, the Board would transfer the entire account into the G Fund after receiving notice of the participant's death.

DATES: Comments must be received on or before April 12, 1999.

ADDRESSES: Comments may be sent to Elizabeth S. Woodruff, Federal Retirement Thrift Investment Board, 1250 H Street, N.W., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Woodruff, (202) 942–1661.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335, 100 Stat. 514. The provisions governing the TSP are codified primarily in subchapters III and VII of Chapter 84 of Title 5, United States Code (1994). The TSP is a tax-deferred retirement savings plan for Federal employees which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a participant's TSP account are held in trust for that participant. 5 U.S.C. 8437(g).

The disbursement of death benefits from the TSP is governed by the provisions of 5 U.S.C. 8433(e) and 8424(d). Under section 8433(e), if a TSP participant dies before he or she has completed a withdrawal election, the account is to be disbursed in accordance with the order of precedence set forth at section 8424(d). Final regulations governing the payment of the TSP account to a beneficiary were published in the **Federal Register** on June 13, 1997 (62 FR 32426).

These regulations do not address how the account will be invested between the participant's death and disbursement of the account to the beneficiary(ies). In the past, the Board has maintained the account as it was invested upon the participant's death; the Board will not maintain a separate account for a beneficiary and will not permit a beneficiary to direct how the account should be invested. However, it may take several months before the Board can identify and locate the appropriate beneficiary(ies) of an account and pay the account balance to the beneficiary(ies). During this time, monies in some investment funds can experience significant changes in value as a result of fluctuations in the market.

FERSA permits a participant to elect to invest all or any portion of his or her contributions in several investment options. At present, all investment options except the Government Securities Investment (G) Fund are invested in securities that fluctuate in value as market conditions change. In contrast, monies in the G Fund are invested in short-term Government securities backed by the full faith and credit of the United States and do not fluctuate in value.

Before a participant can invest in an investment fund other than the G Fund, he or she must provide a one-time acknowledgment that the investment is made at the participant's risk, that the participant is not protected by the United States Government or by the Board against any loss on the investment, and that neither the United States Government nor the Board guarantees any return on the investment. FERSA does not grant to beneficiaries the right to own or control the TSP account of a deceased participant; instead, the account is paid out to them as quickly as administratively feasible. Thus, beneficiaries are not solicited to acknowledge the risk of investment in market securities pending payout to them.

Because monies in investment funds other than the G Fund remain subject to market risk even after a participant's death, however, and because beneficiaries have neither acknowledged nor have any control over that risk, the Board proposes to transfer the entire TSP account into the G Fund after receiving written notice of the participant's death if a participant dies with any portion of his or her account in an investment fund other than the G Fund. The account will continue to accrue earnings at the G Fund rate in accordance with part 1645 until the account is paid in accordance with the order of precedence set forth in paragraph (a) of this section. This action will eliminate the market risk to the beneficiary and will preserve the value of a deceased participant's account until it can be paid out.

Regulatory Flexibility Act

I certify that this amendment will not have a significant economic impact on a substantial number of small entities. It will affect only TSP participants and beneficiaries.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Pub. L. 104–4, 109 Stat. 48, 64, the effect of these regulations on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

List of Subjects in 5 CFR Part 1651

Employee benefit plans, Government employees, Pensions, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, part 1651 of chapter VI of title 5 of the Code of Federal Regulations is amended as follows:

PART 1651—DEATH BENEFITS

1. The authority citation for part 1651 continues to read as follows:

Authority: 5 U.S.C. 8424(d), 8433(e), 8435(c)(2), 8474(b)(5) and 8474(c)(1).

2. Section 1651.1 is amended by adding in alphabetical order the definitions of ''C Fund'', ''F Fund'', ''G Fund'', and ''Investment fund'', to read as follows:

§ 1651.1 Definitions.

* * * * *

C Fund means the Common Stock Index Investment Fund established under 5 U.S.C. 8438(b)(1)(C);

* * * * *

F Fund means the Fixed Income Investment Fund established under 5 U.S.C. 8438(b)(1)(B);

G Fund means the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A);

Investment fund means the C Fund, the F Fund, the G Fund, or any other TSP investment fund created subsequent to December 27, 1986;

* * * * *

3. Section 1651.2 is amended by adding a new paragraph (c) to read as follows:

§ 1651.2 Entitlement to benefits.

* * * * *

(c) If a participant dies with any portion of his or her TSP account in an investment fund other than the G Fund, the Board will transfer the entire account into the G Fund after receiving written notice of the participant's death. The account will continue to accrue earnings at the G Fund rate in accordance with part 1645 until it is paid in accordance with the order of precedence set forth in paragraph (a) of this section.

[FR Doc. 99–3324 Filed 2–10–99; 8:45 am]

BILLING CODE 6760–11–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 910

[No. 99–5]

RIN 3069–AA78

Allocation of Joint and Several Liability on Consolidated Obligations Among the Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing a rule to establish a framework for the orderly allocation of joint and several liability among the Federal Home Loan Banks (FHLBank or Bank) on consolidated obligations, *i.e.*, bonds, notes or debentures issued by the Finance Board pursuant to section 11 of the Federal Home Loan Bank Act (Bank Act). The proposed rule is intended to protect holders of consolidated obligations to the greatest extent practical by providing a framework to ensure the continued timely payment of all principal and interest on consolidated obligations in the unlikely event of a projected inability of a Bank to meet its debt service payment obligations. The proposed rule in no way would limit, restrict or diminish the joint and several liability of the FHLBanks on the consolidated obligations issued by the Finance Board.

DATES: The Finance Board will accept comments on the proposed rule in writing on or before April 12, 1999.

ADDRESSES: Send comments to Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov* or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Joseph McKenzie, Deputy Chief Economist, Office of Policy, Research and Analysis, by telephone at (202) 408–2845 or by electronic mail at *mckenziej@fhfb.gov*, or Charlotte A. Reid, Special Counsel, Office of General Counsel, by telephone at (202) 408–2510, by electronic mail at *reidc@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Bank Act, *see* 12 U.S.C. 1421 *et seq.*, provides plenary authority to the Finance Board in connection with the issuance of bonds, debentures and notes (consolidated obligations or COs) for which the FHLBanks are jointly and severally liable.[1] Section 11 of the Bank Act authorizes the Finance Board to issue rules and regulations governing the issuance of COs. See 12 U.S.C. 1431(a). Finance Board regulations governing the issuance of COs are set forth in 12 CFR Parts 910 and 941.

The FHLBanks finance their operations principally with the proceeds from COs issued by the Finance Board on their behalf. As of September 30, 1998, there were approximately $336.3 billion in consolidated obligations outstanding. In the history of the FHLBank System, no FHLBank has ever been delinquent or defaulted on a principal or interest payment on any consolidated obligation issued by the Finance Board or the Federal Home Loan Bank Board, its predecessor agency (FHLBB).

Neither the Finance Board nor the FHLBB adopted regulations to establish the manner in which the joint and several liability of the FHLBanks would operate in the event of impending default or delinquency on a consolidated obligation. Although the FHLBank System remains financially healthy and strong, and no such default or delinquency is expected, the joint and several liability has become a matter of interest in recent years for other reasons. The municipal bankruptcy and resulting receivership of the County of Orange, California (Orange County), and the ensuing litigation brought by the receiver for Orange County against the FHLBanks, Office of Finance and United States (among others),[2] raised issues concerning liability allocation arising from issuing and servicing consolidated obligations. Additionally, new initiatives and activities undertaken by the FHLBanks, such as the Mortgage Partnership Finance™, pilot program

[1] A bond, note or debenture represents a loan made to the FHLBanks by a lender (''bondholder''). When the Finance Board issues a bond, note or debenture on behalf of the FHLBanks, the FHLBanks become legally obligated by the terms of the instrument to repay a specific amount of money, at a specific point in time, at a specified rate of interest. In practice, the FHLBanks receiving the proceeds of the issuance assume the obligation to service the principal and interest payments for that issuance on behalf of all of the FHLBanks. Interest payments on bonds usually are made twice a year. Because the Bank Act specifies that the FHLBanks are jointly and severally liable on the consolidated obligations issued by the Finance Board for the benefit of the FHLBanks, each FHLBank is liable for the repayment of the entire debt, including the interest payments, for each consolidated obligation. Consolidated obligations are sold in book entry form. The owner of the bond, note or debenture has no certificate, and there is no trust indenture associated with the issuance. Standard & Poors and Moody's are the two primary rating services that rate bonds. The rating services have developed a letter ranking system to indicate their assessment of the likelihood of default of the instruments rated. Bonds rated AAA by Standard & Poors and Aaa by Moodys are the highest quality debt obligations. All consolidated obligation bonds are rated AAA or Aaa.

[2] *See County of Orange, et al.* v. *Federal Home Loan Bank of Boston, et al.*, Case No. SA VC 97–122–GLT (C.D. Cal.). *See also County of Orange et al.* v. *Bear Stearns, & Co., et al.*, Case No. SA CV 98–0527–GLT, *et al.* (C.D.Cal.) (Order granting good faith settlement determinations entered November 30, 1998.) (Orange County agreed to drop all claims against the FHLBank System in connection with a settlement reached with Merrill, Lynch & Co. The FHLBanks, Office of Finance, and United States deny any wrongdoing and will not pay any amount in connection with the settlement.)

have caused at least one FHLBank to suggest that it would be beneficial to clarify how the joint and several financial responsibility for the consolidated obligations would be allocated among the FHLBanks if a FHLBank were to experience a payment problem. The Finance Board believes that it is prudent to clarify for holders of COs how they will benefit from the statutory joint and several liability of the FHLBanks set forth in section 11 of the Bank Act and to clarify for the FHLBanks how their joint and several obligation would operate. The Finance Board also believes it is important to emphasize the Finance Board's intent that holders of COs will never experience an interruption in the flow of interest or principal payments. The regulatory proposal is designed to prevent delinquency in payment, to establish a payment priority system, and to specify as a regulatory matter that the Finance Board has ultimate authority and discretion at any time to call on any FHLBank to make those payments.

The Finance Board cannot and does not seek to alter the statutory joint and several liability of the FHLBanks for COs. Rather, pursuant to its authority to ensure that the FHLBanks remain able to raise funds in the capital markets and to adjust the relative equities among the FHLBanks in connection with the issuance of COs, see 12 U.S.C. 1422a(a)(3)(B)(iii) and 1431(d), the Finance Board is proposing to establish a procedure to assure timely interest and principal payments on COs and a system of priorities among the FHLBanks under which the assets of a FHLBank participating in the proceeds of a consolidated obligation issuance would be applied first toward the satisfaction of that consolidated obligation before the assets of any other FHLBank would be reached.

II. Statutory and Regulatory Background

The Finance Board, consistent with its primary duty to ensure that the FHLBanks operate in a financially safe and sound manner, must ''ensure that the FHLBanks remain adequately capitalized and able to raise funds in the capital markets.'' See 12 U.S.C. 1422a(a)(3)(A) and (3)(B)(iii). Pursuant to the authority set forth in sections 11(b) and (c) of the Bank Act, the Finance Board may issue consolidated FHLBank debentures or bonds which ''shall be the joint and several obligations of all the Federal Home Loan Banks, and shall be secured and be issued upon such terms and conditions as the [Finance] Board may prescribe.'' See 12 U.S.C. 1431(b) and (c). Moreover, section 11(d) of the Bank Act provides that the Finance Board shall have full power to require the FHLBanks to ''deposit additional collateral or to make substitutions of collateral or to adjust equities between the Federal Home Loan Banks.'' 12 U.S.C. 1431(d).

The FHLBanks collectively are the sole obligor on COs. The Bank Act makes clear that COs are not the obligations of and are not guaranteed by the United States. See 12 U.S.C. 1435. Congress underscored this important precept when it enacted the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, which provides in pertinent part:

> This chapter may not be construed as obligating the Federal Government, either directly or indirectly, to provide any funds to * * * the Federal Home Loan Banks, or to honor, reimburse, or otherwise guarantee any obligation or liability of the * * * Federal Home Loan Banks. This chapter may not be construed as implying that any such * * * Bank, or any obligations or securities of such * * * Bank, are backed by the full faith and credit of the United States.

Pub. L. 102–550, 106 Stat. 3944, tit. XIII, sec. 1304 (Oct. 28, 1992), codified at 12 U.S.C. 4503.

The issuance of COs is governed by Finance Board regulations set forth in 12 CFR Parts 910 and 941. The Finance Board sets the general parameters for the issuance of COs through periodic debt authorizations. See, e.g., Finance Board Res. No. 98–59 (Dec. 2, 1998).

As originally enacted in 1932, section 11 of the Bank Act made no provision for the Finance Board's predecessor, the FHLBB, to issue COs on behalf of the FHLBanks. Section 11 permitted the FHLBanks, under certain conditions, to issue debt individually or in concert with one or more other FHLBanks. In all cases, as originally enacted, section 11 required that ''the [FHL]Banks shall be jointly and severally liable for the payment when due of all bonds and debentures, and of notes and other obligations issued by any [FHL]Bank.'' 12 U.S.C. 1431 (1932). The FHLBanks were permitted to make agreements to ensure the payment of such obligations, so long as the agreements did not restrict in any way the FHLBanks' joint and several liability. Thus, under the original statutory scheme, the FHLBanks were jointly and severally liable for the debt of any FHLBank and were required (subject to the rules, regulations and orders of the FHLBB) to make provisions for the payment of their obligations on the bonds, etc., so long as there was no restriction on the joint and several liability of the FHLBanks. To date, no FHLBank has issued any debt instrument in the capital markets. See H.R. Rep. No. 1922, 73rd Cong., 2d Sess., at 72–74 (1934).

In 1934, Congress amended section 11 of the Bank Act to give the FHLBank System more ready access to the capital markets. Section 503 of the National Housing Act of 1934 amended section 11 of the Bank Act to authorize the FHLBB to issue consolidated obligations on which the FHLBanks would be jointly and severally liable. 12 U.S.C. 1431(b) and (c). The constraints on the FHLBanks' power to issue debt contained in section 11 as originally enacted were replaced by a provision that made the FHLBanks' power to issue debt ''generally subject to the rules and regulations prescribed by the Federal Home Loan Bank Board.'' 12 U.S.C. 1431 (1932). The 1934 amendments also eliminated the requirement that the FHLBanks must be jointly and severally liable for any individual FHLBank's issuance. Section 11 as it reads now is essentially unchanged from the 1934 amendments.

Sections 11(b) and (c) of the Bank Act provide that every consolidated obligation ''shall be the joint and several liability of all [FHL]Banks. * * *'' See 12 U.S.C. 1431(b) and (c). The imposition of joint and several liability means that each FHLBank is an obligor on every consolidated obligation; that is, each FHLBank is bound jointly with all other FHLBank-obligors and is liable separately for the entire obligation.[3] The legal effect of joint and several liability is that a ''creditor may sue one or more of the parties to such liability separately, or all of them together at his option.''[4]

Pursuant to the statutory authority recited above, the Finance Board has promulgated regulations governing the issuance of consolidated obligations. In 1989, Congress authorized the Finance Board to maintain the Office of Finance, a joint office of the FHLBanks, and to delegate the ministerial functions associated with the issuance of the consolidated obligations. See 12 U.S.C. 1422b(b)(1) and (2). See also Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, 103 Stat. 183, tit. VII, sec. 702, Aug. 9, 1989. Accordingly, the Finance Board delegated to the Office of Finance the authority to issue consolidated obligations under section 11 of the Bank Act subject to Finance Board regulations, resolutions or

[3] See Williston & Jaeger, 2 A Treatise on the Law of Contracts § 316 (3d ed., 1959).

[4] See Black's Law Dictionary 751 (5th ed. 1979). ''On such a contract each obligor is liable severally or jointly with his co-obligors for all of the damages caused by a breach. There is, therefore, one more cause of action than there are obligors.'' *Id.*

policies. See 12 CFR 900.30. The operations of the Office of Finance are governed by regulations promulgated by the Finance Board in 12 CFR Part 941.

The issuance of the consolidated obligations is governed by the regulations set forth in 12 CFR Parts 910 and 941. The Finance Board also adopted a regulation that provides for a leverage limit on the issuance of consolidated obligations. The rule prohibits the issuance of senior bonds where immediately following such issuance the aggregate amount of senior bonds and unsecured, senior liabilities would exceed twenty times the total paid-in capital stock, retained earnings, and reserves (exclusive of loss and deposit reserves required pursuant to section 1431(g) of all of the FHLBanks).[5] Additionally, the Finance Board promulgated a regulation requiring the FHLBanks to maintain certain assets at all times free of lien or pledge (the so-called ''negative pledge'' requirement) to ensure sufficient collateralization of the consolidated obligations.[6] Since the Finance Board was authorized to issue consolidated obligations on which the FHLBanks are jointly and severally liable, no FHLBank has defaulted on any principal or interest payment.

Under the present system, a FHLBank that needs funds for its operations contacts the Office of Finance to begin negotiations with one or more of the numerous broker-dealers who have been pre-screened and qualified by the Office of Finance to purchase and resell consolidated obligations in the capital markets. Once the parties are in agreement on the terms of the obligation, offering documents are prepared and the Office of Finance issues instructions for the delivery of the consolidated obligation to, and simultaneous receipt of the proceeds from, the purchaser through the electronic payment system operated by the Federal Reserve Bank of New York (''FEDWIRE''). A ''Master Fiscal Agency Agreement'' is in place between the FHLBanks and the Board of Governors of the Federal Reserve System for this purpose. The Office of Finance has an account at the Federal Reserve Bank of New York (NY Fed) that is used to effect delivery and payment transactions. Pursuant to FEDWIRE instructions from the Office of Finance, the NY Fed credits OF's account with the proceeds of a consolidated obligation issuance. Likewise, the NY Fed debits OF's account for interest and principal payments on a consolidated obligation. (In some cases, more than one FHLBank may participate in an issuance, and is entitled to the proceeds in the proportions agreed upon, and required to make principal and interest payments accordingly.) At the end of each business day, the OF nets the proceeds against the principal and interest payments due for each participating FHLBank. While a participating FHLBank is obligated to make the principal and interest payments on its consolidated obligations, all FHLBanks, by law, are jointly and severally liable for the interest and principal payments on all consolidated obligations, which is stated on the face of the Offering Circular.

The likelihood of a delinquency or default on a consolidated obligation has been and continues to be extremely remote. In order to avoid the possibility of such delinquency or default on a consolidated obligation, however remote, the Finance Board believes it is important to adopt a regulation that will codify the authority of the Finance Board to act promptly to intercede before any substantial deterioration of a FHLBank's earnings, and to ensure the continued timely servicing of any and all COs. To the maximum extent possible under the law, holders of consolidated obligations will have first priority in any payment plan. The FHLBanks that participate in a consolidated obligation will be called upon to use all of their available assets to make good on their payment obligations. Any non-participating FHLBank that makes an interest payment or otherwise makes good on a consolidated obligation shall be entitled to reimbursement from the participating FHLBanks and all other FHLBanks as the Finance Board determines pursuant to this proposed rule.

III. Analysis of Proposed Rule

In furtherance of the Finance Board's duties to ensure that the FHLBanks operate in a safe and sound manner and are able to obtain funding in the capital markets, the proposed rule sets forth the means by which the Finance Board will apportion the joint and several liability on consolidated obligations among the FHLBanks. The proposed rule would establish a process by which the Finance Board would look first to the assets of a FHLBank that received the proceeds of a consolidated obligation to make the principal and interest payments on that consolidated obligation, and defines such a FHLBank as a ''participating FHLBank'' for purposes of that issuance. The proposed rule would define a FHLBank that projected a net loss, non-compliance with statutory and regulatory liquidity requirements set forth in section 11 of the Bank Act, 12 U.S.C. 1431(g), and section III of the Finance Board's Financial Management Policy (FMP), or an inability to service the interest and principal payments due on the consolidated obligations in which it was a participating FHLBank as a ''non-performing FHLBank.'' The proposed rule would require each FHLBank to submit quarterly certifications to the Finance Board regarding the consolidated obligations in which the FHLBank is a participating FHLBank. Each participating FHLBank must certify quarterly that it will not suffer a net loss, will remain in compliance with the statutory and regulatory liquidity requirements set forth in section 11 of the Bank Act, 12 U.S.C. 1431(g), and the FMP, and will remain capable of satisfying all consolidated obligation payments due in the next quarter. The proposed rule further provides that any participating FHLBank that cannot so certify shall file a consolidated obligation payment plan with the Finance Board specifying the measures the FHLBank will undertake to fully and timely meet its payment obligations. The proposed rule would require a non-performing FHLBank to refrain from incurring non-essential expenses, paying dividends or redeeming stock until its plan has been approved by the Finance Board or all of its consolidated obligation payment obligations for the quarter have been satisfied. The proposed rule would require a non-performing FHLBank to apply all of its assets to meet its consolidated obligation payments. Furthermore, the proposed rule would codify the authority of the Finance Board to

[5] The following definitions apply to the leverage limit provisions: ''(b) 'Consolidated bonds' means bonds or notes issued on behalf of all [FHL]Banks. (c) 'Senior bonds' means consolidated bonds issued pursuant to 12 U.S.C. 1431 and this part and not defeased, other than bonds specifically subordinated to any then outstanding consolidated bonds. (d) 'Unsecured, senior liabilities' means all obligations of the Banks recognized as a liability under Generally Accepted Accounting Principles, except (1) Liabilities that are covered by a perfected security interest; (2) Consolidated bonds; (3) Bonds issued pursuant to 12 U.S.C. 1431(a); and (4) Allowances for losses for off-balance sheet obligations.'' 12 CFR 910.0(b)–(d).

[6] See 12 CFR 910.1(c). ''The [FHL]Banks shall at all times maintain assets of the following types, free from any lien or pledge, in a total amount at least equal to the amount of senior bonds outstanding: (1) Cash; (2) Obligations of or fully guaranteed by the United States; (3) Secured advances; (4) Mortgages as to which one or more [FHL]Banks have any guaranty or insurance, or commitment therefore, by the United States or any agency thereof; (5) Investments described in section 16(a) of the Bank Act, as amended (12 U.S.C. 1436(a)); and (6) Other securities which have been assigned a rating or assessment by a major nationally recognized securities rating agency that is equivalent to or higher than the rating or assessment assigned by such agency or senior bonds outstanding. (Proviso omitted.)''

require any other FHLBank to make any such payment; and provide for any FHLBank making consolidated obligation payments on behalf of a non-performing FHLBank to receive reimbursement.

The proposed rule would add two new definitions to section 910.0—''Participating Federal Home Loan Bank,'' and ''Non-performing Federal Home Loan Bank.'' The proposed rule would also add a new section 910.7. Section 910.7(a) would state the joint and several liability of the FHLBanks and the duty of the FHLBanks to give priority to consolidated obligation payments. Proposed section 910.7(b)(1) would require quarterly certification by each FHLBank to the Finance Board that the FHLBank will not suffer a net loss, will remain in compliance with the statutory and regulatory liquidity requirements set forth in section 11 of the Bank Act, 12 U.S.C. 1431(g), and the FMP, and will remain capable of servicing all of its consolidated obligation payments due during that quarter. Section (b)(2) would require a participating FHLBank to report immediately any projected net loss, inability to service its consolidated obligations, or any non-compliance with the statutory and regulatory liquidity requirements. The proposed rule in section (b)(3) would codify the authority of the Finance Board to require a FHLBank to file a report pursuant to section (b)(2) under certain circumstances. Under section (c) of the proposed rule any FHLBank projecting or experiencing an inability to service its current consolidated obligations would be required to submit a consolidated obligation payment plan to the Finance Board and would be required to refrain from incurring non-essential operating expenses, declaring or paying dividends, or redeeming any stock, until its consolidated obligation payment plan is approved by the Finance Board and its consolidated obligation payment obligations are satisfied. In the remote event that any participating FHLBank would be unable, due to actual or projected cash flow or balance sheet deficiencies, to service such consolidated obligations, section (d) of the proposed rule provides that the Finance Board would order one or more other FHLBanks to make such payments. The non-performing FHLBank would be liable to those other FHLBanks for reimbursement. The Finance Board would look to the assets of the non-performing FHLBank for reimbursement of such payments.

Under section (e) of the proposed rule, the reallocation of the payment obligations among the other FHLBanks would be based on the pro rata participation of each FHLBank in all consolidated obligations outstanding as of the most recent month end for which the Finance Board has data. The reallocation (as opposed to payments that may be ordered by the Finance Board) would occur only after the non-performing FHLBank had applied all of its assets to service any consolidated obligation. Finally, section (f) of the proposed rule codifies the authority of the Finance Board to act if the inability of any FLHBank to service its consolidated obligations cannot be cured promptly.

IV. Regulatory Flexibility Act

The proposed rule applies only to the FHLBanks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

This proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 350, *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 910

Consolidated bonds and debentures, Federal home loan banks, Securities.

For the reasons stated in the preamble, the Finance Board proposes to amend 12 CFR part 910 as follows:

PART 910—CONSOLIDATED BONDS AND DEBENTURES

1. Revised the authority citation for part 910 to read as follows:

Authority: 12 U.S.C. 1422a, 1422b and 1431.

2. Amend § 910.0 by adding paragraphs (e) and (f) to read as follows:

§ 910.0 Definitions.

* * * * *

(e) *Participating Federal Home Loan Bank* means the Federal Home Loan Bank or Banks that received proceeds from the sale of a consolidated obligation issued by the Board pursuant to section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431).

(f) *Non-Performing Federal Home Loan Bank* means any participating Federal Home Loan Bank that fails to certify pursuant to § 910.7(b)(1) of this part that it is able to pay principal and interest payments when due, that fails to make such payments when due, that fails to file a plan with the Board to meet its obligations on consolidated obligations, that is required by the Board pursuant to § 910.7(b)(3) of this part to file a report, or that is determined by the Board to require assistance in meeting its obligations on consolidated obligations.

3. Add § 910.7 to read as follows:

§ 910.7 Joint and several liability

(a) *In general.* (1) Each and every Federal Home Loan Bank, individually and collectively, has a duty to make full and timely payment of all principal and interest on consolidated obligations when due.

(2) Each and every Federal Home Loan Bank individually and collectively shall ensure that the timely payment of principal and interest on all consolidated obligations is given priority over, and is paid in full in advance of any payment to or redemption of shares from any shareholder, or any other creditor not entitled by law or contract to priority over or parity with the holder of consolidated obligations.

(b) *Certification and Reporting.* (1) Before the end of each calendar quarter, and before declaring or paying any dividend for that quarter, the President of each Federal Home Loan Bank shall certify in writing to the Finance Board that the Federal Home Loan Bank will not suffer a net loss, will remain in compliance with the statutory and regulatory liquidity requirements set forth in section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431(g)), and the Board's Financial Management Policy, and will remain capable of making full and timely payment of all interest and principal payments on consolidated obligations coming due during the upcoming quarter, in which such Federal Home Loan Bank is a participating Federal Home Loan Bank (as defined in § 910.0(e) of this part).

(2) A Federal Home Loan Bank shall report immediately to the Board if at any time:

(i) The Federal Home Loan Bank is unable to provide the certification required in paragraph (b)(1) of this section;

(ii) Subsequent to providing the certification required in paragraph (b)(1) of this section, the Federal Home Loan Bank projects that it will incur a net loss, fail to comply with statutory and regulatory liquidity requirements, or will be unable to timely and fully service consolidated obligations in which the Federal Home Loan Bank is

a participating Federal Home Loan Bank due during the quarter;

(iii) The Federal Home Loan Bank actually incurs a net loss, fails to comply with statutory and regulatory liquidity requirements, or will be unable to timely and fully service consolidated obligations in which the Federal Home Loan Bank is a participating Federal Home Loan Bank due during the quarter.

(iv) The report shall be accompanied by the consolidated obligation payment plan referenced in paragraph (c) of this section.

(3) If at any time the Board has reason to believe that a Federal Home Loan Bank will incur a net loss, cease to be in compliance with the statutory and regulatory liquidity requirements, or will lack the capacity to timely and fully service its consolidated obligations, the Board may require such Federal Home Loan Bank to file a report pursuant to paragraph (b)(2) of this section.

(c) *Consolidated obligation payment plans.* (1) If a participating Federal Home Loan Bank becomes a non-performing Federal Home Loan Bank (as defined in § 910.0(f) of this part) as a result of failing to provide the certification required in paragraph (b)(1) of this section, that Federal Home Loan Bank shall, prior to the beginning of the quarter in which the shortfall is estimated to occur, submit a ''consolidated obligation payment plan.'' A consolidated obligation payment plan shall specify the measures the non-performing Federal Home Loan Bank will undertake to make full and timely payments of all principal and interest consolidated obligation payments due during the quarter.

(2) A Federal Home Loan Bank submitting a report pursuant to paragraphs (b)(2) or (b)(3) of this section, shall at the same time submit a consolidated obligation payment plan as described in paragraph (c)(1) of this section.

(3) A non-performing Federal Home Loan Bank shall refrain from incurring any non-essential expenses, from declaring or paying dividends, and from redeeming any capital stock, until such time as the Board has approved the Federal Home Loan Bank's consolidated obligation payment plan or ordered another remedy, and all of the non-performing Federal Home Loan Bank's consolidated obligation payments have been brought current.

(d) *Board payment orders.* (1) The Board, in its discretion, may order any Federal Home Loan Bank to make any principal or interest payment due on any consolidated obligation.

(2) To the extent that a Federal Home Loan Bank is ordered by the Board to make, or otherwise by agreement makes, any payment on any consolidated obligation in excess of its obligations as a participating Federal Home Loan Bank, the Federal Home Loan Bank shall be entitled to reimbursement from the non-performing Federal Home Loan Bank (which shall have a corresponding obligation to reimburse the Federal Home Loan Bank providing assistance) to the extent of such payment and other associated costs, including reasonable interest.

(e) *Adjustment of equities.* (1) Any non-performing Federal Home Loan Bank shall apply its assets to fulfill its consolidated obligations payment obligations, which shall include reimbursement (including reasonable interest) to any Federal Home Loan Bank that has made payments on behalf of the non-performing Federal Home Loan Bank, whether by agreement with the non-performing Federal Home Loan Bank or by order of the Board.

(2) If the assets of a non-performing Federal Home Loan Bank are insufficient to satisfy all consolidated obligation payment obligations set forth in paragraph (e)(1) of this section, then the Board shall allocate the outstanding liability among the remaining Federal Home Loan Banks on a pro rata basis in proportion to each Federal Home Loan Bank's participation in all consolidated obligations outstanding as of the end of the most recent month for which the Board has data.

(f) *Reservation of authority.* Nothing in this section shall affect the Board's ability to take such enforcement or other action against any Federal Home Loan Bank pursuant to the Board's authority under the Federal Home Loan Bank Act or otherwise to supervise the Federal Home Loan Banks and ensure that they are operated in a safe and sound manner.

Dated: January 27, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–3407 Filed 2–10–99; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–79]

Proposed Establishment of Class E Airspace; Waverly, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Waverly, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 07, a GPS SIAP to Rwy 25, and a Nondirectional Beacon (NDB) SIAP to Rwy 25, have been developed for Pike County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to create controlled airspace at Pike County Airport to accommodate the approaches.

DATES: Comments must be received on or before March 31, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–79, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–79.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Waverly, OH, to accommodate aircraft executing the proposed GPS Rwy 07 SIAP, GPS Rwy 25 SIAP, and NDB Rwy 25 SIAP, at Pike County Airport by creating controlled airspace at the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 712 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

AGL OH E5 Waverly, OH [New]

Waverly, Pike County Airport, OH
(lat. 39°10′00″ N., long. 82°55′45″ W.)

That airspace extending upward from 700 feet above the surface within an 8.8-mile radius of the Pike County Airport and within 3.9 miles each side of the 242° bearing from the airport extending from the 8.8-mile radius to 9.8 miles southwest of the airport and 5.0 miles each side of the 064° bearing from the airport extending from the 8.8-mile radius to 9.6 miles northeast of the airport.

* * * * *

Issued in Des Plaines, Illinois, on January 27, 1999.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 99–3362 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulations No. 4]

RIN 0960–AE35

Reduction of Disability Benefits—Workers' Compensation and Public Disability Benefits and Payments; Withdrawal of Proposed Rules

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rules; withdrawal.

SUMMARY: We are, with this document, withdrawing the proposed rule changes published on Thursday, September 4, 1997, at 62 FR 46682. That publication proposed changes to our rules on the reduction of Social Security benefits based on disability when an individual is receiving workers' compensation benefits or disability benefits or payments provided under another Federal program other than Social Security, or under a State, or local program. We proposed changes that would have clarified a number of our existing policies and would have adopted a uniform method for prorating workers' compensation and public disability benefit and payment settlements.

DATES: Proposed rule changes to 20 CFR 404.408 are withdrawn on February 11, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Social Insurance Specialist, Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–0001, (410) 965–3298 or TTY (410) 966–5609 for information about this action. For information on eligibility or claiming benefits, please call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: The proposed rules published September 4,

1997, at 62 FR 46682, provided for a 60-day period during which the public could submit comments. That period ended November 3, 1997. Due to the number of comments received, on November 12, 1997, at 62 FR 60672, we extended the public comment period to January 5, 1998. Altogether we received over 1,400 comments, almost all of which expressed opposition to the proposed changes.

Because of the information provided in the comments, we have decided to reconsider this proposal and to withdraw the proposed rules. We thank all those who took the time to submit comments to us.

Dated: February 1, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 99–3303 Filed 2–10–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170

Notice of the Proposed Membership of the Negotiated Rulemaking Committee Under Section 1115 of the Transportation Equity Act for the 21st Century (TEA–21)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: As required by the Negotiated Rulemaking Act, the Secretary of the Interior has selected the proposed member of a committee to develop proposed rules for the Indian Reservation Roads program. Tribes in each of the twelve Bureau of Indian Affairs (BIA) Areas were invited to nominate two representatives and two alternates to serve on the committee. After considering nominations, the Secretary proposes to appoint the persons named in this notice as committee members. Tribes, tribal organizations, and individual tribal members who believe that their interests will not be adequately represented by the persons identified in this notice may submit comments on the proposed selection, apply for membership on the committee, or submit other nominations.

DATES: Comments on the proposed committee membership to this negotiated rulemaking committee must be received no later than March 13, 1999.

ADDRESSES: Send nominations and comments to Mr. LeRoy Gishi, Chief, Division of Transportation, Bureau of Indian Affairs, U.S. Department of the Interior, MS–4058–MIB, 1849 C Street NW, Washington, DC 20240. Nominations and comments received by the BIA will be available for inspection at the address listed above from 9:00 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy Gishi, Chief, Division of Transportation, Bureau of Indian Affairs, at the address listed above, or by telephone at (202) 208–4359 or fax at (202) 208–4696. Additional information may be posted on the Indian Reservation Roads web site at www.irr.bia.gov, as it becomes available.

SUPPLEMENTARY INFORMATION: As required by 23 U.S.C. section 202, as amended by TEA–21, the Secretary shall, pursuant to a negotiated rulemaking process, issue regulations governing the Indian Reservation Roads program and establish a formula for allocating all contractible funds among Indian tribes for fiscal year 2000 and subsequent years. Section 202 also requires that in establishing this committee, the Secretary will (1) apply the procedures of negotiated rulemaking under subchapter III of chapter 5 of title 5 (the Negotiated Rulemaking Act) in a manner that reflects the unique government-to-government relationship between the Indian tribes and the United States, and (2) ensure that the membership of the committee includes only representatives of the Federal Government and of geographically diverse small, medium, and large Indian tribes.

In negotiating a proposed regulation establishing a funding formula, the committee will base its proposal on factors that reflect (a) the relative needs of the Indian tribes, and reservation or tribal communities, for transportation assistance, and (b) the relative administrative capacities of, and challenges faced by, various Indian tribes, including the cost of road construction in each BIA Area, geographic isolation and difficulty in maintaining all-weather access to employment, commerce, health, safety, and educational resources. Also, the committee will develop a regulation governing the Indian Reservation Roads program.

The Secretary invites organizations and individuals to comment on the nominations in this notice or nominate other persons for membership on the committee. The Secretary intends that the proposed committee (including any additional members selected) reflect balanced interests as follows:

(1) Members of geographically diverse small, medium, and large Indian tribes;

(2) Members of tribes identified as Direct Service, Self-Determination and Self-Governance tribes; and

(3) Members of tribes with various levels and types of experience in the diverse concerns of transportation development and management (e.g., jurisdictional issues, complexity of transportation systems, climatic concerns, environmental issues, geographic isolation, etc.).

The Secretary has determined that the proper functioning of the committee requires more than the 25 members recommended by the Negotiated Rulemaking Act (5 U.S.C. 565) in order to achieve balanced representation from geographically diverse small, medium, and large Indian tribes as required by Section 1115 of TEA–21. The Secretary has selected 29 tribal representatives and 13 Federal representatives for the committee, for a proposed total of 42 members. The first meeting of the committee is tentatively scheduled for March 16–18, 1999. The following membership for the committee is proposed:

Federal Representatives

Robert Baracker, Designated Federal Official, BIA Albuquerque Area Office
LeRoy Gishi, Chief, BIA Division of Transportation
Justin P. Patterson, Assistant Solicitor, Office of the Solicitor
(One representative), BIA Juneau Area Office
Cordell Ringel, Area Road Engineer, BIA Billings Area Office
Wilfred Frazier, Area Road Engineer, BIA Navajo Area Office
Vernon Palmer, Area Road Engineer, BIA Phoenix Area Office
Robert Ecoffy, Superintendent, Pine Ridge Agency, BIA Aberdeen Area Office
Joel Smith, Superintendent, Minnesota Agency, BIA Minneapolis Area Office
Mike Smith, Assistant Area Director, BIA Sacramento Area Office
(Three representatives) Department of Transportation

Representatives of Tribes, Tribal Organizations, and Individual Indians

ABERDEEN AREA
Pete Red Tomahawk, Transportation Planner
Standing Rock Sioux Tribe
Fort Yates, ND
Ted Danks, Transportation Planner
Three Affiliated Tribes of Mandan, Arikara and Hidatsa
New Town, ND

Alternates:
Fern Peltier, Transportation Planner
Turtle Mountain Band of Chippewa Indians
Belcourt, ND
Diane Zephier, Transportation Planner
Oglala Sioux Tribe
Pine Ridge, SD
ALBUQUERQUE AREA
Edward Little, Director, Indian Pueblos Federal Development Corp.
All Indian Pueblo Council
Albuquerque, NM
James Mark Wright, Tribal Roads Engineer
Jicarilla Apache Tribe
Dulce, NM
David Wyaco, Sr, Tribal Council
Pueblo of Zuni
Zuni, NM
Alternates:
Delfino Calabaza, AIPC Program Administrator
Pueblo of Santo Domingo
Santo Domingo Pueblo, NM
Robert Goffinett, Tribal Transportation Director
Ute Mountain Ute Tribe
Towaoc, CO
ANADARKO AREA
Chuck Tsoodle, Tribal Roads & Transit Director
Kiowa Tribe of Oklahoma
Carnegie, OK
Tim Ramirez, Tribal Roads Director
Prairie Band of Potawatami Nation
Mayetta, KS
Alternates:
Bill Tall Bear, Program Coordinator-Transportation Planner
Cheyenne-Arapaho Tribes of Oklahoma
Concho, OK
John Barrett, Chairman
Citizen Potawatomi Nation
Shawnee, OK
BILLINGS AREA
John Smith, Transportation Planner
Shoshone & Arapaho Tribes
Fort Washakie, WY
Norma Gorneau, Vice Chair
Northern Cheyenne Tribe
Lame Deer, MT
Alternates:
John Healy, Transportation Planner
Fort Belknap Tribes
Harlem, MT
Caleb Shields, Tribal Council
Ft. Peck Tribe
Poplar, MT
EASTERN AREA
Eddie Tullis, Tribal Chairman
Poarch Band of Creek Indians
Atmore, AL
Jody Clark, Transportation Manager
Seneca Nation of Indians
Salamanca, NY
Alternates:
Johnson Owle, Transportation Planner
Eastern Band of Cherokee Indians
Cherokee, NC
Clifford Francis, Tribal Council
Pleasant Point Passamaquoddy
Perry, ME
JUNEAU AREA
Loretta Bullard, President
Kawarek, INC.
Nome, AK
Al Ketzler Sr., Chief Administrative Officer
Tanana Chiefs Conference
Fairbanks, AK
Gideon James, Tribal Operations Director
Native Village of Venetie Tribal Government
Venetie, AK
Alternates:
Dugan Nielsen, Director, Land & Resources
Bristol Bay Native Association
Dillingham, AK
Edward Thomas, President
Central Council Tlingit and Haida Indian Tribes of Alaska
Juneau, AK
MINNEAPOLIS AREA
Jim Garrigan, Director of Tribal Roads
Red Lake Band of Chippewa Indians
Red Lake, MN
Mike Christensen, Tribal Roads Committee
Lac Du Flambeau Chippewa
Lac du Flambeau, WI
Alternates:
Bruce Danforth, Public Works Area Manager
Oneida Nation
Oneida, WI
John Stewart, Tribal Engineer
Prairie Island Indian Community
Welch, MN
MUSKOGEE AREA
George Almerigi, Second Chief
Muskogee Creek Nation
Okmulgee, OK
Everett Waller, Councilman
Osage Nation
Pawhuska, OK
Alternates:
Robert Endicott, Transportation Planner
Cherokee Nation
Tahlequah, OK
Rebecca Torres, Chief
Alabama Quassarate Tribal Town
Henryetta, OK
NAVAJO AREA
Sampson Begay, Tribal Council
Navajo Nation
Window Rock, AZ
Andrew Simpson, Tribal Council
Navajo Nation
Window Rock, AZ
Alternates:
Alfred Yazzie, Navajo Nation Council
Navajo Nation
Window Rock, AZ
Thomas Christie, Department of Justice
Navajo Nation
Window Rock, AZ
PHOENIX AREA
Alex Cabello, Councilman
Hualapai Tribe
Peach Springs, AZ
Robyn Burdette, Chairperson
Summit Lake Paiute Tribe
Winnemucca, NV
Wade Large, Asst. Economic Development Director
Uintah & Ouray Ute Tribe
Fort Duchesne, UT
Alternates:
Cecil Antone, Lieutenant Governor
Gila River Indian Community
Sacaton, AZ
Rita Martinez, Councilwoman
Tohono O ''odham Nation
Sells, AZ
PORTLAND AREA
Michael Marchand, Colville Business Council
Confederated Tribes of Colville Indians
Nespelem, WA
Dave Whitener, Chairman
Squaxin Island Tribe
Shelton, WA
Della Cree, Community Development Planner
Nez Perce Tribe
Lapwai, ID
Alternates:
Andy Kampkoff, Construction Manager
Lummi Indian Business Council
Bellingham, WA
Mike Clement, Economic Development Manager
Confederated Tribes of Warm Springs
Warm Springs, OR
SACRAMENTO AREA
Anthony Largo, Spokesman
Santa Rosa Indian Reservation
Hemet, CA
Mervin Hess, Chairperson
Bishop Indian Reservation
Bishop, CA
Vlayn McCovey, Council Member
Yurok Tribe
Eureka, CA
Alternates:
Mac Hayward, Public Works Director
Redding Rancheria
Redding, CA
Randolph Feliz, Tribal Vice Chair
Hopland Band of Pomo Indians
Hopland, CA

If you believe that your interests will not be adequately represented by any person identified in the committee membership, you may apply or nominate another person for membership on the committee. Each application or nomination must include:

(1) The name of the nominee.

(2) The tribal interest(s) to be represented by the nominee (based on the interests listed above).

(3) Evidence that the applicant or nominee is authorized to represent

parties related to the interest(s) the person proposed to represent.

(4) The reasons that the proposed members of the committee identified in this notice do not represent the interests of the person submitting the application or nomination.

(5) Your name, address, telephone number, and the name of the tribe or tribal organization with which you are affiliated.

To be considered, comments and nominations must be received by the close of business on March 13, 1999, at the location indicated in the ''Addresses'' section.

Dated: February 4, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–3301 Filed 2–10–99; 8:45 am]

BILLING CODE 4310–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 164–0112b; FRL–6227–3]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, San Joaquin Valley Unified Air Pollution Control District, Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of oxides of nitrogen (NO_X) emissions from solid fuel fired boilers, steam generators and process heaters within the San Joaquin Valley Unified Air Pollution Control District and from stationary gas turbine operations within the Sacramento Metropolitan Air Quality Management District.

The intended effect of proposing approval of these rules is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received by March 15, 1999.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721.

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION: This document concerns San Joaquin Valley Unified Air Pollution Control District's (SJVUAPCD) Rule 4352, Solid Fuel Fired Boilers, Steam Generators and Process Heaters, and Sacramento Metropolitan Air Quality Management District's (SMAQMD) Rule 413, Stationary Gas Turbines. The SJVUAPCD rule was submitted by the California Air Resources Board (CARB) to EPA on March 26, 1996 and the SMAQMD rule was submitted on May 18, 1998. For further information, please see the information provided in the direct final action which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 14, 1999.

Felicia Marcus,

Regional Administrator, Region 9.

[FR Doc. 99–3144 Filed 2–10–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410, 414, 424, 476, and 498

[HCFA–3002–P]

RIN 0938–AI96

Medicare Program; Expanded Coverage for Outpatient Diabetes Self-Management Training Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide for uniform coverage of outpatient diabetes self-management training services. These services include educational and training services furnished to a beneficiary with diabetes by an entity deemed to meet certain quality standards proposed in this rule. The physician or qualified nonphysician practitioner treating the beneficiary's diabetes would certify that these services are needed as part of a comprehensive plan of care. It sets forth proposed payment amounts that have been established in consultation with appropriate diabetes organizations. It would implement section 4105 of the Balanced Budget Act of 1997.

COMMENT DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on April 12, 1999.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–3002–P, PO Box 31850, Baltimore, MD 21207–8850.

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

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

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

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–3002–P. 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 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Claude Mone, (410) 786–5666, (Conditions for Coverage and Quality Standards); Angela Mason, (410) 786–7452, (Physician Fee Schedule Payments); Joan Brooks, (410) 786–5526 (Accreditation and Deeming).

SUPPLEMENTARY INFORMATION:

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Background

A. Diabetes—Background

1. Prevalence and Costs of Diabetes

In 1997, as reported by the Department of Health and Human Services' Centers for Disease Control and Prevention, (CDC), 15.7 million people in the United States had diabetes, nearly six percent of the United States population (Morbidity and Mortality Weekly Report 4643, 1014–1018, 1997 Center for Disease Control and Prevention). Diabetes is the seventh leading cause of death in the United States, and more than 187,000 persons died from the disease and its related complications in 1995. The American Diabetes Association estimates that $98.2 billion was spent in 1997 on diabetes care ($44.1 billion in costs directly attributable to diabetes and $54.1 billion for indirect medical costs, such as work loss, disability, and premature death.)

Among Americans aged 65 and older, 4 million persons (9.3 percent of this group) are estimated to have diabetes. According to the National Health and Nutrition Examination Survey (NHANES), as many as 18.7 percent of Americans over age 65 are at risk for developing diabetes. The goals in the management of diabetes are to achieve normal metabolic control and reduce the risk of micro and macro-vascular complications. Numerous epidemiologic and interventional studies point to the necessity of maintaining good glycemic control to reduce the risk of the complications of diabetes. Despite this knowledge, diabetes remains the leading cause of blindness, lower extremity amputations, and kidney disease requiring dialysis. Diabetes and its complications are primary or secondary factors in an estimated 9 percent of hospitalizations (Aubert, RE, et al., Diabetes-related hospitalizations and hospital utilization. In: Diabetes in America. 2nd ed. National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Disease, NIH, Pub. No. 95–1468–1995: 553–570). Overall, beneficiaries with diabetes are hospitalized 1.5 times more often than beneficiaries without diabetes. Ten percent of these hospitalizations are a direct result of uncontrolled diabetes, and more than half of these admissions occur in beneficiaries 65 and older (National Hospital Discharge Survey, U.S. National Center for Health Statistics, U.S. Department of Health and Human Services, 1990). In expanding the Medicare program to include outpatient diabetes self-management training services, the Congress intended to empower Medicare beneficiaries with diabetes to better manage and control their conditions. The Conference Report indicates that the conferees believed that ''this provision will provide significant Medicare savings over time due to reduced hospitalizations and complications arising from diabetes.'' (H.R. Conf. Rep. No. 105–217, at 701 (1997)).

2. Classification of Diabetes

Diabetes mellitus is a disease of metabolism presenting as a complex group of syndromes that have in common elevated blood glucose levels. It occurs because the insulin produced by the beta cells of the pancreas is either absent, insufficient, or not used properly by target tissues. As a result, the body is unable to metabolize macronutrients in food in the normal way. Since the body cannot convert glucose into energy, high levels of glucose remain in the blood and spill into the urine, eventually resulting in micro-vascular complications (for example, kidney disease and eye disease) and macro-vascular complications (for example, stroke and ischemic heart disease).

There are two major types of diabetes that affect the Medicare population, Type 1 diabetes, previously called insulin dependent diabetes mellitus, and Type 2 diabetes, previously called non-insulin dependent diabetes mellitus.

B. Medicare Coverage and Payment Before July 1, 1998

1. Medicare Coverage

Before July 1, 1998, Medicare covered diabetes self-management training furnished through outpatient hospital-based programs (Coverage Issues Manual (CIM), HCFA Pub. 6, Section 80–2). Specifically, the CIM provided coverage of diabetes education if the services were furnished under a physician's order by the provider's personnel; and under medical staff supervision to beneficiaries who are registered patients of that provider. We required that the services be closely linked to the care and treatment of the individual beneficiary and provided the beneficiary with essential knowledge that aided in the beneficiary's active participation in his or her own treatment and the skills that enabled self-management.

Finally, all services covered by Medicare had to be reasonable and necessary to treat the beneficiary's diabetes and the referring physician was responsible for maintaining documentation of the necessity of the training program. Section 1862(a)(1)(A) of the Act provides, in pertinent part, that Medicare may pay only for services that are reasonable and necessary for the diagnosis or treatment of illness or injury. In developing the Medicare policy on diabetes self-management, we determined that certain educational services are consistent with the provisions of section 1862(a)(1)(A) of the Act.

2. Medicare Payment

Since 1994, Medicare payment for diabetes education as a separate service has been limited to services furnished in

the hospital outpatient department to the hospital's registered outpatients. These services have been paid under Medicare Part B on a reasonable cost basis. In all other Medicare settings, beneficiary education related to diabetes is treated as an integral part of a direct service if furnished by a physician or nonphysician practitioner or furnished as incident to their services and no separate charge was allowed.

Payment has been made for hospital outpatient diabetes education programs that, at a minimum, teach the beneficiary diet and exercise and blood glucose self-monitoring; establish treatment plans for insulin-dependent beneficiaries; and motivate the beneficiaries to use skills learned to enable them to manage their diabetes. Payment has been made for facility costs associated with the provision of both individual and group education sessions.

C. Recent Legislation

Section 4105(a) of the Balanced Budget Act of 1997 (BBA '97) (Pub. L. 105–33, enacted on August 5, 1997), provides coverage for outpatient diabetes self-management training. Under this coverage, training would include educational and training services furnished in an outpatient setting (according to frequency standards established by the Secretary) to a beneficiary with diabetes by a ''certified provider'' that meets certain quality standards. These services would be covered only if the physician managing the beneficiary's diabetic condition certifies that the services are needed under a comprehensive plan of care in order to provide the beneficiary with the skills and knowledge necessary to help manage his or her diabetes (including skills related to the self-administration of injectable drugs). Services would be paid under the physician fee schedule in amounts established by the Secretary after consultation with appropriate organizations.

The statute states that a ''certified provider'' is a physician, or other individual or entity designated by the Secretary, that, in addition to providing outpatient diabetes self-management training services, provides other items or services for which payment may be made under Medicare. Moreover, the statute requires that a physician or other individual or entity, must meet the quality standards that are established by the Secretary or meet alternative quality standards under the statute. A physician or other individual or entity may be deemed to have met those quality standards by meeting the applicable standards originally established by the National Diabetes Advisory Board and subsequently revised by organizations who participated in the establishment of standards by the Board. Finally, the Secretary may recognize as a certified provider a physician, individual, or entity that is recognized by an organization that represents individuals with diabetes (including Medicare beneficiaries) as meeting standards for furnishing these services.

The legislation also requires that Medicare payment for outpatient diabetes self-management training be made to a certified provider under the physician fee schedule effective July 1, 1998. In addition, it requires the Secretary to consult with appropriate organizations, including organizations representing individuals or Medicare beneficiaries with diabetes in determining a payment amount for diabetes education and training services under the fee schedule. Section 1848 of the Act requires that payments under the physician fee schedule be based on national uniform relative value units (RVUs) based on the resources used in furnishing a service. Section 1848(c) of the Act requires that national RVUs be established for physician work, practice expense, and malpractice expense.

In addition, the law provides expanded coverage for blood glucose monitors and testing strips for all beneficiaries with diabetes. (Medicare previously covered these devices and supplies for only insulin-treated diabetics.) In June of 1998, we announced a national coverage decision concerning blood glucose monitors and testing strips in Program Memorandum B98–26–60. This proposed rule addresses only the coverage of, and payment for, outpatient diabetes self-management training services, and the quality standards that we would require an entity approved to furnish training services to meet.

D. Program Instructions

In June of 1998, we issued a program instruction that partially implemented the outpatient diabetes self-management training benefit beginning July 1, 1998 (PM AB–98–36). In this program memorandum, we indicated that outpatient diabetes self-management training services may be covered under Medicare only if the physician who is managing the beneficiary's diabetic condition certifies that the services are needed under a comprehensive plan of care related to the beneficiary's diabetic condition to ensure therapy compliance or to provide the beneficiary with necessary skills and knowledge in the management of his or her disease.

We stated that for initial implementation of this benefit that we were designating physicians, individuals, or entities that are paid under the physician fee schedule and meet the National Diabetes Advisory Board Standards, now called the National Standards for Diabetes Self-Management Education Programs, recognized by the American Diabetes Association (ADA) as approved entities. In addition, under our existing authority, we would continue to pay hospitals that were paid for diabetes self-management training services before July 1, 1998 under CIM 80–2 until we publish a final rule. Once the final rule is published, we will cover only outpatient diabetes self-management training services to those entities that meet the requirements for coverage as explained in the final rule.

In September of 1998, we issued a program memorandum (PM AB–98–51) that clarified a number of issues that occurred as a result of our June, 1998 memorandum. In this program memorandum, we provided additional information for contractors to facilitate implementation of this provision. We explained that the two new Physician's Current Procedural Terminology codes that must be used for billing outpatient diabetes self-management training.

We also amended the contractor instructions concerning the Education Recognition Program Certificate necessary in order to pay claims. This September 1998 memorandum also advised the contractors to publish a notice to the provider community that these certificates must be sent in before the approved entity submits the first claim rather than with the first claim.

We advised that individual training sessions can be provided for a beneficiary if the beneficiary's physician decides that it is medically necessary (for example, as indicated by language or physical challenges, such as severely impaired hearing or sight). Diabetes training sessions should be billed in 1 hour increments only (that is, 1 hour, 2 hours etc.).

In addition, we restated that a hospital outpatient diabetes self-management training program that does not have an Education Recognition Program Certificate that had been paid by Medicare for these services before July 1, 1998, may continue to be paid on a reasonable cost basis, without obtaining recognition until the final rule is published. An approved entity must forward information to its contractor that it has been paid by the Medicare program for outpatient diabetes self-management training before July 1, 1998. Upon receipt of this information,

the contractor would continue to pay claims for these services. Any new hospital outpatient diabetes self-management training program must have an Education Recognition Certificate showing that it meets the required educational standards.

II. Industry Consultations and Rationale for Policy Changes

As required by statute, we have met individually with representatives of various groups or organizations active in the field of diabetes education and training. These organizations or groups include the ADA, the American Medical Association (AMA), the American Academy of Family Physicians, the Endocrine Society, the American Association of Clinical Endocrinologists, the American Association of Diabetes Educators, the American Dietetic Association, the Health Industry Manufacturers Association, Merck-Medco, the Diabetes Treatment Centers of America, American Pharmaceutical Association, the National Association of Chain Drug Stores, and the National Community Pharmacy Associations. We have also worked extensively with diabetes experts from the CDC and the Department of Veterans Affairs. In addition, we visited a number of diverse hospital-based training programs to obtain an understanding of the current training programs that are available to Medicare beneficiaries. In some cases, multiple meetings were held. Each group was asked to address specific questions that covered all aspects of this regulation and to provide scientific evidence to support each of their responses to these questions. These meetings and the information obtained from them were extremely useful to us. There was a general sense among the industry that there was not conclusive evidence and data on several issues involved in this proposed rule. As a result, the responses of these groups were very diverse and often conflicting. Thus, writing this proposed rule required sifting through available evidence and balancing diverse interests and opinions, with the benefit to the beneficiary, on both an individual and population level, being the major concern.

Despite the importance of the need for diabetes self-management education and abundant scientific literature on how to provide diabetes self-management training, there is no clear consensus on several issues. These issues include critical questions concerning who should provide the training (and the specific qualifications necessary, that is, the proposed requirements for Certified Diabetic Educators), who should receive this training, and how, when, and where this training should be provided. We solicit comments on all these issues and explicitly request any available empirical data describing the impacts of these or alternative requirements on beneficiary health outcomes.

We believe that all of the consulted parties agree that diabetes self-management training is an interactive, collaborative process involving beneficiaries with diabetes, their physician, and their educators. The educational process should provide the beneficiary with the knowledge and skills needed to perform self-care, manage crisis, and make lifestyle changes required to successfully manage the disease. The goal is to enable the beneficiary to become an active participant in his or her diabetes care. It involves a four-step process that includes the following:

(1) Assessment of the beneficiary's educational needs;

(2) Development of an educational plan, based on the individual goals and needs of the beneficiary;

(3) Educational interventions; and

(4) Evaluation of the beneficiary's success in achieving the beneficiary's self-management goals.

Effective diabetes self-management training recognizes that the person with diabetes must be responsible for self-management of his or her disease, and is based on established principles of learning, especially the need for interactive skill-based learning as opposed to only didactic education.

A 1997 GAO report concluded that Medicare beneficiaries with diabetes are not receiving the quality of care needed to manage their diabetes (Most Beneficiaries with Diabetes Do Not Receive Recommended Monitoring Services, GAO/HHS07–48). Following the issuance of the GAO report, and receiving testimony from clinicians, diabetes experts, and other studies, the Congress expanded Medicare coverage to include coverage of monitors and blood glucose test strips, as well as outpatient self-management education and training for beneficiaries with diabetes.

While it is important to increase access to diabetes training for Medicare beneficiaries with diabetes, it is equally important to maintain a level of quality that is at least equal to the programs currently reimbursed by Medicare and to be able to evaluate the effect of these programs. It is through the establishment and maintenance of quality standards for diabetes training that we would promote desired outcomes that result in improved health status for beneficiaries with diabetes.

III. Provisions of the Proposed Rule

A. Diabetes Self-Management Training Services

We are proposing to add a new statutory authority, section 1865(b) of the Act, to paragraph (a) of § 410.1, ''Basis and scope.'' Section 1865(b) permits us to approve and recognize a national accreditation organization and its accreditation program for accrediting an entity to furnish outpatient diabetes self-management training services.

We are proposing a new subpart H in part 410, ''Outpatient Diabetes Self-Management Training Services.'' In § 410.140, we are proposing the following definitions for purposes of this new subpart:

Approved entity means an individual physician or entity accredited by an approved organization to furnish training services and approved by HCFA to furnish and receive Medicare payment for the training services.

Deemed entity means an individual, physician, or entity accredited by an approved organization, but that has not yet been approved by HCFA to furnish and receive Medicare payment for the training. Upon being approved by HCFA to receive Medicare payment for training, HCFA refers to this entity as an ''approved entity.''

Organization means a national accreditation organization.

Training means outpatient diabetes self-management training.

We are proposing in § 410.141(a) that admission into an outpatient diabetes self-management training program would be on the order of the physician (or qualified nonphysician practitioner) treating the beneficiary's diabetes. To ensure access to these services in rural areas we would recognize training services ordered by certain nonphysician practitioners who treat a beneficiary's diabetes and whose services would be covered under Medicare as physician services if furnished by a physician. We would require these nonphysician practitioners to be operating within the scope of the statutory benefit and their authority under State law, or regulations. Nonphysician practitioners who generally meet this definition are physician assistants (section 1861(s)(2)(K)(i) of the Act), nurse practitioners (section 1861(s)(2)(K)(ii) of the Act), clinical nurse specialists (section 1861(s)(2)(K)(iii) of the Act), nurse-midwives (section 1861(s)(2)(L) and 1861(gg) of the Act), qualified psychologists (section 1861(s)(2)(M) of

the Act), and clinical social workers (section 1861(s)(2)(N) of the Act). Patient self-referral would not be covered.

B. Conditions for Coverage

We are proposing that outpatient diabetes self-management training must meet the following conditions (§ 410.141(b)).

1. Physician's Order

Following an evaluation of the beneficiary's need for the training, we would require the physician or qualified nonphysician practitioner who is treating the beneficiary's diabetes to order the training.

2. Plan of Care

We would require the physician or qualified nonphysician practitioner to prepare a comprehensive plan of care that describes the content, number, frequency, and duration of the diabetes self-management training services. The plan would contain a statement, as specified by us, and signed by the physician or qualified nonphysician practitioner who is managing the beneficiary's diabetic condition, that the services described in the plan of care are needed to ensure therapy compliance or to provide the beneficiary with the skills and knowledge to help manage the beneficiary's diabetes. This statement would identify the beneficiary's specific medical conditions (described in § 410.141(d)(1)) that the training program should address. We are proposing that any changes to the plan of care be signed by the physician or nonphysician practitioner treating the beneficiary. In addition, the plan of care would be incorporated into the approved entity's permanent medical record for the beneficiary and be available to us upon request.

3. Reasonable and Necessary Services

We propose that the outpatient diabetes self-management training services be reasonable and necessary for the treatment of the beneficiary's diabetes. Section 1862(a)(1)(A) of the Social Security Act (the Act) provides that Medicare cover only services that are reasonable and necessary for the diagnosis or treatment of a beneficiary's illness or injury. Based on consultation with the industry, we believe that certain outpatient diabetes self-management and training programs are consistent with the reasonable and necessary provisions of section 1862(a)(1)(A) of the Act.

4. Group vs Individual Training Sessions

Except under certain circumstances, we are proposing group training sessions for all beneficiaries consisting of 2 to 20 individuals (all of whom need not be Medicare beneficiaries (§ 410.141(b)(4)). We would cover individual training sessions if no group session is available within 2 months of the physician's order, or if the beneficiary's physician or qualified nonphysician practitioner certifies that he or she has special needs resulting from conditions that would hinder effective participation in a group training session (for example, severe language or physical challenges, such as impaired hearing or sight) (§ 410.70(c)(3)). Within 2 months of a physician's order for outpatient diabetes self-management training services, we would expect that most patients, including those in rural areas, would be able to attend a group session. However, in situations, for example, when there is a geographic barrier that hinders a patient from attending a group session, the regulation would allow for an individual to have an individual training session.

C. Types and Frequency of Training

1. Initial Training

In § 410.141(c)(1), we propose that Medicare cover up to 10 hours of initial outpatient diabetes self-management training within a continuous 12-month period for each beneficiary that meets the conditions described below. In addition, we are proposing that payment would be only for those sessions attended (not for packages of sessions unless there is documentation that the beneficiary attended all sessions (§ 414.62(c)).

2. Additional Training

We propose that a beneficiary who receives the initial training program be eligible for a single follow-up training session of up to one hour each year. (A group session, unless an individual session is needed, is based on the same criteria listed above.) The need for the annual session would be documented by the physician or qualified nonphysician practitioner ordering the services and identify the specific medical conditions (described in § 410.141(d)(1)) that the program must address. The services must be reasonable and necessary. Documentation of any of the criteria that resulted in the initial eligibility would make a beneficiary eligible for the follow-up session. There may be other situations that would qualify a beneficiary for an annual session, for example, a change in physical functional status. We would require that these situations also be documented by the physician or qualified nonphysician practitioner and identified as the situations that make the session reasonable and necessary.

A physician or qualified nonphysician practitioner certifying and monitoring the need for diabetes self-management training would bill for a single evaluation and management code, such as CPT code 99201 (for a new beneficiary when that beneficiary requires a problem focused history, focused examination, and medical decision making) or CPT code 99212 (for an established beneficiary, due to the complexity of monitoring and oversight of care furnished by another provider/site in an offsite setting).

D. Beneficiaries Who May be Covered

1. Medical Conditions

As previously mentioned, the Congress has specifically delegated authority to the Secretary to determine the times and frequency when outpatient diabetes self-management training is appropriate. Since many beneficiaries have longstanding stable diabetes and some beneficiaries have already attended hospital-based outpatient diabetes self-management training, we do not believe that it would be medically reasonable and necessary for all beneficiaries with diabetes to automatically attend self-management training. Therefore, we are proposing in § 410.141(d)(1) that any beneficiary who has any one of the following medical conditions occurring within the 12-month period before the physician's order for the training would be eligible for Medicare coverage for training services from an approved entity:

- New onset diabetes.
- Poor glycemic control as evidenced by a glycosylated hemoglobin (HbA1C) of 9.5 or more in the 90 days before attending the training.
- A change in treatment regimen from no diabetes medications to any diabetes medication, or from oral diabetes medication to insulin.
- High risk for complications based on poor glycemic control; documented acute episodes of severe hypoglycemia or acute severe hyperglycemia occurring in the past year during which the beneficiary needed third party assistance for either emergency room visits or hospitalization.
- High risk based on at least one of the following documented complications:

+ Lack of feeling in the foot or other foot complications such as foot ulcer or amputation.

+ Pre-proliferative or proliferative retinopathy or prior laser treatment of the eye.

+ Kidney complications related to diabetes, such as macroalbuminuria or elevated creatinine.

We are concerned that all beneficiaries with diabetes have access to outpatient diabetes self-management training services while recognizing that certain beneficiaries because of their medical conditions have caregivers. The Medicare statute, however, provides benefits only for services related to the beneficiary. Therefore, we would encourage caregivers to attend the training with the beneficiary or attend separate training, but Medicare payment would be limited to the diabetes self-management training for the beneficiary.

2. Other Conditions

Beneficiaries who are inpatients in a hospital, skilled nursing facility, hospice, or nursing home would not simultaneously be eligible for services under this benefit. It is the responsibility of the facility staff at these facilities to provide effective disease management instruction as part of the basic care and treatment furnished to the beneficiary while the beneficiary is an inpatient of that facility.

If outpatient diabetes self-management training services are furnished in a Federally qualified health center (FQHC) or a rural health center (RHC) setting by a nonphysician practitioner, the services would be bundled into the facility rate. Separate payment for the professional services of nurse practitioners, physician assistants, and clinical nurse specialists furnished in an RHC or FQHC setting is not permitted. The professional services of these nonphysician practitioners are bundled with other facility services when furnished to patients under the RHC and FQHC benefits. The payment made to the RHC or the FQHC under the all-inclusive rate specifically accounts for the services of these nonphysician practitioners furnished in the RHC or FQHC setting because the facility payment rate reflects the costs of these services.

E. Approved Entities

The statute requires that physicians, individuals, or entities who meet certain quality standards may provide outpatient diabetes self-management services and may be designated by the Secretary as ''certified providers.'' Section 400.202 defines a Medicare ''provider'' as including ''a hospital, a (critical access hospital) CAH, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency or a public health agency * * *'' Medicare also covers services by suppliers. Suppliers are defined in § 400.202 and include a physician, or other practitioner, or an entity other than a provider, that furnishes health care services under Medicare. The new outpatient diabetes self-management training benefit could be furnished by a provider or supplier that meets certain quality standards. For consistency throughout this proposed rule, we use the term ''approved entity'' to mean those entities that we may approve to furnish outpatient diabetes self-management training services.

In § 410.141(e), we identify the conditions we would require an approved entity to meet. In order to be an ''approved entity,'' we would require the physician, individual, or entity to furnish other services for which direct Medicare payment may be made. In addition, the approved entity must comply with the Medicare regulations on the prohibition on reassignment of Medicare benefits in §§ 424.73 and 424.80. In summary, these regulations prohibit payment for services to entities other than the physician, provider, or supplier who furnished the services unless there is a specific exception that authorizes reassignment. In some cases, in order for Medicare payment to be appropriate, there must be specific contractual language. We propose that in order to be an ''approved entity'' an individual, physician, or entity must be able to be paid properly under these regulations so that payment would be consistent with the statutory prohibitions on reassignment of benefits.

Also, we would require an approved entity to provide us with any documentation that we may request, including information that is necessary to pay a claim or to perform a focused post-payment medical review study. Finally, we would approve an entity to furnish outpatient diabetes training services if it meets the quality standards prescribed by us; the National Standards for Diabetes Self-Management Education Program, previously the NDAB standard; or standards developed by a national organization that we have approved. In order to show that these quality standards are met, an approved entity must show proof that it has been accredited by an approved accreditation organization.

Entities that may meet the quality standards for furnishing outpatient diabetes training services are hospitals, critical access hospitals, End Stage Renal Disease facilities, and clinics. Individuals that may be properly paid for outpatient diabetes education training services are physicians, clinical nurse specialists, nurse practitioners, clinical social workers, psychologists, and nurse midwives. Moreover, a licensed pharmacist that is a Medicare supplier of durable medical equipment under § 424.57 could qualify as an ''approved entity'' if the individual or entity meets the payment and quality standards.

Currently, physician assistants (PAs) cannot bill Part B of the Medicare program directly for their professional services. The PA's physician supervisor (or a physician designated by the supervising physician or employer as provided under State law or regulation) is primarily responsible for the overall direction and management of the PA's professional activities and for assuring that the services furnished are medically appropriate for the beneficiary. Medicare payment for PA services is made only to the PA's employer regardless of whether the PA is employed as a W–2 employee or whether the PA is an independent contractor (section 4512 of the BBA '97). We would apply these same payment rules to outpatient diabetes training services furnished by PAS.

Dietitians and certified diabetic educators who are in independent practice would not qualify as an approved entity for the purpose of receiving payment for outpatient diabetes training services. We believe, however, that the law and the Conference Report are clear that only those physicians, individuals, and entities that furnish other services for which Medicare payment may be made can be an approved entity. The Conference Agreement specifically states that the Secretary may designate entities ''who currently are reimbursed by Medicare.'' (H.R. Conf. 105–217, at 701.)

F. HCFA's Process for Approving National Accreditation Organizations

In the past, under section 1865 of the Act, HCFA approved national accreditation organizations if HCFA found, taken as a whole, the accreditation of a provider or supplier entity by the national accreditation organization provided reasonable assurance that the Medicare health and safety conditions or requirements for that Medicare provider or supplier type were met. Therefore, in reviewing a

national accreditation organization's request for approval and recognition, HCFA looked at the accreditation organization's program as a whole and determined whether to approve the organization and deem the provider or supplier entities it accredited to meet the applicable HCFA conditions or requirements. In 1996, section 1865 of the Act was amended. HCFA must now determine whether the accreditation of a provider or supplier entity by the national accreditation organization provides assurances that the applicable Medicare health and safety conditions or requirements are met or exceeded. In 1997, Congress passed deeming requirements for Medicare + Choice organizations that require the accreditation organization to apply and enforce standards that are at least as stringent as the HCFA requirements. We believe that the deeming requirements for Medicare + Choice are a reflection of Congress' current thinking about the degree to which HCFA holds accreditation organizations accountable. In reviewing a national accreditation organization's request for approval and recognition, HCFA now looks standard-by-standard at the crosswalk between the accreditation organization's standards and the applicable HCFA conditions or requirements. HCFA expects to see that each Medicare condition or requirement, for the provider or supplier that the accreditation organization accredits, is covered by the accreditation organization's standards. The accreditation organization's standards do not have to adopt the exact language of the HCFA requirements. In fact, the accreditation organization may have requirements that are more stringent than HCFA's conditions or requirements. After evaluating the accreditation organization's standards, HCFA looks at the accreditation organization's processes for assuring that entities meet the accreditation standards.

The process that we would use to deem compliance for outpatient diabetes self-management training programs accredited by national accreditation organizations would be similar to the process used for deeming compliance with individual provider or supplier requirements under Part 488, as well as the process for deeming compliance with the Medicare + Choice quality requirements in part 422, subpart D. The accreditation organization would apply and enforce either HCFA's standards, the standards of the NDAB, or a set of standards established by an organization representing individuals with diabetes and approved by HCFA as standards that are substantially equivalent to the HCFA standards.

In determining whether to approve and recognize a national accreditation organization, we would determine whether the accreditation organization applies and enforces quality standards that have been determined by HCFA to be substantially equivalent to the quality standards in § 410.144 based on a comparison of the accreditation organization's standards and its crosswalk. We would also consider whether the accreditation organization meets the requirements for approved accreditation organizations in § 410.143. We would make these determinations on the basis of the materials submitted by an accreditation organization seeking our approval in accordance with § 410.142. We would, through submittal of appropriate documentation by the national organization requesting accreditation approval from us, determine whether the accreditation organization's requirements concerning the frequency of accreditation, accreditation forms, guidelines and instructions to evaluators are as rigorous as our requirements with a similar emphasis on outcomes.

In § 410.142, we propose the conditions a national accreditation organization would have to meet to be an approved accreditation organization. We may approve an accreditation organization if the organization applies and enforces quality standards that have been determined by HCFA to be substantially equivalent to the quality standards in § 410.144; is either a nonprofit or not-for-profit organization with demonstrated experience in representing the interest of individuals with diabetes; and is neither owned or controlled by any entity it accredits, nor owns or controls an entity that could be accredited, as defined at 42 CFR 413.17. Control exists if the accredited entities have power, directly or indirectly, to significantly influence or direct the activities or policies of the accreditation organization. We have included this requirement to preclude any conflict of interest that could compromise the integrity of the accreditation process. In addition, we would require the organization to comply with the application and reapplication procedures set forth in § 410.142(h)(1), ''Procedures for approval of accreditation as a basis for deeming compliance.''

1. Required Information and Materials

We are proposing that a national accreditation organization requesting our approval and recognition of its accreditation program must furnish to us the information and materials discussed below.

We are proposing the organization may not use more than one set of quality standards for its outpatient diabetes self-management training program. In addition, the accreditation organization must inform us of the quality standards it would use. These standards must include a detailed comparison (including a crosswalk if the accreditation organization does not use standards described in § 410.144(a) in their entirety) between the organization's accreditation requirements and quality standards and our quality standards.

We are proposing that the organization provide us with detailed information about its accreditation process, including the frequency of accreditation, and copies of its accreditation forms, guidelines, and instructions to evaluators.

We are proposing that the organization also provide: descriptions of the accreditation review process, the accreditation status decision making process, procedures used to notify an entity of deficiencies in its outpatient diabetes self-management training program, procedures to monitor the correction of those deficiencies, and procedures used to enforce compliance with accreditation requirements. We are also proposing the organization provide us with detailed information about the individuals who perform evaluations for the accreditation organization, including:

- The education and experience requirements for the individuals who perform evaluations.
- The content and frequency of the continuing education furnished to the individuals who perform evaluations.
- The process used to monitor the performance of individuals who perform evaluations.
- The organization's policies and practices with respect to the participation, in the accreditation process, by an individual who is professionally or financially affiliated with the entity being evaluated.

We are proposing that the organization provide us with a description of the organization's data management and analysis system with respect to its accreditation activities and decisions, including the kinds of reports, tables, and other displays generated by that system. The organization must also provide a description of the organization's procedures for responding to and investigating complaints against a

deemed entity, including policies and procedures regarding coordination of these activities with appropriate licensing bodies, ombudsmen programs, and us.

We are proposing that the organization must provide us with a description of its policies and procedures with respect to the withholding or removal of accreditation for failure to meet the accreditation organization's quality standards or requirements, and other actions the organization takes in response to noncompliance with its quality standards and requirements. This description must identify all types (for example, full or partial) and categories (for example, provisional, conditional, or temporary) of accreditation offered by the organizations, the duration of each type and category of accreditation and a statement identifying the types and categories that would serve as a basis for accreditation if we approve the accreditation organization. We are also proposing that the organization provide us with a list of all entities that it has currently accredited to furnish outpatient diabetes self-management training and the type, category, and expiration date of the accreditation held by each of them. In addition, we are proposing that the organization provide us with the name and address of each person with an ownership or control interest in the accreditation organization; documentation that demonstrates its ability to furnish us with electronic data in a format compatible to ours; and a resource analysis that demonstrates that its staffing, funding, and other resources are adequate to perform the required accreditation activities. The organization must acknowledge that, as a condition for approval and recognition by HCFA, it agrees to comply with the requirements set forth in §§ 410.142 through 410.144.

Finally, we are proposing that the national accreditation organization agrees to provide us with any additional information that we may request in order to respond to its request for our approval and recognition of its accreditation program to accredit entities to furnish outpatient diabetes self-management training services.

2. Onsite Visits

We are proposing that we or our agent may visit the prospective accreditation organization's offices to verify information in the organization's application, including, but not limited to, review of documents, and interviews with the organization's staff.

3. Notice and Comment

Because the approval of a national accreditation organization could have broad impact upon large numbers of organizations, providers, and beneficiaries, we are providing notice and comment opportunities. We would publish a proposed notice in the **Federal Register** if we consider approving a national accreditation organization's application for approval. The proposed notice would specify the basis for granting approval, a description of how the organization's accreditation program applies and enforces standards that have been determined by HCFA to be substantially equivalent to the quality standards for outpatient diabetes self-management training services set forth at § 410.144. We would also allow an opportunity for public comment.

We would publish a final notice in the **Federal Register** if we approve a national accreditation organization's request. Publication of the final notice would occur after we have reviewed the public comments received in response to the proposed notice. The final notice would specify the effective date of the approval, and the term of approval, which may not exceed 6 years.

4. Criteria We Would Use to Approve National Accreditation Organizations

Section 410.142(e) proposes that in deciding to approve and recognize an organization's accreditation program to accredit entities to furnish outpatient diabetes self-management training services, we would consider the following criteria: (1) The organization applies and enforces quality standards that have been determined by HCFA to be substantially equivalent to the quality standards set forth at § 410.144, (2) The organization meets the requirements for approved organizations in § 410.143, (3) The organization is not owned or controlled by the entities it accredits, as defined in § 413.17(b)(2) or (b)(3), respectively, of this chapter and (4) The accreditation organization does not accredit any entity it owns or controls.

5. Notice of Our Decision

In § 410.142(f), we propose that we would notify the prospective accreditation organization in writing of our decision. We would include the following information in our notice to the affected organization: (1) We would state whether we have approved or denied the organization's request, (2) If we deny the request we would provide our rationale for denial, and (3) We would communicate the procedures the organization must use for reconsideration and reapplication.

6. Reconsideration of Adverse Decisions

Section 410.142(g) proposes that an accreditation organization that has received our notice of denial of its request for our approval and recognition of its accreditation program to accredit entities to furnish outpatient diabetes self-management training services may request reconsideration of our decision in accordance with part 488 subpart D.

7. Request for Approval Following Denial

Section 410.142(h) proposes that an accreditation organization that has received our notice of denial of its request for approval and recognition of its accreditation program to accredit entities to furnish outpatient diabetes self-management training services may submit a new request to us under the following conditions: (1) The organization has revised its accreditation program to correct the deficiencies we noted in our denial notice; (2) The organization must demonstrate through documentation that the quality standards used by the deemed entities have been determined by HCFA to be substantially equivalent to the quality standards for outpatient diabetes self-management training services set forth at § 410.144; and (3) After compiling this information, the organization must resubmit the application in its entirety. We are proposing that an accreditation organization that has requested reconsideration of our denial of its request for approval and recognition of its accreditation program to accredit entities to furnish outpatient diabetes self-management training services may not submit a new request until all administrative proceedings have been completed.

8. Withdrawal

We are proposing that an organization requesting our approval and recognition of its accreditation program to accredit entities may withdraw its application at any time.

9. Reapplying for Accreditation

We are proposing that an accreditation organization must request continued approval and recognition at least 6 months before the expiration of our approval and recognition of the accreditation organization's program.

G. Requirements for Approved Accreditation Organizations

1. Ongoing Responsibilities of an Approved Accreditation Organization

Section 410.143 proposes the ongoing accreditation organization responsibilities. These responsibilities parallel those currently imposed on accreditors by other accreditation and deeming processes under Medicare. An accreditation organization approved and recognized by us must undertake the following activities on an ongoing basis. They must provide to us in writing and on a monthly basis all of the following information: (1) Copies of all accreditation decisions and any accreditation-related information that we may require (including corrective action plans and summaries of our quality standards that are unmet), (2) A notice of all complaints related to accredited entities, (3) If the organization takes any remedial action or adverse actions, within 30 days of taking those actions, (including revocation, withdrawal, or revision of an entity's accreditation status) against a deemed entity, information describing the remedial or adverse action and the circumstances that led to taking the action, (4) A notice of any proposed changes in its accreditation standards and requirements or evaluation process. If an organization implements changes without our approval, we may withdraw our approval and recognition of the organization's accreditation program.

We are proposing that within 30 days of notification of a change in our quality standards, the organization submit to us its organization's plan to alter its quality standards to conform to our revised standards (including a crosswalk between our revised standards and the organization's revised standards) within or by the effective date specified in HCFA's notification of a change in the quality standards.

2. Oversight of Approved National Accreditation Organizations

Section 410.143(b) proposes the specific criteria and procedures for continuing oversight. We perform oversight activities to ensure that an approved national accreditation organization and the entities the national accreditation organization accredits continue to meet our quality standards. We may contract with an entity to perform these oversight activities. Oversight consists of equivalency review, validation review, and onsite observation.

3. Equivalency Review

We compare the national accreditation organization's standards and its application and enforcement of those standards to our comparable standards and processes when we impose new requirements or change our process for approving and recognizing accreditation organizations, an accreditation organization proposes to adopt new standards or changes in its accreditation process, or an accreditation organization reapplies to us for continuation of its approval and recognition by us of its program to accredit entities to furnish outpatient diabetes self-management training services.

4. Validation Reviews

We or our agent may conduct an evaluation of an accreditation organization's own evaluation process, by conducting evaluations of deemed entities approved by the accreditation organization and comparing its results to the results of the accreditation organization's evaluation of the deemed entities. At the conclusion of the review, we identify any accreditation programs for which validation evaluation results indicate (1) a 20-percent rate of disparity between the accreditation organization's evaluation of the deemed entities and HCFA's (or its agent's) evaluation on standards that do not constitute immediate jeopardy to patient health and safety if unmet; or (2) any disparity at all on standards that constitutes immediate jeopardy to patient health and safety if unmet. Our beneficiary-centered approach to diabetes self-management training oversight dictates zero tolerance of accreditation organization failures to identify noncompliance that expose beneficiaries to such serious risk. At the conclusion of a validation review, we also identify any accreditation programs for which validation evaluation results indicate, irrespective of the rate of disparity, that there are widespread or systematic problems in an organization's accreditation process such that accreditation no longer provides assurance that the quality standards described in § 410.144 are met. Accreditation programs identified as noncompliant through validation review may be subject to withdrawal of our approval.

5. Onsite Inspections

We may conduct an onsite inspection of the accreditation organization's operations and offices to verify information and assess the organization's compliance with its own policies and procedures. The onsite inspection may include, but is not limited to, reviewing documents, auditing meetings concerning the accreditation process, evaluating accreditation results or the accreditation status decision making process, and interviewing the organization's staff.

6. Withdrawal of Our Approval and Recognition

If an equivalency review, validation review, onsite observation, or our daily experience with the accreditation organization suggest that an accreditation organization is not meeting the requirements of this subpart, we give the accreditation organization written notice of its intent to withdraw approval and recognition of the organization's accreditation program. We may withdraw our approval of an accreditation organization at any time if we determine that accreditation by the organization no longer guarantees that the approved entity meets the quality standards described in § 410.144, and failure to meet those standards could jeopardize the health or safety of Medicare beneficiaries or constitute a significant hazard to the public health; or the accreditation organization has failed to meet its obligations for accreditation in §§ 410.142 through 410.144.

7. Request for Reconsideration

The final provision of this section proposes the process for reconsideration. An accreditation organization may request a reconsideration of our decision to withdraw our approval and recognition of the organization in accordance with subpart D of part 488 of this chapter.

H. Quality Standards for an Approved Entity

A national accreditation organization approved and recognized by us may accredit an entity to meet one of the following sets of standards: The quality standards prescribed by us; the National Standards for Diabetes Self-Management Education Programs, which were originally established by the National Diabetes Advisory Board (NDAB) and subsequently revised by organizations who participated in the establishment of standards by the Board; or a national nonprofit or not-for-profit organization that represents individuals (including individuals under Medicare) with diabetes as meeting standards for furnishing services.

1. Our Standards

The BBA '97 authorized the Secretary to develop her own quality standards.

We believe that our proposed standards offer sufficient assurances that the outpatient diabetes self-management training programs would provide quality care and the standards are flexible enough to apply in any health care setting.

In developing our standards, we have been heavily influenced by the National Standards for Diabetes Self-Management Education Program standards and agree that the structure necessary to provide quality diabetes self-management education consists of the human and material resources and the management systems needed to achieve program and participant goals. This structure includes the support and commitment of the organization sponsoring the program.

We are committed to working with affected parties to implement these proposed standards and to impose a minimum burden to approved entities. Thus, in developing these proposed standards we have solicited suggestions from organizations representing ADA Education recognition programs, other organizations and the States. Many states have begun to write laws for the establishment of diabetes self-management education programs. Conversely, there are States that have not developed laws to incorporate a diabetes self-management program within their current health systems. Based on the literature in the area of Diabetes Self-Management Education (Diabetes Care, Volume 18, Number 1, January 1995) and considering the recommendations of organizations such as the ADA, the American Association of Clinical Endocrinologist, the Diabetes Treatment Centers of American and the American Medical Association, the following are our proposed standards.

Standard (1) *Organizational structure:* (i) Provides the educational resources to support the programs offered and the beneficiaries served, including adequate space, personnel, budget, instructional materials, confidentiality, privacy, and operational support.

(ii) Defines clearly and documents the organizational relationships, lines of authority, staffing, job descriptions, and operational policies.

(iii) Maintains a written policy that affirms education as an integral component of diabetes care.

(iv) Assesses the service area to define the target population in order to appropriately allocate personnel and resources.

(2) *Environment.* Maintains a safe and sanitary environment, properly constructed, equipped, and maintained to protect the health and safety of all patients and that meets all applicable fire protection and life safety codes.

(3) *Program staff.* (i) Requires a program coordinator who is responsible for program planning, implementation, and evaluation.

(ii) Requires nonphysician professional staff to obtain 14 hours of continuing education about diabetes, educational principles, and behavior change strategies every 2 years.

(4) *Team approach.* (i) Except as permitted under paragraph (a)(4)(ii) of this section, furnishes services using a multidisciplinary instructional staff who are qualified to teach the training content areas required in paragraph (a)(5) of this section. The team must include at least a registered dietitian and a Certified Diabetic Educator (CDE) who have recent didactic and experiential preparation in diabetes clinical and educational issues.

(ii) If the team includes a registered nurse, an approved entity may delay implementation of the requirements for a CDE until 3 years after the effective date of the final rule.

We are proposing in § 410.144(a)(4) that outpatient diabetes self-management training services must be furnished by a multidisciplinary team of at least two health care professionals who have didactic training or experience in diabetes clinical and educational issues. The team must include at least a registered dietitian and a CDE. We believe that accessibility to a CDE is important to persons with diabetes because they like to call their health care providers with questions about diabetes and any other health concerns they may have. It is during these kinds of encounters that the most active level of education and support in the behavior change process occurs, and where the CDE can be extremely valuable to the physician in managing patients with diabetes. By addressing the self-management educational needs of patients with diabetes, the CDE is able to alleviate the demand for time and attention that such patients place on their physicians. Recognizing that there may be a shortage of CDEs, we would delay the implementation of the CDE requirement. We believe that the general management of the vast majority of patients with diabetes is being provided by primary care physicians who may not have a CDE on staff but employ a registered nurse to provide the training at this time. Thus, we are allowing 3 years for a registered nurse to substitute for a CDE.

The team members would be employees of an approved entity defined in § 410.141(e) or capable of reassigning Medicare benefits to the approved entity.

(5) *Training content.* Offers training and is capable of meeting the needs of its patients on the following subjects:

(i) Diabetes overview/pathophysiology of diabetes.

(ii) Nutrition.

(iii) Exercise and activity.

(iv) Diabetes medications (including skills related to the self-administration of injectable drugs).

(v) Self-monitoring and use of the results.

(vi) Prevention, detection, and treatment of acute complications.

(vii) Prevention, detection, and treatment of chronic complications.

(viii) Foot, skin, and dental care.

(ix) Behavior change strategies, goal-setting, risk factor reduction, and problem solving.

(x) Preconception care, pregnancy, and gestational diabetes.

(xi) Relationships among nutrition, exercise, medication, and blood glucose levels.

(xii) Stress and psychosocial adjustment.

(xiii) Family involvement and social support.

(xiv) Benefits, risks, and management options for improving glucose control.

(xv) Use of health care systems and community resources.

(6) *Training methods.* (i) Offers individual and group instruction for effective diabetes self-management training services.

(ii) Uses instructional methods and materials that are appropriate for the target population, and participants being served.

(7) *Review and plan of care and goals.* (i) Reviews each beneficiary's plan of care.

(ii) Develops and updates an individual assessment, in collaboration with each beneficiary, that includes relevant medical history, present health status, health service or resource utilization, risk factors, diabetes knowledge and skills, cultural influences, health beliefs and attitudes, health behaviors and goals, support systems, barriers to learning, and socioeconomic factors. Based on the assessment, develops, in collaboration with each beneficiary, an individual education plan. Documents the results, including assessment, intervention, evaluation and follow-up in the beneficiary's permanent medical record.

(8) *Educational intervention.* Offers appropriate and timely educational intervention based on referral from the beneficiary's physician or nonphysician practitioner and based on periodic reassessments of health status,

knowledge, skills, attitudes, goals, and self-care behaviors.

(9) *Performance measurement and quality improvement.* Establishes and maintains a performance measurement and quality improvement program that meets the following requirements:

(i) Stresses health outcomes (for example, improved beneficiary diabetic control, beneficiary understanding, or beneficiary compliance) and provide for the collection, analysis, and reporting of data that permits measurement of performance outcomes, or other quality indicators, such as, monitoring for compliance, lost work or school days, metabolic control, or others.

(ii) Requires an entity to take the following actions:

(A) Evaluate itself on an annual basis as to its effectiveness in using these measures.

(B) Improve its performance on at least one outcome or quality indicator each year.

(C) If requested, report to us nationally standardized performance measures to the extent that they become available in the future and the Secretary determines they are appropriate.

(D) Meet minimum performance levels on performance measures described in this paragraph (a)(9) established by us, which are based on national or local empirical experience and are prospectively announced to allow sufficient time for compliance.

(10) *Peer Review Organization review.* Has an agreement with a PRO, which has a contract with us to perform quality assurance reviews. At a minimum, the agreement allows the PRO access to beneficiary or group therapy records and binds an approved entity to comply with corrective actions or to participate in quality improvement projects that the PRO determines are necessary.

We understand that there may be certain disincentives to adopt our standards as a result of these last requirements because the approved entity may not have access to all of the quality data requested by us. However, we believe that any responsible outpatient diabetes self-management training program would want to know how effective their program is therefore, we do not think that it is unreasonable to require the approved entity to report certain quality indicators to the PRO. We are soliciting comments on this approach and whether or not it appears to be too burdensome for the approved entities.

2. The National Standards for Diabetes Self-Management Education Programs

The NDAB, in collaboration with other diabetes-related groups, developed standards in 1983 in response to concerns that the quantity and quality of diabetes education varied considerably throughout the United States. It was hoped that the application of uniform standards would increase the quality, availability, and effectiveness of diabetes education, as well as accessibility, through third-party payment. The standards were deliberately designed to be general enough to be implemented in a variety of settings and to deal largely with the process of development and maintenance of quality diabetes education programs. The original standards consisted of 10 components, with each component divided into elements applicable to the sponsoring institution or the educational program. Review criteria were developed as a method to measure a program's achievement of the standards. The review criteria were extensively pilot tested and found to be feasible, practical, and appropriately stringent.

Using these criteria, the ADA implemented a process in 1986 to officially recognize programs that meet the National Standards for Diabetes Self-Management Education Programs (NSDSMEP). To achieve recognition, a program must undertake a voluntary extensive self-evaluation and documentation process for each element of the standards. Programs that meet these standards are awarded a certificate.

In 1993, the NDAB charged a task force of representatives from the ADA and other organizations to review the current standards and make recommendations for retention or revision. The revised National Standards for Diabetes Self-Management Education Programs define quality programs in terms of structure, process, and outcomes. Each of these three program components is subdivided into elements. There are standards for each of these elements. As mentioned previously in this preamble, the statute has deemed the National Standards for Diabetes Self-Management Programs as they appear in Diabetes Care, Volume 21, Supplement 1, January 1998. If the ADA and other organizations votes by majority vote to amend or change one of standards in the future, we reserve the right to approve or disapprove such change as described in § 410.143, ''Requirements on approved accreditation organization.'' We expect that the ADA would apply to HCFA as an accreditation organization and would be quickly approved and recognized because the ADA uses the NSDSMEP. We would require all approved entities that meet these standards to provide us with a copy of their certification from the ADA as proof of meeting these standards. This would include a copy of their proof of renewal at the time they are required to renew their educational programs with the ADA.

Applying for Education Recognition by the ADA requires the submission of an application plus a processing fee. Each application must include demographic data on the participants served, instructor qualifications, annual program review, the program's curriculum and educational materials, education records with follow-up evaluations, and outcomes data. To apply, a program must obtain a copy of the current ''Meeting the Standards'' manual to understand the review criteria and must have furnished training since and collected 12 months of data. At the end of the 12 month data collection period, three separate copies of the completed application are submitted to the ADA Education Recognition Program along with the current processing fee.

The completed application is reviewed by an expert panel of diabetes educators. After official notification of Education Recognition, the program is sent an Education Recognition Certificate from the ADA.

We are proposing in § 410.72 that the program may be one that, at a minimum meets all of the National Standards for Diabetes Self-Management Education Programs established by the NDAB and revised by a task force of representatives of diabetes and other organizations and has a certificate of education recognition awarded by the ADA. The National Standards for Diabetes Self-Management Education Programs and ADA review criteria follows:

Standard 1. The sponsoring organization shall have a written policy that affirms education as an integral component of diabetes care.

Review criterion: 1–1. There is a written statement from the sponsoring organization to reflect that self-management education is an integral component of diabetes care.

Standard 2. The sponsoring organization shall identify and provide the educational resources required to achieve its educational objectives in terms of its target population. These resources include adequate space, personnel, budget, and instructional materials.

Review criterion: 2–1. For both individual and group instruction, resources (including space, staff, budget, and educational materials) are adequate to support the programs offered and the participants served.

Standard 3. The organizational relationships, lines of authority, staffing, job descriptions, and operational policies shall be clearly defined and documented.

Review criterion: 3–1. The relationships among the sponsoring organization and the diabetes program coordinator, staff, and the advisory committee are clearly defined.

3–2. There is a description of the following for the coordinator and each instructional staff member:

- Role in the program.
- Teaching responsibilities.
- Other program responsibilities.
- Amount of time spent in the program.

3–3. There are written policies approved by the advisory committee concerning the operation of the program.

Standard 4. The service area shall be assessed in order to define the target population and determine appropriate allocation of personnel and resources to serve the educational needs of the target population.

Review criterion. 4–1. The target population is defined (specifically the potential number to be served, types of diabetes, age range, language, ethnicity, unique characteristics, and special educational needs).

Standard 5. A standing advisory committee consisting of a physician, a nurse educator, a dietitian, an individual with behavioral science expertise, a consumer, and a community representative, at a minimum, shall be established to oversee the program.

Review Criteria. 5–1. The advisory committee members specified above attend at least two meetings a year.

5–2. The health professional members include at least one physician, one nurse educator, and one registered dietitian, each with expertise in diabetes.

5–3. The individual with behavioral science expertise is any professional with academic preparation in the behavioral sciences; for example, counseling, health behavior, psychology, social work, and sociology.

5–4. The consumer is any individual with diabetes or the caretaker thereof.

5–5. The community representative is any individual not employed by the institution.

5–6. There is a written policy concerning the membership and responsibilities of the advisory committee.

5–7. There is documentation that the advisory committee is fulfilling its responsibilities to approve the program plan, recommend and approve policy, and review the program annually.

Standard 6. The advisory committee shall participate in the annual planning process, including determination of target audience, program objectives, participant access mechanisms, instructional methods, resource requirements (including space, personnel, budget, and materials), participant follow-up mechanisms, and program evaluation.

Review criterion. 6–1. There is documentation that the advisory committee approves a written program plan each year that includes the items specified above.

Standard 7. Professional program staff shall have sufficient time and resources for lesson planning, instruction, documentation, evaluation, and follow-up.

Review criterion. 7–1. The instructor's available hours and resources are adequate to meet the needs of the program and the participants.

Standard 8. Community resources shall be assessed periodically.

Review criterion. 8–1. There is a list (including name, address, and telephone number) of community resources within the service area that serve the target population and their families. This list is reviewed and updated yearly by the advisory committee.

Standard 9. A coordinator shall be designated who is responsible for program planning, implementation, and evaluation.

Review Criteria. 9–1. The job description for the program coordinator includes his/her responsibilities for:

- Acting as a liaison between the program staff, the advisory committee, and the administration of the institution.
- Providing and/or coordinating the orientation and continuing education for the professional program staff.
- Participating in the planning and review of the program each year.
- Participating in the preparation of the program budget.
- Evaluating program effectiveness.
- Serving as the chair or a member of the advisory committee.
- Overseeing the program with on-site supervision.

9–2. The program coordinator is a CDE or has completed at least 24 hours of approved continuing education that includes a combination of diabetes, educational principles, and behavior strategies.

Standard 10. Health care professionals with recent didactic and experiential preparation in diabetes clinical and educational issues shall serve as the program instructors. Certification as a diabetes educator by the National Certification Board for Diabetes Educators (NCBDE) is recommended. Multidisciplinary instructional staff who are collectively qualified to teach the required content areas shall include at least (1) a registered dietitian and (2) either a registered nurse or other health professional who is a CDE.

Review criteria. 10–1. Program instructors are professional staff who routinely teach in the diabetes self-management education program and include at least (1) a registered dietitian and (2) either a registered nurse or other health professional who is a CDE.

10–2. Program instructors are health care professionals with a valid license, registration, or certification and who are CDEs or have completed at least 16 hours of approved continuing education that includes a combination of diabetes, educational principles, and behavioral strategies.

Standard 11. Professional program staff shall obtain education about diabetes, educational principles, and behavioral change strategies on a continuing basis.

Review criterion. 11–1. The program coordinator and all instructors complete at least 6 hours per year of approved continuing education that includes a combination of diabetes, educational principles, and behavioral strategies.

Standard 12. Based on the needs of the target population, the program shall be capable of offering instruction in the following content areas:

a. Diabetes overview.

b. Stress and psychosocial adjustment.

c. Family involvement and social support.

d. Nutrition.

e. Exercise and activity.

f. Medications.

g. Monitoring and use of results.

h. Relationships among nutrition, exercise, medication, and blood glucose levels.

i. Prevention, detection, and treatment of acute complications.

j. Prevention, detection, and treatment of chronic complications.

k. Foot, skin, and dental care.

l. Behavior change strategies, goal setting, risk factor reduction, and problem solving.

m. Benefits, risks, and management options for improving glucose control.

n. Preconception care, pregnancy, and gestational diabetes.

o. Use of health care systems and community resources.

Review criteria. 12–1. There is a written curriculum that includes educational objectives, content outline, instructional methods and materials,

and the means for evaluating achievement of the objectives for each content area or session of the program.

12–2. The curriculum is current and includes all 15 content areas as appropriate for the identified target population.

Standard 13. The program shall use instructional methods and materials that are appropriate for the target population and the participants being served.

Review criterion. 13–1. Instructional methods and materials are appropriate for the target population and participants in terms of cultural relevance, age, language, reading levels, and special educational needs.

Standard 14. A system shall be in place to inform the target population and potential referral sources of the availability and benefits of the program.

Review criterion. 14–1. The program reviews marketing strategies for the target population and potential referral sources annually.

Standard 15. The program shall be conveniently and regularly available.

Review criterion. 15–1. Program utilization, program completion rate, and waiting periods are assessed yearly.

Standard 16. The program shall be responsive to requests for information and referrals from consumers, health care professionals, and health care agencies.

Review criterion. 16–1. There is a procedure for responding to requests for information and referrals.

Standard 17. An individualized assessment shall be developed and updated in collaboration with each participant. The assessment shall include relevant medical history, present health status, health service or resource utilization, risk factors, diabetes knowledge and skills, cultural influences, health beliefs and attitudes, health behaviors and goals, support systems, barriers to learning, and socioeconomic factors.

Review criterion. 17–1. An initial assessment of the items specified above is documented in the education record and updated as needed.

Standard 18. An individualized education plan, based on the assessment, shall be developed in collaboration with each participant.

Review criterion. 18–1. The participant's pre-program knowledge and skill level in relation to the fifteen content areas of the National Standards is assessed. Educational needs are identified with the participant and documented in the education record.

Standard 19. The participant's educational experience, including assessment, intervention, evaluation, and follow-up shall be documented in a permanent medical or education record. There shall be documentation of collaboration and coordination among program staff and other providers.

Review criteria. 19–1. The participant's progress through the program is documented in the educational record and includes:

- The initial assessment and education plan as specified above.
- An indication of the content taught, dates of instruction, and the instructors.
- Post-program assessment of the participant's knowledge and skill level of each of the appropriate content areas of the National Standards.
- Behavioral goals.
- A plan for follow-up.
- Communication of participant's progress and any follow-up recommendations to the primary care provider.
- Follow-up assessment and any resulting interventions.

19–2. Each program instruction documents his/her own interventions with the participants.

19–3. Communication and collaboration among program staff are facilitated by and documented in the education record.

Standard 20. The program shall offer appropriate and timely educational interventions based on periodic reassessments of health status, knowledge, skills, attitudes, goals, and self-care behaviors.

Review criteria. 20–1. At least one follow-up assessment of the items specified above and any interventions are documented in the education record.

20–2. Participants achievement of behavioral goals is assessed and documented 1–3 months after goal setting.

Standard 21. The advisory committee shall review program performance annually, including all components of the annual program plan and curriculum, and use the information in subsequent planning and program modification.

Review criteria. 21–1. The advisory committee conducts and documents the results of an annual review of the program including:

- Program objectives.
- The curriculum, instructional methods, educational materials, and community resource list.
- Actual audience compared to the target population.
- Participant access and follow-up mechanisms.
- Program resources (space, personnel, and budget).
- Program effectiveness/participant outcomes.
- Marketing strategies to the target population and any potential referral sources.

21–2. The results of the annual review are reflected in the next annual program plan.

Standard 22. The advisory committee shall annually review and evaluate predetermined outcomes for program participants.

Review criteria. 22–1. Participants' outcomes are measured and evaluated, specifically, the degree to which the participants achieve their behavioral goals and one other outcome measure (for example, monitoring for complications, lost work or school days, metabolic control, or others).

22–2. The program's effectiveness at improving outcomes among participants is evaluated by the advisory committee and the results of this evaluation are reflected in the next annual program plan.

3. Standards of an Organization That Represents Individuals With Diabetes.

We propose that an organization may apply to us for approval of its standards so that we can recognize it as an ''organization that represents individuals with diabetes.'' Upon our approval, and recognition, the organization may deem that a physician, individual, or entity has met the quality standards for a deemed entity. We would review and consider applications for approval and recognition only from organizations that represent individuals with diabetes including Medicare beneficiaries. Given the Congress' interest in ensuring the well-being of Medicare beneficiaries with diabetes, we do not believe that Congress intended that anyone with frivolous criteria could apply to us for recognition as an accrediting organization. In fact, we believe that these other organizations would have comprehensive *bona fide* quality standards and be organizations that are either non-profit or not-for-profit with demonstrated experience in representing the interest of individuals with diabetes. This could include, 501(c)(3) organizations, existing accrediting organizations, or professional organizations that do not have a proprietary or financial interest with the entities they would be accrediting. It is our intention to be able to approve organizations as ''organizations that represent individuals with diabetes'' upon the effective date of the final rule. Therefore, we would begin accepting applications from organizations. Applications should be mailed to the following address: Office of Clinical Standards and Quality, Room S3–02–01,

Health Care Financing Administration, 7500 Security Blvd., Baltimore, MD 21244.

I. Requirements for Deemed Entities

Section 1865 gives us the authority to deem that any provider entity meets certain requirements if the entity is accredited and periodically reaccredited by a national organization. The process that must ensure that the entity, as a condition of accreditation, meets standards that are at least as stringent as our applicable standards.

Section 410.145(a) specifies the conditions under which an approved entity may be deemed to meet the quality requirements. The first requirement is that the approved entity have submitted necessary documentation and be fully accredited (and periodically reaccredited) by a national accreditation organization approved by us. Only full accreditation offers us adequate assurance that the approved entity meets the quality standards. Entities that are conditionally or provisionally accredited (or the equivalent thereof) by their accreditation organization do not meet all of their accreditation organization's standards, and for this reason, would not be deemed to meet quality standards in § 410.144.

The second requirement is that the entity may not be accredited by an organization that owns or controls the entity. We believe this requirement is necessary to prevent a conflict of interest.

1. Effective Date for Deemed Entities

Section 410.145(b) establishes when deemed status is effective. Deemed status is effective on the later of the following dates: the date on which the accreditation organization is approved by us, or the date that the accreditation organization deems the entity to meet the HCFA quality standards described in § 410.144. Medicare payment may not be made to an entity before the entity meets all of the requirements to be approved by us under § 410.141(e). Medicare payment would be made only for those services that are furnished after the date we approve the entity to furnish services (§ 424.44(d)).

2. Requirements for Deemed Entities

Section 410.145(c) establishes the obligations of deemed entities. We are proposing that as a requirement for deemed status, an entity must, before submitting a claim for Medicare payment, forward a copy of its certificate or proof of accreditation from its accreditation organization indicating that the entity meets the quality standards described in § 410.144. In addition, an entity deemed to meet Medicare standards must submit to evaluations to validate its accreditation organization's accreditation process, and authorize its accreditation organization to release to us a copy of its most current accreditation evaluation, together with any information related to the evaluation that we may require (including corrective action plans.) These two activities are part of our ongoing oversight strategy for ensuring that the accreditation organization applies and enforces its accreditation standards in a manner comparable to ours.

3. Removal of deemed status.

Section 410.145(d) addresses removal of deemed status. We would remove an entity's deemed status if: (1) We determine, on the basis of our own evaluation or the results of the accreditation evaluation, that the entity does not meet the quality standards for outpatient diabetes self-management training; (2) we withdraw our approval of the accreditation organization that deemed the entity to furnish outpatient diabetes self-management training; however, the removal of the entity's deemed status would not occur until 60 days after the accreditation organization is no longer recognized or (3) the entity fails to meet the requirements for deemed entities in § 410.145(c).

If we remove recognition of an accreditation organization because of its failure to meet our requirements, those entities who have deemed status with that accreditation organization would have up to 60 days to become accredited by another accreditation organization approved by us.

The final paragraph in § 410.145(d)(3) states that we can remove deemed status if the entity fails to meet the requirements in § 410.145(c). We retain the authority to initiate enforcement action against any entity that it determines, on the basis of its own evaluation or the results of the accreditation evaluation, no longer meets the Medicare standards for which deemed status was granted. We expect the accreditation organization to have a system in place for enforcing compliance with its standards, perhaps sanctions for motivating correction of deficiencies, but we cannot delegate to the accreditation organization the authority to terminate the entity's approval.

J. Outpatient Diabetes Self-Management Training Payment Methodology

1. Proposed Method of Payment

a. Consultation With Industry

In keeping with the requirements of the BBA '97, we have consulted individually with the same groups and organizations mentioned previously to establish payment amounts for outpatient diabetes self-management training services that would be paid under the physician fee schedule. The consensus among the industry is that cost data on providing diabetes training is inadequate. We consulted with the ADA to provide us with guidance in assessing the types of resource inputs that a typical diabetes training program would use in order for us to price diabetes services.

b. Calculation of proposed RVUs

We do not expect to establish physician work RVUs for diabetes outpatient self-management training services, because we believe diabetes training can appropriately be performed by individuals other than a physician. We would establish, however, practice expense and malpractice expense RVUs for these services. Our plans for the future are to develop the practice expense RVUs for diabetes training in a manner consistent with the resource-based practice expense methodology used for all other services paid under the physician fee schedule. The development of resource-based practice expense RVUs is the subject of a separate proposed rule (HCFA–1006–P) published in the **Federal Register** on June 5, 1998 (63 FR 30818). Malpractice RVUs for diabetes training have been extrapolated based on analogous procedures.

2. Costs Included in Developing Payment

The direct costs attributed to the provision of this service are the costs of an hourly professional salary (for example, registered nurse, registered dietitian, or certified diabetes educator), counseling materials, special equipment, administrative costs of billing, record maintenance, and the scheduling of patients. Indirect costs include the cost of office equipment and supplies, continuing training, accounting, office rent, utilities, and similar costs.

3. Determining Resource Inputs

Section 1848 of the Act requires that payments under the physician fee schedule be based on national uniform RVUs based on the resources used in furnishing a service. The resource

inputs that we would use to determine the practice expense RVUs for this service would be based on the estimated cost for furnishing an hourly training session by the ADA. In order to be consistent with national RVUs under the physician fee schedule, we would adjust the hourly professional salary, change the physician component to a professional salary rate, disallow for appointment cancellations, increase the scheduling secretary's salary, and adjust the allowance for billing costs and telephone calls. We would recognize the legal fees for malpractice insurance as part of the separate malpractice RVU. The following shows the estimated cost determination worksheet provided to us by the ADA along with our adjustments to the cost estimates in order to make the ADA's estimated costs consistent with the national physician fee schedule.

TABLE 1.—DIABETES SELF-MANAGEMENT TRAINING RESOURCE COSTS PROVIDED BY THE AMERICAN DIABETES ASSOCIATION (ADA) AND HCFA'S ADJUSTMENTS USED TO DETERMINE PROPOSED PAYMENT

Services (data provided by ADA)	ADA estimated costs	HCFA adjustments individual/group	HCFA RVUs individual/group	HCFA adjusted costs individual/group	AMA category
DIRECT COSTS					
Professional Salary/Hour (RN or RD)	$24.00				
Benefits/hour (28% salary)	6.72	$25.32=National Professional Rate			
Total	30.72	25.32/2.53*	0.69/0.07	$25.32/2.53*	Clinical.
Physician Component (Oversight)	3/min				
Total	6.00	0.84/0.84	0.02/0.02	0.84/0.84	Clinical.
Counseling Materials:					
Printed Videos, Strips, Medical Supplies.	5.00			5.00/5.00	Medical supplies.
Special Equipment:					
Computer Software ($6,000 over 3 years).	0.96			0.96/0.96	Office supplies.
Calculators, Scales, Gloves	0.25			0.25/0.25	Medical supplies.
Reference Materials (Journals, Books, etc.) ($500/year).	0.25			0.25/0.25	Other.
Costs of Operation:					
Billing Insurance Forms/Follow-Up (8% of cost).	6.40			2.13/2.13**	Clerical.
Record Maintenance (charts, files).	3.00			3.00/3.00	Clerical.
Scheduling Patients (10 min. × $12).	2.00	2.15 is National scheduling secretary rate.	0.06/0.06	2.15/2.15	Clerical.
Reports to Referral Source	4.32			4.32/4.32	Clerical.
No shows	3.00	0.00	Not allowed cost	0.00/0.00	
Phone Calls (one 15-minute call/visit 30/hour.	7.50			3.75/3.75***	Office.
Total	32.68		0.59/0.59	21.81/21.81	
Total Direct Costs	69.40			47.97/25.18	
INDIRECT COSTS					
Rent	2.25			2.25/2.25	Office.
Utilities	1.40			1.40/1.40	Office.
Office Supplies & Equipment	1.73			1.73/1.73	Office.
Telephone ($125/m/173.3 wk. Hrs. Mo.).	0.72			0.72/0.72	Office.
Continuing Education	0.72			0.72/0.72	Other.
Accounting	0.25			0.25/0.25	Other.
Total Indirect Costs	7.07		0.19/0.19	7.07/7.07	
Legal Fees=Total Malpractice RVU.	0.20	0.37	0.01/0.01	0.37/0.37	Malpractice Expense.
Total Individual/Group Costs	76.67		1.51/0.89	55.41/32.62*	

* Based on an average of 10 members in a group, since a group is defined as 2 to 20 individuals.
** Based on the average of three billings during an individual and group session.
*** Based on a 50% telephone contact to beneficiaries during individual and group sessions.

4. Payment

We propose to pay this service under the physician fee schedule (§ 414.62). The proposed RVUs are as follows:

Individual sessions	Group sessions per individual	Individual sessions	Group sessions per individual
Physician Work RVUs = 0.	Physician Work RVUs = 0.	Practice Expense RVUs = 1.51.	Practice Expense RVUs = .89.

Individual sessions	Group sessions per individual
Malpractice Expense RVUs = .01.	Malpractice Expense RVUs = .01.

Table 1 explains how we derived the proposed payment rates for providing diabetes training on an individual basis and in a group setting, based on the estimated resource costs provided by the ADA. Since the number of beneficiaries within a group would vary, we have based our methodology on an assumption that there would typically be 10 beneficiaries attending a group session.

The Act requires that payments vary among fee schedule areas according to the extent that resource costs vary as measured by the geographic practice cost indices (GPCIs). Section 1848(e)(1)(C) of the Act requires us to review and, if necessary, adjust the GPCIs at least every 3 years. On October 31, 1997, we published a final rule, Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule, Other Part B Payment Policies, and Establishment of the Clinical Psychologist Fee Schedule for Calendar Year 1998 (62 FR 59256). Addendum E to that rule identifies the 1999 GPCIs for practice expense RVUs and malpractice expense RVUs.

Using the proposed RVUs, we would pay $55.41 for individual sessions and $32.62 per person within a group session. These same payment rates would apply for the 1-hour annual refresher training. Actual payments to an entity approved by us would be adjusted for geographic variation and determined based on the physician fee schedule methodology as described in a separate final rule published in the **Federal Register** on October 31, 1997 (62 FR 59048).

Billing for payment would be submitted in 60-minute increments. The following CPT codes would be used for billing:

G0108—Outpatient diabetes self-management training services, individual session, per 60 minutes of training.

G0109—Outpatient diabetes self-management training services, group session, per individual, per 60 minutes of training.

Based on information received from the diabetes industry, we propose that beneficiaries receive up to 10 hours of diabetes training within the same year, either as an individual or within a group setting. As previously stated in this proposed regulation, we are proposing that all beneficiaries who receive the initial training program be eligible for an annual single training session of up to one hour (a group session, unless an individual session is needed based on the same criteria listed above).

We would refine the diabetes training payment amount in the future by incorporating this service into the refinement process used for other Medicare services payable under the physician fee schedule. Medicare co-payments and deductibles would apply for diabetes outpatient self-management training services.

K. Time Limits for Filing Claims

We are proposing to add a new paragraph (d), ''Outpatient diabetes self-management training,'' to § 424.44, ''Time limits for filing claims.'' New paragraph (d) would state that we would make payment to an entity for the furnishing of outpatient diabetes self-management training after we approve the entity to furnish the services under part 410 subpart H.

L. Photocopying Reimbursement and Mailing Costs for Practitioners

Section 4105(c) of the BBA '97 requires the Secretary to establish outcome measures, including glycosylated hemoglobin (past 90-day average blood sugar levels), for purposes of evaluating the improvement of the health status of Medicare beneficiaries with diabetes mellitus. In order to obtain adequate clinical documentation used in developing these outcome measures, we would direct Peer Review Organizations to collect this information from a physician or qualified nonphysician practitioner treating a beneficiary with diabetes as authorized by § 476.111(a).

We are proposing to pay physicians and nonphysician practitioners for photocopying and mailing cost directly attributable to the physician or nonphysician's responsibility to the PROs to provide photocopies of requested beneficiary medical records (§ 476.111(d)). The proposed payment is $.10 per page for photocopying plus first class postage costs for mailing the records. The proposed photocopying amount includes the cost of labor, supplies, equipment, and overhead. We are proposing the above amount based on the final rule establishing photocopying payment for hospitals published in the **Federal Register** (See 57 FR 47779 through 47787, October 20, 1992).

M. Appeals

We propose that in order to become an approved entity, a physician, individual, or entity must be approved by an accreditation organization and approved by us. If an individual, physician, or entity is found not to meet the conditions in either § 410.141(e), we would disapprove the application. We would provide administrative review of this decision by using the procedures for suppliers in part 498. Similarly, in the event we find an approved entity not to be in compliance with the conditions set forth in § 410.141(e), we may revoke the approved entity's Medicare billing number. In that event, we would also provide administrative appeal rights under the procedures in Part 498. Therefore, we have revised the definition of ''supplier'' that appears in § 498.2 to include an ''approved entity'' for furnishing outpatient diabetes self-management training.

N. Outcome Measures

We are requesting comments on the type of process and outcome measures we should be collecting in the future in order to review the progress of beneficiaries and the success of programs. We also solicit comments on the desirability in the future of replacing these proposed prescriptive training and personnel requirements with reliance on outcome measures.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the information collection requirements (ICRs) as summarized and discussed below.

Section 410.141 Outpatient Diabetes Self-management and Training

Section 410.141(b) states that diabetes self-management training must be included in a comprehensive plan of

care and documented in the patient's medical record by the physician or qualified nonphysician practitioner treating the beneficiary for training services that meet the requirements of this section. In addition, this section requires that HCFA-approved entities submit their plan of care to HCFA upon request. While the documentation and recordkeeping requirement imposed by this section is subject to the PRA, the requirements to disclose information to HCFA upon request are not subject to the PRA in accordance with 5 CFR 1320.4(a)(2), since the disclosure of information to or for a Federal agency during the conduct of an administrative action or audit involving an agency against specific individuals or entities is exempt from the PRA.

Therefore, the burden associated with this section that is subject to the PRA is the time and effort for the physician or qualified nonphysician practitioner to ensure that each patient's plan of care is documented and maintained in his or her medical record. We estimate that it will require 30 minutes to document each plan of care. And, on an annual basis there will be 2,250,000 required plans of care (2,000,000 aged beneficiaries + 250,000 disabled beneficiaries). Therefore, the total annual burden of this requirement is 1,125,000 hours (2,250,000 plans of care * 30 minutes = 1,125,000 hours).

Section 410.141(c)(2) requires the physician or qualified nonphysician practitioner treating the beneficiary document in the beneficiary's medical record the specific medical condition that the additional beneficiary training must address.

While this ICR is subject to the PRA, we believe the burden associated with this ICR is exempt in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities.

Section 410.141(c)(3)(ii) states that the beneficiary's physician or qualified nonphysician practitioner must document in the beneficiary's medical record that the beneficiary has special needs, such as severe vision, hearing, or language limitations that would hinder effective participation in a group training session.

While this ICR is subject to the PRA, we believe the burden associated with this ICR is exempt in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities.

Section 410.141(e)(3) requires that an entity submit the necessary documentation to, and is accredited by, an accreditation organization approved by HCFA under § 410.142 to meet one of the sets of quality standards described in § 410.144. The burden associated with this requirement is the time and effort necessary for an entity requesting to be deemed to submit the necessary documentation to an accreditation organization. It is estimated that it will take each of the estimated 750 entities 60 hours to complete these requirements every 3 years, for an annual burden of 20 hours. Therefore, the total annual burden imposed by these requirements is estimated to be 15,000 hours.

Section 410.141(e)(4) states that a physician, individual, or entity must provide documentation to HCFA as requested.

Since this requirement will be collected as part of an investigation or audit against specific individuals or entities, we believe that this ICR is exempt in accordance with 5 CFR 1320.4(a)(2). In addition, we believe that since the request for information is addressed to a single person as defined in 5 CFR 1320.3(h)(6), the collection does not meet the definition of an information collection as defined in 5 CFR 1320.3(c).

Section 410.142 HCFA Process for Approving National Accreditation Organizations

Section 410.142(b) states that a national organization requesting accreditation approval by HCFA must furnish to HCFA the information and materials described in this section.

The burden associated with these requirements is the time and effort to furnish to HCFA the information and materials described in this section. It is estimated that during the first year it will take 5 national organizations 96 hours to comply with these requirements. Since organizations will generally be approved for at least 6 years, we have annualized the total burden to be 96 * 5 = 480 hours/6 years = 80 annual hours.

Section 410.142(c) states that HCFA may visit the prospective accreditation organization's offices to verify information in the organization's application, including, but not limited to, review of documents, and interviews with the organization's staff.

The burden imposed by this section is the time and effort necessary to disclose documentation related to the onsite visit. However, we believe that these requirements are exempt from the PRA since they will be imposed under the conditions defined in 5 CFR 1320.4 and meet the exception(s) to the definition of information as set forth in 5 CFR 1320.3(h)(3), (h)(6), and (h)(9) and as such does not meet the definition of an information collection.

Section 410.142(g) states that an accreditation organization that has received HCFA's notice of denial of its request for HCFA approval and recognition of its accreditation program to accredit entities to furnish outpatient diabetes self-management training services may request reconsideration of HCFA's decision in accordance with part 488 subpart D of this chapter.

We believe that this ICR is exempt in accordance with 5 CFR 1320.4(a)(2) since this requirement is the result of an administrative action, investigation, or audit against specific individuals or entities.

Section 410.142(h) states that an organization that has received HCFA's notice of denial of its request for accreditation may submit a new request to HCFA if it meets the conditions in this section.

We anticipate that these requirements will be imposed on less then 10 persons on an annual basis, and, therefore, are not subject to the PRA as defined in 5 CFR 1320.3(c).

Section 410.142(j) states that at least 6 months before the expiration of HCFA's approval and recognition of the accreditation organization's program, an accreditation organization must request from HCFA continued approval and recognition.

The burden associated with this requirement is the time and effort necessary for an organization to submit to HCFA a request for reapproval. The burden associated with this requirement is captured in § 410.142(b).

Section 410.143 Requirements for Approved Accreditation Organizations

Section 410.143(a)(1) states that an accreditation organization approved by HCFA must provide to HCFA in a written form and on a monthly basis all of the ICRs set forth in § 410.143(a)(1)(i) through (a)(1)(iv).

The burden associated with these requirements is the time and effort for an accreditation organization to comply with the requirements of this section. It is estimated that it will take each organization 4 hours to complete these requirements. There are approximately 5 respondents for a total of 20 annual hours.

Section 410.143(a)(2) states that within 30 days of a change in the HCFA standards, submit to HCFA its organization's plan to alter its standards to conform to the revised HCFA

standards (including a crosswalk between the revised HCFA standards and the organization's revised standards) within the timeframes for adopting the revised HCFA standards specified in the notification of change it receives from HCFA.

The burden associated with these requirements are the time and effort for an organization to submit its organization's plan. It is estimated that it will take each organization 10 hours to comply with these requirements. There are approximately 5 respondents for a total of 50 hours.

Section 410.143(b) states that HCFA (or its agent(s)) may perform oversight activities such equivalency reviews, validation reviews, and onsite inspections ensure that an approved accreditation organization and the entities the accreditation organization accredits continue to meet the quality standards described in § 410.144. In addition, an accreditation organization that is dissatisfied with a determination to withdraw HCFA approval and recognition may request a reconsideration of HCFA's decision in accordance with part 488 subpart D of this chapter.

The burden imposed by this section is the time and effort necessary to disclose documentation under the reviews and inspections.

However, we believe that these requirements are exempt from the PRA since they will be imposed under the conditions defined in 5 CFR 1320.4 and meet the exception(s) to the definition of information as set forth in 5 CFR 1320.3(h)(3), (h)(6), and (h)(9) and as such does not meet the definition of an information collection.

Section 410.144 Quality Standards for a Deemed Entity

Section 410.144(a)(1)(ii) and (iii) states that a deemed entity document the organizational relationships, lines of authority, staffing, job descriptions, and operational policies. In addition, it must maintain a written policy that affirms education as an integral component of diabetes care.

The burden associated with this requirement is the time and effort for an entity to document and maintain the information described above. It is estimated these requirements will take each entity 8 hours. There are approximately 750 entities for a total annual burden of 6,000 hours.

Section 410.144(a)(7) states that an entity must review each beneficiary's plan of care, develop, and update an individual assessment in collaboration with each beneficiary, and document the results, including assessment, intervention, evaluation, and follow-up in the beneficiary's permanent medical record.

The burden associated with this requirement is captured in § 410.141(b) above.

Section 410.144(a)(9) states that an entity must establish and maintain a performance measurement and quality improvement program that meets the requirements of this section. In addition, if requested, an entity must report to HCFA nationally standardized performance measures to the extent that they become available in the future and the Secretary determines they are appropriate.

While the requirements to maintain documentation and the reporting of nationally standardized performance measures are subject to the PRA, the requirements to disclose information to HCFA upon request are not subject to the PRA in accordance with 5 CFR 1320.4(a)(2), since the disclosure of information to or for a Federal agency during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities is exempt from the PRA.

Therefore, the burden associated with this section, that is subject to the PRA, is the time and effort necessary for an entity to maintain documentation related to the performance measurement and quality improvement program and the reporting of nationally standardized performance measures. It is estimated that the recordkeeping requirements will take each entity 3 hours on an annual basis since there are approximately 750 entities for a total annual burden of 2,250 hours. Since HCFA is not currently requiring entities to report nationally standardized performance measures, we are not assigning any burden to this requirement. When HCFA does mandate the requirement to report these performance measures, the burden associated with this requirement will be adjusted accordingly.

Section 410.144(a)(10) states that each deemed entity must have an agreement with a PRO, which has a contract with HCFA to perform quality assurance reviews. At a minimum, the agreement must allow the PRO access to beneficiary or group therapy records, and binds an approved entity to comply with corrective actions or to participate in quality improvement projects that the PRO determines are necessary.

The burden associated with this requirement is the time and effort necessary to maintain the necessary documentation to demonstrate that the deemed entity has entered into a written agreement with a PRO that meet the requirements of this section.

We estimate that it will take 750 entities 5 minutes on an annual basis to maintain the necessary documentation for an overall annual burden of 63 hours.

Section 410.145 Requirements for Deemed Entities

Section 410.145(a)(10) states that an entity may be deemed to meet the HCFA quality standards described in § 410.144 if the entity has submitted necessary documentation and is fully accredited (and periodically reaccredited) by a national accreditation organization approved by HCFA. The burden associated with meeting these requirements is captured in § 410.141(e)(3).

Section 410.145(c) states that an entity may be deemed to meet the HCFA quality standards described in § 410.144(a) if the entity—(1) forwards a copy of its certificate from its accreditation organization indicating that the entity meets the HCFA quality standards described in § 410.144(a) before submitting a claim for Medicare payment; (2) agrees in writing to submit to evaluation (including onsite inspections) by HCFA (or its agent) to validate its accreditation organization's accreditation process; and (3) authorizes in writing for its accreditation organization to release to HCFA a copy of its most recent accreditation evaluation, and any accreditation-related information that HCFA may require.

The burden associated with these requirements is the time and effort for an entity to submit a copy of its certificate, along with its agreement, and authorization.

It is estimated that it will take each entity 5 minutes to comply with these requirements. There are approximately 750 respondents for a total of 63 hours.

Section 414.62 Payment for Outpatient Diabetes Self-Management Training Services

Section 414.62(c) states that beneficiary participation in training sessions must be documented on attendance sheets.

While this ICR is subject to the PRA, we have not accounted for the burden of this ICR because we believe the burden associated with this ICR is exempt in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities. We solicit comment on our preliminary conclusion

that this activity would be done in the normal course of business and, thus, would have no burden for providers.

We have submitted a copy of this proposed rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: Louis Blank, HCFA–3002–P

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Eydt, HCFA Desk Officer.

V. Regulatory Impact Analysis

A. Background

We have examined the impacts of this proposed rule as required by Executive Order 12866, the Unfunded Mandates Act of 1995, and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). The statutory provision that this rule further implements would cause this to be a major rule because we have estimated that the annual costs associated with this rule would be significantly higher than $100 million beginning in 1999.

Section 1102(b) of the Social Security Act (the Act) requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 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.

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may mandate an annual expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more. We believe that this proposed rule would not mandate such expenditures.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. States and tribal governments are not considered to be small entities. This rule provides additional benefit payments to providers for offering classes on diabetes self-management. Therefore, there are no regulatory burden issues affecting small entities to be considered with respect to these benefit payments. In section C. of the RIA that discusses the accreditation approval process, we acknowledge that some small entities may face a regulatory burden in obtaining accreditation. We discuss proposed measures that we believe will lessen the regulatory burden on these entities.

This proposed rule sets forth an expanded benefit for Medicare beneficiaries with diabetes who meet the criteria for self-management training services. It also identifies who may be an approved entity that may furnish these services, and lists the quality standards that must be met by these approved entities. This regulation would primarily affect beneficiaries with diabetes and certain health care professionals, such as physicians, nurses, physician-directed clinics, and hospital outpatient departments.

We estimate that there are 4.5 million Medicare beneficiaries with diabetes (approximately 4 million aged beneficiaries and .5 million disabled beneficiaries). Of this total, we estimate that about half, or 2.25 million beneficiaries, would receive diabetes self-management training services. This estimate assumes that the remaining 2.25 million Medicare beneficiaries either have already received the training or do not currently meet the conditions of coverage. These beneficiaries may meet the conditions of coverage at a later date, if their medical condition changes.

B. Diabetes Costs and Benefits

After consultation with the industry, we believe it is reasonable to cover up to 10 hours of initial diabetes self-management training within a continuous 12-month period and up to 1 hour of additional training annually (after the initial training) for each beneficiary that meets the conditions of coverage. We estimate that there would actually be 10 1-hour sessions billed in the first year and possibly one follow-up session (up to 1 hour) billed each year thereafter, if the beneficiary qualifies for the follow-up session. We have assumed that most beneficiaries with diabetes that currently qualify would have the training in the first few years of coverage. This accounts for the large influx of spending in the first few years. The outyear estimates assume that a limited number of beneficiaries with new diabetes diagnoses would receive the full training benefit, and that others would receive refresher courses if ordered by their physician. In addition, we have assumed that there would be newly diagnosed beneficiaries with diabetes each year that would receive up to 10 hours of initial diabetes self-management training, but they represent a smaller number of diabetics.

The following table displays the budgetary cost of the outpatient diabetes self-management training program to the Medicare program.

PROJECTED BUDGET IMPACT OF NEW BENEFIT

[$ in millions]

FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
$40	$390	$320	$180	$80

These costs are considerable, especially in the first few years, but we also expect substantial benefits. When someone has diabetes, his or her body has trouble making or using insulin, a hormone produced by the pancreas.

Insulin enables the body's tissues to use glucose, a sugar that circulates in the bloodstream and that normally provides energy for the body's cells. Because a diabetic beneficiary cannot properly use glucose in the blood, blood sugar levels remain high, unless a person takes appropriate medication (such as insulin) or is able to reduce blood sugar levels through diet and exercise. The consequences of diabetes can be severe. It is the fourth leading cause of death by disease in the United States. Diabetes can also result in many other medical problems, including heart disease, stroke, kidney disease, loss of sensation and circulation in the legs, possibly leading to amputations, and blindness. Proper health care and self-management can help circumvent these problems or slow their onset. There are two critical questions that go to the heart of diabetes self-management training. First, when should the person receive the training? Second, how much training should the person receive? Initial training may bring about short term behavioral changes. Some experts, however, express concern about the difficulty people with diabetes have in maintaining behavior changes unless they get additional education and support as a follow-up to the initial training. To assure that our beneficiaries receive the amount of training and support we believe they need to maintain good health or improve their existing health status, we would provide, when medically necessary, refresher training in a subsequent year following the initial training. We believe that these actions would have a positive result on the Medicare program, and we plan to monitor specific outcome measures to assure that only quality programs are reimbursed by the Medicare program.

There is a possibility of delays in enrolling newly approved entities because of the accreditation process. However, existing outpatient diabetes self-management programs would continue to be paid as they are now. The estimates assume that roughly 70 percent of beneficiaries would be able to receive the self-management training from currently approved entities. Also, the estimates do not reflect payments for beneficiaries who are inpatients in facilities such as hospitals or nursing homes. Finally, we assume that the number of beneficiaries with diabetes grows in the same manner as total Part B enrollment. This results in increasing the number of beneficiaries with diabetes by about 40,000 per year.

C. Accreditation Process

Section 1865 of the Act requires us to determine whether the accreditation of a provider or supplier entity by a national accreditation organization provides assurances that the applicable Medicare health and safety conditions or requirements are met.

The BBA '97 authorized the Secretary to develop her own quality standards. We have condensed the standards originally established by the NDAB and recognized by the ADA, and we believe that our proposed standards offer sufficient assurances that the outpatient diabetes self-management training programs would provide quality care and the standards are flexible enough to apply in any health care setting.

The ADA Education Recognition Program is a national voluntary process that identifies diabetes self-management training programs that meet National Standards for Diabetes Self-Management Education Programs. The ADA currently recognizes outpatient diabetes self-management programs. To date, the ADA has given recognition to approximately 575 education programs. Under the conditions in this proposed rule, the ADA, along with any other national accreditation organization that wishes to be approved and recognized by HCFA, would be required to submit appropriate documentation requesting accreditation approval from us. Once we have determined that the organizations meet the HCFA requirements concerning frequency of accreditation, accreditation forms, and that they use guidelines and instructions to evaluators that are as rigorous as our requirements with a similar emphasis on outcomes, they may then be approved and recognized as national accreditation organizations.

We fully expect that the ADA will apply to HCFA as a national accreditation organization and be quickly approved to accredit entities. Our review of the ADA-recognized programs indicates that there is a minimum of at least one program in each State and the District of Columbia. These programs are located in both small rural hospitals as well as large urban hospitals. While the majority of these programs are hospital-based, there are some that are clinics and one in Arizona that is an insurance plan. Thus, we believe that the geographic distribution of recognized programs is such that Medicare beneficiaries would be able to receive training without a delay of the benefit.

We recognize that some small entities such as rural physicians and qualified nonphysician practitioners may find the 12-month collection of data and the start-up fees required by the ADA to be a burden to their practices. The approximate cost for an entity to get accredited, based on current ADA figures, is $682.50, which includes an $82.50 application fee and a $600 initial accreditation fee. The subsequent triennial fee is $500. Additional items, such as recordkeeping costs and other overhead costs, have not been factored into the cost of becoming an approved entity. We estimate that there will be a total of 750 accredited entities when this rule is implemented and we estimate there are currently 575 entities that are ADA-certified and that already pay accreditation costs. The additional 175 entities would pay the $682.50, so the additional private sector cost would be $119,437.50.

In addition, we acknowledge that some existing programs are currently accredited by their State or local agency and may now find it a burden to become accredited by a national organization. However, we expect that at least four other national accreditation organizations would apply to us for recognition and that these entities may find the quality standards of these organizations to be substantially equivalent to the existing State or local standards. The CDC has a cooperative agreement with the 50 States, all U.S. territories, and the District of Columbia. This agreement provides funding to these geographic entities, which they currently use to perform a variety of diabetes-related activities. Ten of the 50 States use a portion of their funds to administer their State diabetes self-management training accreditation programs. Under this proposed rule, there will be no loss of revenue from this cooperative agreement for any of these geographic entities. Those States that currently use their funds from the cooperative agreement to administer their State diabetes self-management training programs can either choose to become an organization or choose instead to fund other diabetes-related activities, including the development of educational programs for the use of approved entities that desire to obtain national accreditation in order to qualify for Medicare payment under this benefit.

One way we are trying to lessen the burden on rural and small entities is by postponement of the requirement for the CDE to be part of the diabetes self-management team. This proposed rule requires that nonphysician diabetes educators complete 14 hours of approved diabetes-related continuing education every two years. The approximate cost of obtaining these

credits is $300. (This estimate is based on diabetes-related training information that we received from the American Association of Diabetes Educators.) We believe that existing programs would have approximately 3½ years from the publication of this proposed rule to provide outpatient diabetes self-management training while preparing to meet the HCFA standard concerning the CDE.

We estimate that there would be 750 approved entities when this final rule is fully implemented. Each approved entity would need a CDE. The initial certification of a CDE costs $250 and another $250 every 5 years to maintain certification. It would cost approximately $37,500 (750 × $250 ÷ 5) per year for CDE certification at the rate of one CDE per approved entity. The continuing education requirement for a CDE associated with this proposed rule would cost approximately $300 every 2 years. The estimated total cost for continuing education for all CDEs would be $112,500 (750 × $300 ÷ 2) per year at the rate of one CDE per approved entity. The estimated total cost for combined certification and continuing education for all CDEs would be approximately $150,000 per year.

D. Conclusions

We anticipate that this proposed rule would improve health of Medicare beneficiaries with diabetes by providing them with the skills and knowledge necessary to effectively manage their diabetic condition. We recognize that there may be some burden on existing and new entities because of the requirement that they must be accredited by a national accreditation body. However, we must ensure that Medicare pays only for those programs that are of the highest quality. We believe that the overall burden to these entities is worth the benefit that will be gained to both the Medicare beneficiary and the program.

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

List of Subjects

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare.

42 CFR Part 476

Health care, Health professional, Health record, Peer Review Organizations (PRO), Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare.

For the reasons set forth in the preamble, 42 CFR Chapter IV would be amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. Part 410 would be amended as follows:

1. The authority citation for part 410 continues to read as follows:

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), unless otherwise indicated.

2. Section 410.1, paragraph (a) is revised to read as follows:

§ 410.1 Basis and scope.

(a) *Statutory basis.* This part is based on the indicated provisions of the following sections of the Act:

1832—Scope of benefits furnished under the Medicare Part B supplementary medical insurance (SMI) program.

1833 through 1835 and 1862—Amounts of payment for SMI services, the conditions for payment, and the exclusions from coverage.

1861—Definition of the kinds of services that may be covered.

1865(b)—Permission for HCFA to approve and recognize a national accreditation organization and its accreditation program for accrediting an entity to furnish outpatient diabetes self-management services.

1881—Medicare coverage for end-stage renal disease beneficiaries.

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3. New subpart H, consisting of §§ 410.140 through 410.145, is added to read as follows:

Subpart H—Outpatient Diabetes Self-Management Training Services

Sec.

410.140 Definitions.
410.141 Outpatient diabetes self-management training.
410.142 HCFA process for approving national accreditation organizations.
410.143 Requirements for approved accreditation organizations.
410.144 Quality standards for a deemed entity.
410.145 Requirements for deemed entities.

Subpart H—Outpatient Diabetes Self-Management Training Services

§ 410.140 Definitions.

For purposes of this subpart, the following definitions apply:

Approved entity means an individual, physician, or entity accredited by an approved organization to furnish training and approved by HCFA to furnish and receive Medicare payment for the training.

Deemed entity means an individual, physician, or entity accredited by an approved organization, but that has not yet been approved by HCFA to furnish and receive Medicare payment for the training. Upon being approved by HCFA to receive Medicare payment for training, HCFA refers to this entity as an ''approved entity.''

Organization means a national accreditation organization.

Training means outpatient diabetes self-management training.

§ 410.141 Outpatient diabetes self-management training.

(a) *General rule.* Medicare Part B covers training defined in § 410.140 ordered by a physician or qualified nonphysician practitioner (as these terms are defined in § 410.32) for a beneficiary with a diabetic condition to ensure therapy compliance or to provide the beneficiary with necessary skills and knowledge to manage the beneficiary's condition.

(b) *Conditions for coverage.* The training must meet the following conditions:

(1) Following an evaluation of the beneficiary's need for the training, it is ordered by the physician or qualified nonphysician practitioner treating the beneficiary's diabetes.

(2) It is included in a comprehensive plan of care (established by the physician or qualified nonphysician practitioner treating the beneficiary for diabetes) that meets the following requirements:

(i) Describes the content, number, frequency, and duration of the training as written by the physician or qualified nonphysician practitioner treating the beneficiary.

(ii) Contains a statement specified by HCFA and signed by the physician or qualified nonphysician practitioner managing the beneficiary's diabetic condition. By signing this statement, the physician or qualified nonphysician practitioner certifies that he or she is managing the beneficiary's diabetic condition and the training described in

the plan of care are needed to ensure therapy compliance or to provide the beneficiary with the skills and knowledge to help manage the beneficiary's diabetes. The physician's or qualified nonphysician practitioner's statement must identify the beneficiary's specific medical conditions (described in paragraph (d)(1) of this section) that the training would address.

(iii) Provides that any changes to the plan of care are signed by the physician or qualified nonphysician practitioner treating the beneficiary.

(iv) Is incorporated into the approved entity's permanent medical record for the beneficiary and is made available, upon request, to HCFA.

(3) It is reasonable and necessary for treating or monitoring the condition of a beneficiary who meets the conditions described in paragraph (d) of this section.

(4) Except as permitted in paragraph (c)(3) of this section, it is furnished in a group setting consisting of 2 to 20 individuals who need not all be Medicare beneficiaries.

(c) *Types and frequency of training*—(1) *Initial training.* Medicare Part B covers up to 10 hours of initial training within a continuous 12-month period for each beneficiary that meets the conditions in paragraph (d) of this section.

(2) *Additional training.* After receiving the initial training described in paragraph (c)(1) of this section, Medicare covers a single follow-up training session lasting no more than 1 hour for a beneficiary each year. The physician or qualified nonphysician practitioner treating the beneficiary must document in the beneficiary's medical record the specific medical condition (described in paragraph (d)(1) of this section) that the additional training must address.

(3) *Exception.* Medicare covers up to 10 hours of training on an individual basis for a Medicare beneficiary who meets any of the following conditions:

(i) No group session is available within 2 months of the date the training is ordered.

(ii) The beneficiary's physician or qualified nonphysician practitioner documents in the beneficiary's medical record that the beneficiary has special needs resulting from conditions, such as severe vision, hearing, or language limitations that would hinder effective participation in a group training session.

(d) *Beneficiaries who may be covered.* Medicare Part B covers initial training services for a beneficiary who meets the following conditions:

(1) *Medical conditions.* A beneficiary has one of the following medical conditions occurring within the 12-month period before the physician's order for the training:

(i) New onset diabetes.

(ii) Poor glycemic control as evidenced by a glycosylated hemoglobin (HbA1C) level of 9.5 or more in the 90 days before attending the training.

(iii) A change in treatment regimen from no diabetes medications to any diabetes medication, or from oral diabetes medication to insulin.

(iv) High risk for complications based on poor glycemic control (documented acute episodes of severe hypoglycemia or acute severe hyperglycemia occurring in the past year during which the beneficiary needed third party assistance for either emergency room visits or hospitalization).

(v) High risk based on at least one of the following documented complications:

(A) Lack of feeling in the foot or other foot complications such as foot ulcer or amputation.

(B) Pre-proliferative or proliferative retinopathy or prior laser treatment of the eye.

(C) Kidney complications related to diabetes, such as macroalbuminuria or elevated creatinine.

(2) *Other conditions.* The beneficiary—

(i) Has not received initial training; or

(ii) Is not receiving services as an inpatient in a hospital, SNF, hospice, or nursing home.

(iii) Is not receiving services as an outpatient in an RHC or FQHC.

(e) *Who may furnish services.* Services may be furnished by a physician, individual, or entity that meets the following conditions:

(1) In addition to furnishing diabetes training services described in § 410.141, furnishes other services for which direct Medicare payment may be made.

(2) May properly receive Medicare payment under § 424.73 or § 424.80 of this chapter, which set forth prohibitions on assignment and reassignment of benefits.

(3) Submits necessary documentation to, and is accredited by, an accreditation organization approved by HCFA under § 410.142 to meet one of the sets of quality standards described in § 410.144.

(4) Provides documentation to HCFA, as requested.

§ 410.142 HCFA process for approving national accreditation organizations.

(a) *General rule.* HCFA may approve and recognize an organization that is either a nonprofit or not-for-profit organization with demonstrated experience in representing the interest of individuals with diabetes to accredit entities to furnish training services.

(b) *Required information and materials.* An organization requesting HCFA's approval and recognition of its accreditation program must furnish to HCFA the following information and materials:

(1) The standards that the organization uses to accredit entities to furnish training services.

(2) A detailed comparison (including a crosswalk if the organization does not use standards described in § 410.144 in their entirety) between the organization's accreditation requirements and standards and the HCFA standards described in § 410.144(a).

(3) Detailed information about the organization's accreditation process, including all of the following information:

(i) Frequency of accreditation.

(ii) Copies of accreditation forms, guidelines, and instructions to evaluators.

(iii) Descriptions of the following:

(A) The accreditation review process and the accreditation status decision making process.

(B) The procedures used to notify an entity of deficiencies in its outpatient diabetes self-management training program and procedures to monitor the correction of those deficiencies.

(C) The procedures used to enforce compliance with accreditation requirements.

(4) Detailed information about the individuals who perform evaluations for the organization, including all of the following information:

(i) The education and experience requirements for the individuals who perform evaluations.

(ii) The content and frequency of continuing education furnished to the individuals who perform evaluations.

(iii) The process used to monitor the performance of individuals who perform evaluations.

(iv) The organization's policies and practices with respect to the participation, in the accreditation process, by an individual who is professionally or financially affiliated with the entity being evaluated.

(5) A description of the organization's data management and analysis system with respect to its accreditation activities and decisions, including the kinds of reports, tables, and other displays generated by that system.

(6) A description of the organization's procedures for responding to and investigating complaints against a

deemed entity, including policies and procedures regarding coordination of these activities with appropriate licensing bodies, ombudsmen programs, and HCFA.

(7) A description of the organization's policies and procedures with respect to the withholding or removal of accreditation for failure to meet the organization's standards or requirements, and other actions the organization takes in response to noncompliance with its standards and requirements.

(8) A description of all types (for example, full or partial) and categories (for example, provisional, conditional, or temporary) of accreditation offered by the organization, the duration of each type and category of accreditation and a statement identifying the types and categories that would serve as a basis for accreditation if HCFA approves the organization.

(9) A list of all entities currently accredited to furnish training and the type, category, and expiration date of the accreditation held by each of them.

(10) The name and address of each person with an ownership or control interest in the organization.

(11) Documentation that demonstrates its ability to furnish HCFA with electronic data in HCFA-compatible format.

(12) A resource analysis that demonstrates that its staffing, funding, and other resources are adequate to perform the required accreditation activities.

(13) A statement acknowledging that, as a condition for approval and recognition by HCFA of its accreditation program, it agrees to comply with the requirements set forth in §§ 410.142 through 410.144.

(14) Additional information HCFA requests to enable it to respond to the organization's request for HCFA approval and recognition of its accreditation program to accredit entities to furnish training services.

(c) *Onsite visit.* HCFA may visit the prospective organization's offices to verify information in the organization's application, including, but not limited to, review of documents, and interviews with the organization's staff.

(d) *Notice and comment*—(1) *Proposed notice.* HCFA publishes a proposed notice in the **Federal Register** announcing its intention to approve an organization's request for HCFA approval and recognition of its accreditation program and the standards it uses to accredit entities to furnish training services. The notice includes the following information:

(i) The basis for approving the organization.

(ii) A description of how the organization's accreditation program applies and enforces quality standards that have been determined by HCFA to be substantially equivalent to the quality standards for training services described in § 410.144.

(iii) An opportunity for public comment.

(2) *Final notice.* (i) After considering public comments, HCFA publishes a final notice in the **Federal Register** indicating whether it has approved an organization's request for HCFA approval and recognition of its accreditation program and the standards it uses to accredit entities to furnish training services.

(ii) If HCFA approves the request, the final notice specifies the effective date and the term of the approval, which may not exceed 6 years.

(e) *Criteria HCFA uses to approve national accreditation organizations.* In deciding to approve and recognize an organization's accreditation program to accredit entities to furnish training services, HCFA considers the following criteria:

(1) The organization applies and enforces quality standards that have been determined by HCFA to be substantially equivalent to the quality standards described in § 410.144.

(2) The organization meets the requirements for approved organizations in § 410.143.

(3) The organization is not owned or controlled by the entities it accredits, as defined in § 413.17(b)(2) or (b)(3), respectively, of this chapter.

(4) The organization does not accredit any entity it owns or controls.

(f) *Notice of HCFA's decision.* HCFA notifies the prospective organization in writing of its decision. The notice includes the following information:

(1) Statement of approval or denial.

(2) Rationale for denial.

(3) Reconsideration and reapplication procedures.

(g) *Reconsideration of adverse decision.* An organization that has received HCFA's notice of denial of its request for HCFA approval and recognition of its accreditation program to accredit entities to furnish training services may request reconsideration of HCFA's decision in accordance with part 488 subpart D of this chapter.

(h) *Request for approval following denial.* (1) Except as provided in paragraph (h)(2) of this section, an organization that has received HCFA's notice of denial of its request for HCFA approval and recognition of its accreditation program to accredit entities to furnish training services may submit a new request to HCFA if it meets the following conditions:

(i) Has revised its accreditation program to correct the deficiencies HCFA noted in its denial notice.

(ii) Demonstrates, through documentation, that the quality standards used by the deemed entities are substantially equivalent to the HCFA quality standards for training services described in § 410.144(a).

(iii) Resubmits the application in its entirety.

(2) An organization that has requested reconsideration of HCFA's denial of its request for HCFA approval and recognition of its accreditation program to accredit entities to furnish training services may not submit a new request until all administrative proceedings have been completed.

(i) *Withdrawal.* An organization requesting HCFA approval and recognition of its accreditation program to accredit entities may withdraw its application at any time.

(j) *Reapplying for accreditation.* At least 6 months before the expiration of HCFA's approval and recognition of the organization's program, an organization must request from HCFA continued approval and recognition.

§ 410.143 Requirements for approved accreditation organizations.

(a) *Ongoing responsibilities of an approved accreditation organization.* An organization approved and recognized by HCFA must undertake the following activities on an ongoing basis:

(1) Provide to HCFA in writing and on a monthly basis all of the following:

(i) Copies of all accreditation decisions and any accreditation-related information that HCFA may require (including corrective action plans and summaries of unmet HCFA standards).

(ii) Notice of all complaints related to accredited entities.

(iii) Within 30 days of taking remedial or adverse action (including revocation, withdrawal, or revision of an entity's deemed status) against a deemed entity, information describing the remedial or adverse action and the circumstances that led to taking the action.

(iv) Notice of any proposed changes in its accreditation standards and requirements or evaluation process. If an organization implements changes without HCFA approval, HCFA may withdraw its approval and recognition of the organization's accreditation program.

(2) Within 30 days of notification of a change in the HCFA quality standards, submit to HCFA its organization's plan to alter its quality standards to conform

to the revised HCFA standards (including a crosswalk between the revised HCFA standards and the organization's revised standards) by the effective date specified in HCFA's notification of the change in HCFA's quality standards.

(b) *HCFA oversight of approved national accreditation organizations.* HCFA performs oversight activities to ensure that an approved organization and the entities the organization accredits continue to meet the quality standards described in § 410.144. HCFA may contract with an entity to perform these oversight activities. HCFA (or its agent) uses the following procedures:

(1) *Equivalency review.* HCFA compares the organization's standards and its application and enforcement of its standards to the comparable HCFA standards (described in § 410.144(a)) and processes when any of the following conditions exist:

(i) HCFA imposes new requirements or changes its process for approving and recognizing organizations.

(ii) The organization proposes to adopt new standards or changes its accreditation process.

(iii) The organization reapplies to HCFA for continuation of its approval and recognition by HCFA of its program to accredit entities to furnish training services.

(2) *Validation reviews.* HCFA validates the organization's accreditation process by conducting evaluations of deemed entities accredited by the organization and comparing its results to the results of the organization's evaluation of the deemed entities.

(3) *Onsite inspections.* HCFA may conduct an onsite inspection of the organization's operations and offices to verify information and assess the organization's compliance with its own policies and procedures. The onsite inspection may include, but is not limited to, reviewing documents, auditing meetings concerning the accreditation process, evaluating accreditation results or the accreditation status decision making process, and interviewing the organization's staff.

(4) *Withdrawal of HCFA approval and recognition*—(i) *HCFA decision to withdraw.* HCFA gives the organization written notice of HCFA's intent to withdraw its approval and recognition of the organization's program to accredit entities if HCFA determines through an equivalency review, validation review, onsite inspection, or HCFA's daily experience with the organization that any of the following conditions exist:

(A) The quality standards that the organization applies and enforces are not substantially equivalent to HCFA's quality standards described in § 410.144(a).

(B) The organization has failed to meet the requirements for accreditation in §§ 410.142 through 410.144.

(ii) *Request for reconsideration.* An organization may request a reconsideration of HCFA's decision to withdraw its approval and recognition of the organization in accordance with part 488 subpart D of this chapter.

§ 410.144 Quality standards for a deemed entity.

An organization approved and recognized by HCFA may accredit an entity to meet one of the following sets of standards:

(a) *HCFA standards.* Standards prescribed by HCFA, which include the following:

(1) *Organizational structure.* (i) Provides the educational resources to support the programs offered and the beneficiaries served, including adequate space, personnel, budget, instructional materials, confidentiality, privacy, and operational support.

(ii) Defines clearly and documents the organizational relationships, lines of authority, staffing, job descriptions, and operational policies.

(iii) Maintains a written policy that affirms education as an integral component of diabetes care.

(iv) Assesses the service area to define the target population in order to appropriately allocate personnel and resources.

(2) *Environment.* Maintains a safe and sanitary environment, properly constructed, equipped, and maintained to protect the health and safety of all patients and that meets all applicable fire protection and life safety codes.

(3) *Program staff.* (i) Requires a program coordinator who is responsible for program planning, implementation, and evaluation.

(ii) Requires nonphysician professional staff to obtain 14 hours of continuing education about diabetes, educational principles, and behavior change strategies every 2 years.

(4) *Team approach.* Furnishes services using a multidisciplinary instructional staff who are qualified to teach the training content areas required in paragraph (a)(5) of this section.

(i) *General rule.* The team must include at least a registered dietitian and a Certified Diabetic Educator (CDE) who have recent didactic and experiential preparation in diabetes clinical and educational issues.

(ii) *Delayed effective date for a CDE.* If the team includes a registered nurse, an approved entity may delay implementation of the requirement for a CDE until [3 years after the effective date of the final rule].

(5) *Training content.* Offers training and is capable of meeting the needs of its patients on the following subjects:

(i) Diabetes overview/pathophysiology of diabetes.

(ii) Nutrition.

(iii) Exercise and activity.

(iv) Diabetes medications (including skills related to the self-administration of injectable drugs).

(v) Self-monitoring and use of the results.

(vi) Prevention, detection, and treatment of acute complications.

(vii) Prevention, detection, and treatment of chronic complications.

(viii) Foot, skin, and dental care.

(ix) Behavior change strategies, goal-setting, risk factor reduction, and problem solving.

(x) Preconception care, pregnancy, and gestational diabetes.

(xi) Relationships among nutrition, exercise, medication, and blood glucose levels.

(xii) Stress and psychosocial adjustment.

(xiii) Family involvement and social support.

(xiv) Benefits, risks, and management options for improving glucose control.

(xv) Use of health care systems and community resources.

(6) *Training methods.* (i) Offers individual and group instruction for effective training services.

(ii) Uses instructional methods and materials that are appropriate for the target population, and participants being served.

(7) *Review of plan of care and goals.* (i) Reviews each beneficiary's plan of care.

(ii) Develops and updates an individual assessment, in collaboration with each beneficiary, that includes relevant medical history, present health status, health service or resource utilization, risk factors, diabetes knowledge and skills, cultural influences, health beliefs and attitudes, health behaviors and goals, support systems, barriers to learning, and socioeconomic factors. Based on the assessment, develops, in collaboration with each beneficiary, an individual education plan. Documents the results, including assessment, intervention, evaluation and follow-up in the beneficiary's permanent medical record.

(8) *Education intervention.* Offers appropriate and timely educational intervention based on referral from the beneficiary's physician or nonphysician practitioner and based on periodic reassessments of health status,

knowledge, skills, attitudes, goals, and self-care behaviors.

(9) *Performance measurement and quality improvement.* Establishes and maintains a performance measurement and quality improvement program that meets the following requirements:

(i) Stresses health outcomes (for example, improved beneficiary diabetic control, beneficiary understanding, or beneficiary compliance) and provides for the collection, analysis, and reporting of data that permits measurement of performance outcomes, or other quality indicators, such as, monitoring for compliance, lost work or school days, metabolic control, or others.

(ii) Requires an entity to take the following actions:

(A) Evaluate itself on an annual basis as to its effectiveness in using these measures.

(B) Improve its performance on at least one outcome or quality indicator each year.

(C) If requested, report to HCFA nationally standardized performance measures to the extent that they become available in the future and the Secretary determines they are appropriate.

(D) Meet minimum performance levels on performance measures described in this paragraph (a)(9) established by HCFA, which are based on national or local empirical experience and are prospectively announced to allow sufficient time for compliance.

(10) *Peer Review Organization review.* Has an agreement with a PRO, which has a contract with HCFA to perform quality assurance reviews. At a minimum, the agreement allows the PRO access to beneficiary or group therapy records and binds an approved entity to comply with corrective actions or to participate in quality improvement projects that the PRO determines are necessary.

(b) *The National Standards for Diabetes Self-Management Education Programs.* Each of the educational standards contained in the National Standards for Diabetes Self-Management Education Programs (NSDSMEP) as of (insert the date the final rule is published in the **Federal Register**) or any NSDSMEP standards subsequently approved by HCFA.

(c) *Standards of a national accreditation organization that represents individuals with diabetes.* Standards that have been developed by an organization (and approved by HCFA) that is either a nonprofit or not-for-profit organization with demonstrated experience in representing the interest of individuals, including health care professionals and Medicare beneficiaries, with diabetes.

§ 410.145 Requirements for deemed entities.

(a) *General rule.* An entity may be deemed to meet the HCFA quality standards described in § 410.144 if the following conditions are met:

(1) The entity has submitted necessary documentation and is fully accredited (and periodically reaccredited) by an organization approved by HCFA.

(2) The entity is not accredited by an organization that owns or controls the entity.

(b) *Effective date of deemed status.* The date on which an entity is deemed to meet the HCFA quality standards described in § 410.144(a) is the later of one of the following dates:

(1) The date HCFA approves and recognizes the organization to accredit entities to furnish training services.

(2) The date the organization accredits the entity to meet one of the quality standards described in § 410.144(a).

(c) *Requirements for deemed entities.* An entity may be deemed to meet the HCFA quality standards described in § 410.144(a) if the entity meets the following conditions:

(1) Before submitting a claim for Medicare payment, forwards a copy of its certificate or proof of accreditation from an approved organization indicating that the entity meets the HCFA quality standards described in § 410.144(a).

(2) Agrees to submit to evaluation (including onsite inspections) by HCFA (or its agent) to validate its approved organization's accreditation process.

(3) Authorizes its approved organization to release to HCFA a copy of its most recent accreditation evaluation, and any accreditation-related information that HCFA may require.

(d) *Removal of deemed status.* HCFA removes an entity's deemed status for any of the following reasons:

(1) HCFA determines, on the basis of its own evaluation or the results of the accreditation evaluation, that the entity does not meet the HCFA quality standards for the training services described in § 410.144.

(2) Sixty days after HCFA withdraws its approval of the organization that deemed the entity to furnish training services.

(3) The entity fails to meet the requirements of paragraph (c) of this section.

B. Part 414 would be amended as follows:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Sections 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

2. A new § 414.63 is added to read as follows:

§ 414.63 Payment for outpatient diabetes self-management training services.

(a) *Payment under the physician fee schedule.* Payment for outpatient diabetes self-management training services is made under the physician fee schedule in accordance with §§ 414.1 through 414.48.

(b) *To whom payment may be made.* Payment is made to an entity approved by HCFA to furnish outpatient diabetes self-management training services in accordance with §§ 410.141 through 410.145.

(c) *Limitation on payment.* Payment is made for training sessions actually attended by the beneficiary and documented on attendance sheets.

C. Part 424 would be amended as follows:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 424.44, a new paragraph (d) is added to read as follows:

§ 424.44 Time limits for filing claims.

* * * * *

(d) *Outpatient diabetes self-management training.* HCFA makes payment to an entity for the furnishing of outpatient diabetes self-management training after HCFA approves the entity to furnish the services under part 410 subpart H of this chapter.

D. Part 476 would be amended as follows:

PART 476—ACQUISITION, PROTECTION, AND DISCLOSURE OF PEER REVIEW INFORMATION

1. The authority citation for part 476 continues to read as follows:

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 476.111, new paragraph (d) is added to read as follows:

§ 476.111 PRO access to records and information of institutions and practitioners.

* * * * *

(d) A PRO may reimburse for requested information at the rate of $.10 per page for photocopying plus first class postage. The photocopying amount includes the cost of labor, supplies, equipment, and overhead.

E. Part 498 would be amended as follows:

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFS/MR AND CERTAIN NFS IN THE MEDICAID PROGRAM

1. The authority citation for part 498 continues to read as follows:

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 498.2 [Amended]

2. In § 498.2, the definition of *supplier* is amended to add the words ''an entity approved by HCFA to furnish outpatient diabetes self-management training,'' following ''(OPO)''.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 30, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: November 23, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 99–3083 Filed 2–10–99; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–203; DA 99–255]

Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action extends the deadline for filing comments and reply comments to the *Notice of Proposed Rule Making (NPRM)*, released November 23, 1998. It is taken in response to the request to extend the comment and reply comment period submitted by the Association of America's Public Television Stations (AAPTS). The intended effect of this action is to allow AAPT's membership to have additional time in which to file comments and reply comments.

DATES: Comments are due on or before February 16, 1999; reply comments are due on or before March 16, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, Room TW–A325, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jane Gross or Robert Somers, Policy and Rules Division, Mass Media Bureau (202) 418–2130.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Order granting an extension of time for filing comments and reply comments in MM Docket No. 98–203; DA 99–255, adopted January 28, 1999. The complete text of this Order 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 copy contractor, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Synopsis of Order Granting Extension of Time for Filing Comments

1. On November 23, 1998, the Commission released an NPRM in this proceeding, 63 FR 68722 (December 14, 1998), regarding the ancillary or supplementary use of digital television capacity by noncommercial educational (NCE) television licensees. Comments in this proceeding are presently due January 28, 1999, and reply comments are due March 1, 1999.

2. On January 27, 1998, AAPTS submitted a Motion for Extension of Time to file comments in response to the NPRM. AAPTS states that additional time is necessary to allow the AAPTS board to reflect in its filing industry-wide discussions scheduled for the end of January, and to review in its end of January board meeting the policy positions that it plans to present to the Commission. AAPTS requests a brief extension of the comment and reply comment deadlines, which it contends will serve the Commission's goal of generating a full and complete record that reflects the views of all affected parties.

3. As set forth in Section 1.46 of the Commission's Rules, 47 CFR 1.46, it is our policy that extensions of time for filing comments in rulemaking proceedings shall not be routinely granted. However, because of the importance of the instant proceeding to the future of public television, and the potential benefits of the petitioner's developing a more complete record through discussion of these issues with its members, we believe an extension of the comment and reply deadlines for the NPRM is warranted.

4. Accordingly, *It is ordered* that the Motion for Extension of Time filed in MM Docket No. 98–203 by the Association of America's Public Television Stations *Is granted*. The time for filing comments *Is extended* to February 16, 1999.

5. *It is further ordered* that the time for filing reply comments *Is extended* to March 16, 1999.

6. This action is taken pursuant to authority found in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 USC 154(i) and 303(r), and Sections 0.204(b), 0.283, and 1.45 of the Commission's Rules, 47 CFR 0.204(b), 0.283, and 1.45.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3328 Filed 2–10–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 567

[Docket No. NHTSA–99–5073]

RIN 2127–AH49

Vehicle Certification; Contents of Certification Labels for Altered Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend NHTSA's regulations on vehicle certification that specify the contents of the certification labels that vehicle alterers are required to affix to motor vehicles that they alter. The amendment would require the certification label affixed by the alterer to state that the vehicle, as altered, conforms to all applicable Federal motor vehicle safety, bumper, and theft prevention standards affected by the alteration. Under the existing regulations, the certification

labels on altered vehicles need only state that the vehicles, as altered, comply with all applicable Federal motor vehicle safety and bumper standards affected by the alteration. The proposed amendment would make the certification requirements for vehicle alterers consistent with those for vehicle manufacturers.

DATES: *Comments.* Comments must be received on or before March 29, 1999.

Applicability Date. If adopted, the proposed amendment would apply to motor vehicles manufactured on or after September 1, 1999.

ADDRESSES: Comments should refer to the docket number above and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Docket hours are 9 am to 5 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. (202–366–5238).

SUPPLEMENTARY INFORMATION: In a final rule published today, NHTSA is amending its regulations on vehicle certification at 49 CFR 567.4 to require the certification label for multipurpose passenger vehicles (MPVs) and trucks with a gross vehicle weight rating (GVWR) of 6,000 pounds or less to specify that the vehicle complies with all applicable Federal motor vehicle safety and theft prevention standards. As explained in the final rule, this amendment was prompted by a letter that NHTSA had received from a vehicle manufacturer noting that under a provision of the Anti Car Theft Act of 1992 now codified at 49 U.S.C. 33101, the definition of vehicles subject to the major parts marking requirements of the theft prevention standard was expanded to include ''a multi-purpose passenger vehicle or light duty truck when that vehicle or truck is rated at not more than 6,000 pounds gross vehicle weight.''

One of the comments submitted in response to the notice of proposed rulemaking (NPRM) that preceded this final rule (published on June 25, 1998 at 63 FR 34623) was from John Russell Deane III, who identified himself as the General Counsel of the Speciality Equipment Market Association (SEMA). In his comment, Mr. Deane recommended that NHTSA amend 49 CFR 567.7, the provision in the certification regulations that prescribes requirements for persons who alter certified vehicles, so that it is consistent with the amendments to the certification requirements for manufacturers at 49 CFR 567.4 that the agency was proposing.

The certification requirements in section 567.7 apply to a person who alters a previously certified vehicle before it is first purchased for purposes other than resale. The certification requirements are triggered only when the vehicle is altered ''other than by the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies, or minor finishing operations such as painting,'' or when the vehicle is altered ''in such a manner that its stated weight ratings are no longer valid.''

In his comment, Mr. Deane noted that although vehicle alterers have a statutory responsibility to certify that any vehicle they alter that is subject to the theft prevention standard remains in compliance with that standard following the completion of the alterations, section 567.7 has never been amended to reflect that requirement.

In its response to Mr. Deane's comment, NHTSA acknowledged the validity of the issue that he raised, and stated that the agency would commence rulemaking shortly to address the disparity between the certification responsibilities for manufacturers and those for alterers with regard to the theft prevention standard.

Accordingly, NHTSA is proposing to amend the certification regulations to require the label affixed by vehicle alterers to state that the vehicle, as altered, conforms to all applicable Federal motor vehicle safety, bumper, and theft prevention standards affected by the alteration. So that vehicle alterers have adequate lead time to exhaust their existing inventory of certification labels and have new labels printed, if the proposed amendment is adopted, this requirement would apply to vehicles manufactured on or after September 1, 1999.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This proposal was not reviewed under E.O. 12866. NHTSA has analyzed this proposal and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures.

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Although most vehicle alterers are likely to qualify as small entities, the proposed rule would have no adverse economic impact upon them because they would be afforded adequate lead time to exhaust their existing inventory of certification labels and have new labels printed. This amendment would also have no effect on small organizations, and small governmental units. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws would be affected.

4. National Environmental Policy Act

The agency has considered the environmental implications of this proposed rule in accordance with the National Environmental Policy Act of 1969 and determined that the proposed rule would not significantly affect the human environment.

5. Civil Justice Reform

This proposed rule would not have any retroactive effect. It would modify an existing Federal regulation to make it consistent with a statutory requirement. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this proposed rule. This proposed rule does not preempt the states from adopting laws or regulations on the same subject, except that if adopted, the resulting Federal regulation would preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of

confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material. Comments will also be available on line at www.dms.dot.gov.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 567

Labeling, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, the agency proposes to amend § 567.7, *Requirements for persons who alter certified vehicles,* in Title 49 of the Code of Federal Regulations at Part 567 as follows:

PART 567—[AMENDED]

1. The authority citation for part 567 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, and 30115, 30117, 30166, 32502, 32504, 33101–33104, and 33109; delegation of authority at 49 CFR 1.50.

2. Section 567.7 would be amended by revising paragraph (a) to read as follows:

§ 567.7 Requirements for persons who alter certified vehicles.

* * * * *

(a) The statement: ''This vehicle was altered by (individual or corporate name) in (month and year in which alterations were completed) and as altered it conforms to all applicable Federal Motor Vehicle Safety Standards affected by the alteration and in effect in (month, year).'' The second date shall be no earlier than the manufacturing date of the original vehicle, and no later than the date alterations were completed.

(1) In the case of passenger cars manufactured on or after September 1, 1999, the expression ''safety, bumper, and theft prevention'' shall be substituted in the statement for the word ''safety''.

(2) In the case of multipurpose passenger vehicles (MPVs) and trucks with a GVWR of 6,000 pounds or less manufactured on or after September 1, 1999, the expression ''and theft prevention'' shall be included in the statement following the word ''safety''.

* * * * *

Issued on: January 29, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–3292 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 253

[Docket No. 980812215–8215–01, I.D. 072898D]

RIN 0648–AK76

Fishing Capacity Reduction Program

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

ACTION: Proposed rule.

SUMMARY: NMFS (hereinafter we or us) proposes framework regulations specifying procedures for requesting us to conduct a fishing capacity reduction program in a specific fishery and governing the conduct of programs initiated in response to a request or on our own initiative. Fishing capacity reduction programs pay harvesters in fisheries with too much harvesting capacity to surrender their fishing permits and/or withdraw their vessels from fishing. Reduction costs can be paid by post-reduction harvesters, taxpayers, or others. The intent of reducing excess harvesting capacity in a fishery is to increase harvesting productivity and help conserve and manage the fishery's resources.

DATES: Comments must be received by April 12, 1999.

ADDRESSES: Comments should be sent to Michael L. Grable, Chief, Financial Services Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713–2390.

SUPPLEMENTARY INFORMATION: Most U.S. fisheries have excess fishing capacity. Excess capacity decreases earnings, complicates management, and imperils conservation. To provide for fishing capacity reduction (reduction), Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861 *et seq.*)(Magnuson Act) by adding a new section 312(b)-(e) (16 U.S.C. 1861a(b)-(e)). To finance reduction costs, Congress amended Title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 *et seq.*) by adding new sections 1111 and 1112 (the portions applicable to capacity reduction loans have been codified at 46 App. U.S.C. 1279f & 1279g). This action would add a subpart D to 50 CFR part 253 setting forth framework regulations for requesting us to conduct a reduction program in a specific fishery (reduction program) and governing the conduct of reduction programs initiated in response to a request or on our own initiative.

Under section 312(b)(2) of the Magnuson Act, a reduction program's objective is ''to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time.'' The reduction program pays harvesters in a program fishery (reduction fishery) either to surrender their fishing permits or both surrender their fishing permits and withdraw their vessels from all domestic fishing. Harvesters can withdraw vessels either by scrapping them or (for federally-documented vessels) by subjecting them to title restrictions that prevent the vessels' use for fishing.

Reduction cost can be funded in several ways: a loan from us (loan), Federal appropriations, and/or contributions from states or other public or private sources. If a loan finances any part of the reduction cost, we refer to the reduction program as a financed program. If the reduction cost is not in any part financed by a loan, we refer to the reduction program as a subsidized program.

A loan from us is a practical way to finance reduction cost. Under sections 1111 and 1112 of Title XI of the

Merchant Marine Act, a loan for a program cannot exceed $100 million, the repayment maturity may be no longer than 20 years, and the annual repayment interest rate is set at two percent of the principal amount outstanding plus the interest rate we are obligated to pay the U.S. Treasury for borrowing the money we in turn loan.

The loans are not conventional because they involve no promissory notes, mortgages, or other contractual loan documentation or security. Section 312(d) of the Magnuson Act requires the harvesters remaining in the fishery after a reduction program reduces capacity to repay the loan through a loan-repayment fee (fee) deducted by the first ex-vessel purchaser from the proceeds otherwise payable to the harvester for fish landed from the reduction fishery (fee fish). Under section 312(d) of the Magnuson Act, such fees cannot exceed five percent of the ex-vessel value of all fee fish that the harvesters deliver. Collectively, the post-reduction harvesters are the borrower, and they all make repayments on the loan each time they deliver fee fish to a fish buyer.

Besides being required to collect the fee by deducting it from the trip proceeds otherwise payable to the harvesters, the first ex-vessel buyers (buyers) of fee fish must account for fee revenues and forward them to us. We then apply the fee revenues to reduce the loan balance.

Under sections 312(d)&(e) of the Magnuson Act, we may not impose an industry fee system (fee system) unless two thirds of the votes cast in a referendum of the fishing permit or fishing vessel owners in the reduction fishery first approve the fee system.

Section 312(b) requires that a reduction program:

(1) Be cost-effective and capable of repaying any debt obligations incurred;

(2) Be necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the reduction fishery; and

(3) Be consistent with the Federal or state fishery management plan (FMP) or management program in effect for the reduction fishery.

Section 312(b) also requires that the FMP or management program in effect for the reduction program fishery:

(1) Prevent the replacement of capacity that the reduction program removes through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures (taking into account the reduction fishery's full potential fishing capacity); and

(2) Establish a specified or target total allowable catch or other measures that trigger closure of the reduction fishery or adjustments to reduce catch when fisheries conservation and management so require.

These requirements (and other reduction program aspects, such as post-reduction allocation) generally require an amendment to the controlling FMP or management program (reduction amendment).

For a fishery managed by a Federal fishery management council (council), the council must request a reduction program before we can start the reduction program process. For a state-managed fishery, the Governor of the state must request a reduction program before we can start. If a fishery is managed by more than one council, all the managing councils must join in the request. If a fishery is managed by more than one state, the Governors of all managing states must join in the request. Each requester must hold a public hearing on each request before sending it to us. For fisheries that are neither managed by a council nor managed by a state (such as fisheries for highly migratory species), we may initiate the reduction program process on our own initiative.

For a council-managed fishery, the proposed framework regulations would require the council to prepare and adopt any needed reduction amendment to the FMP and to draft regulations implementing it before requesting a program. We would review and, if appropriate, approve the reduction amendment, and issue regulations implementing it (after notice and opportunity for public comment), before we propose a program implementation plan (program plan) or propose regulations to implement that program plan (program regulations).

Provisions of the reduction amendment could be made effective independent of implementation of the reduction program or effective dependent on the initiation of the reduction program or on the completion of the capacity reduction stage of the reduction program. All provisions of a reduction amendment would be considered by us to be dependent, unless the reduction amendment expressly designates a provision as independent. Dependent provisions made initially effective to enable completion of pre-capacity reduction stage program steps would have no further effect if the reduction is not completed.

Under section 312(e) of the Magnuson Act, we must, for each reduction program, prepare a program plan for adoption and propose program regulations, and after 60-days opportunity for public comment, issue final program regulations and adopt (subject, for a financed program, to the condition precedent that the industry fee system needed to repay the loan be approved by a referendum), a final program plan. In a subsidized program, all provisions of the program regulations would go into effect at the same time. In a financed program, however, the industry fee system and related provisions of the program regulations would not be made effective until a subsequent referendum approves the fee system. These provisions would include those governing the performance of the obligations of all parties under the reduction contracts and of the post-reduction permit holders to repay the loan through the fee system. The obligations under the reduction contracts would include us disbursing the funds specified in each reduction contract and the vessel owners whose bids were accepted surrendering their fishing permits or both surrendering their permits and withdrawing their vessels from all domestic fishing. The provisions effective initially would be those necessary to conduct pre-referendum and referendum activities. Pre-referendum activities include: (1) inviting bids, (2) bidding, (3) receiving the bids, and (4) accepting, subject to a subsequent referendum approving the fee system, those bids meeting the criteria for bid acceptance.

For a financed program, the proposed framework regulations would require the council or Governor to submit a final business plan with the request for a reduction program. A business plan is a detailed reduction proposal from proponents within the proposed reduction fishery whose post-reduction fishing permit holders would repay the loan. The proponents would submit the business plan to the appropriate potential requester. The proposed framework regulations would require the requester to base its request on the business plan.

A business plan must specify: (1) how the potential borrower (collectively, all post-reduction harvesters in the reduction fishery) proposes that we accomplish reduction, (2) the minimum amount of capacity that we must reduce, and (3) the maximum reduction cost the potential borrower is willing, in the form of a loan, to repay. The business plan must also justify the proposed reduction program by demonstrating: (1) the program's cost effectiveness, (2) how it will enable post-reduction earnings sufficient to repay the loan, and (3) the likelihood both that the required

amount of capacity can be reduced at the reduction cost proposed and that a subsequent referendum will approve the industry fee system required to repay the loan. A business plan must also propose specific provisions for all other technical aspects of the reduction program. These include reduction amendments (involving matters such as post-reduction upgrading restrictions and fish allocations) and other matters such as the provisions of invitations to bid. If we decide to conduct the financed program requested, we would base our program plan and program regulations on the business plan.

A business plan not broadly supported by harvesters in a proposed reduction fishery would have little chance of producing a successful referendum. Business planners must, consequently, be responsive to the practical necessity that their business plan reflect fairly the needs of most harvesters in the proposed reduction fishery. These include the needs of both those who wish to receive reduction payments to leave the fishery and those who wish to remain and repay the loan. To ensure that the business plan fairly reflects these needs, business planners should conduct surveys designed to ascertain needs and extensively coordinate business plan preparation with all affected harvesters.

A business plan is a complex undertaking. Reduction involves many variables which differ from one fishery to the next. Consequently, preparing a business plan requires local ingenuity and fisheries knowledge. We will not attempt to prescribe reduction design, methodology, or other such details. Harvesters who remain in the program fishery after reduction are the beneficiaries of a financed program. They are the borrower responsible for repaying the loan. Any business plan upon which any loan is based should be their plan.

Each business plan must be sufficient to: (1) convince a requester to request the reduction program, (2) convince us to finance the reduction program requested, (3) allow us to readily prepare a program plan and program regulations, (4) enable bidding results that convince referendum voters to approve the required industry fee system, and (5) enable us to collect fee revenues sufficient to repay the loan.

All requests will involve a large investment of effort. This will be wasted if reduction programs are not thoroughly analyzed, realistic, and well planned. Each requester should, consequently, require business planners to demonstrate a high degree of diligence consistent with that investment.

Until we invite bids, receive them, and decide which ones to accept, no one really knows how much capacity can be reduced for what cost. Under section 312(d) of the Magnuson Act, the criteria for determining the types and numbers of vessels which are eligible to participate in the reduction program and the procedures for reduction program participation (such as the procedures for the submission of bids by vessel owners) must be part of the program plan and program regulations. However, for a financed program, section 312(e) of the Magnuson Act prohibits us from ''adopt[ing] a final implementation plan involving industry fees or debt obligation unless an industry fee system has been approved by a referendum * * *.'' This reflects Congressional intent that, before we make a loan, fulfill our obligations under the reduction contracts (i.e., pay out the loan funds in exchange for permit surrender or permit surrender and vessel withdrawal), obligate the remaining harvesters in the fishery to repay the loan, and impose and collect the fees, we obtain, through a referendum, the collective consent of those who would be obligated to repay the loan. However, in order to make an informed decision, the referendum voters must know how much capacity will be reduced and how much that reduction will cost. We and they cannot determine this unless bids are invited, received, and accepted before the referendum is conducted, and we cannot conduct the bid process without knowing what the final program plan will be and without having the program regulations governing the bidding process in effect.

While for a financed program section 312(e) forbids us from adopting a final program plan before the fee system needed to repay the loan is approved by a referendum, we are not prohibited from proposing a program plan or from proposing regulations to implement it, or from publishing, after 60-days opportunity for public comment, what would be the program plan we would adopt if, and after, a referendum approves the fee system. Nor does section 312 prohibit us from issuing and making effective any portion of the program plan implementing regulations, such as the regulations governing the bidding process, not imposing any fee obligations or dealing with fee related matters.

Accordingly, we have proposed framework procedures that would allow us to determine the amount of reduction and the cost of such reduction and to disseminate that information to the fee referendum voters before they vote, while complying with the statutory prohibition against adopting a final program plan (which implicitly prohibits us from making the loan and imposing repayment obligations) before the industry approves, by referendum, the fee system needed to repay the loan.

Under our proposed procedures, we would not adopt a final program plan for a financed program before a referendum approves the fee system. However the framework procedures would require us before conducting a fee referendum to publish the final program plan we will adopt if the referendum approves the fee system and issue program regulations that are effective for all reduction aspects except those related to the fee system.

Thus, under the framework rules, we would not conduct a referendum on the fee system until we first:

(1) Approve a reduction amendment (and, in the case of a Federal fishery, issue appropriate implementing regulations);

(2) Propose a program plan and program regulations for a 60-day public comment period;

(3) After considering the public comments:

(a) Publish the final program plan that we will adopt if a referendum subsequently approves the fee system; and

(b) Issue the final program regulations and make effective all provisions except for those involving the fee system;

(4) Issue invitations to bid;

(5) Receive all bids; and

(6) Conditionally accept the bids meeting the bid acceptance criteria in the published final program plan.

We would then conduct a fee referendum with ballots specifying, among other things, the amount of reduction, the reduction cost, the reduction loan amount (if different from the reduction cost), and the reduction loan term, the fee rate prospectively necessary to amortize the reduction loan over its term, and the actual fee rate for the year following reduction. Thus, the subsequent referendum would be on whether to approve the fee system needed to repay a known loan amount that accomplishes a known amount of reduction. If the referendum approves the fee system, we would adopt the previously published final program plan and, by a notice published in the **Federal Register**, announce the adoption of the final program plan as well as the effective date of the fee system related provisions of the final program regulations.

Under the proposed regulations, submitting a bid (i.e., making an offer to surrender a permit and/or surrender a permit and withdraw a vessel from all domestic fishing for the sum specified in the bid) would be voluntary. However, once a bid is submitted, it would be irrevocable. If we accept a bid, we would be entitled to specific performance of the resulting reduction contract. Making all bids irrevocable bids and enabling us to require the specific performance of the reduction contracts resulting from bid acceptance ensures that bidder non-performance cannot change the reduction cost and the amount of reduction upon which the referendum voters based their votes. Our pre-referendum acceptance of a reduction bid creates a conditional reduction contract. The condition is that the fee system necessary to repay the loan is approved by a subsequent industry referendum. If the referendum does not approve the necessary fee system, the bid acceptances and the resulting contracts are then null and void, the program plan would not be adopted, the loan would not be made, the fee provisions in the program regulations would not become effective, and any program regulations in effect would be revoked. If the referendum approves the fee system, the bid acceptances and resulting contracts are then unconditional and in full force and effect, entitling us to the contracts' specific performance. We then would adopt the program plan, publish a notice in the **Federal Register** announcing the adoption of the plan and the effective date of all program regulations not yet effective, make the loan, disburse the loan funds in exchange for the surrender of fishing permits and or the surrender of fishing permits and the withdrawal of vessels from all domestic fishing, and make the fee system provisions in the program regulations effective.

Commercial reality requires that the time between accepting bids and subsequently conducting a referendum be as short as possible. Consequently, we must accept bids and conduct referenda with all possible dispatch. All other required components of a potential reduction program must be in place before we invite bids, accept bids, and conduct referenda based on bid results. Once we invite bids, the remaining process must proceed without delay.

This proposed framework rule addresses some components of the reduction sequence directly and others only indirectly.

Under the proposed regulations, the following sequence would apply to a financed program that is in a council-managed fishery, requires a reduction amendment, and results in a referendum approving the fee system for a loan equal to the total reduction cost:

(1) The reduction's fishing-industry proponents:

(a) Prepare a business plan, and

(b) Submit the business plan to the appropriate council;

(2) The appropriate council:

(a) Approves the business plan;

(b) Prepares a reduction amendment to the applicable FMP and draft regulations to implement it;

(c) Holds a public hearing about the reduction program; and

(d) Submits a reduction program request (including the business plan, the reduction amendment to the FMP, and the draft regulations to implement the reduction amendment) to us; and

(3) We:

(a) Determine that the requested reduction program meets all statutory and regulatory requirements;

(b) Approve a loan (assumes availability of sufficient appropriation and/or apportionment authority);

(c) Announce the availability of the reduction amendment to the FMP for public comment and propose regulations to implement it;

(d) Approve the reduction amendment;

(e) Issue regulations to implement the reduction amendment (except for any independent provisions,

these regulations become effective only when we actually reduce capacity);

(f) Propose a program plan and program regulations;

(g) Publish the final program plan we will adopt if the fee system is approved by a subsequent referendum and issue the program regulations (provisions not necessary for program activities that precede a referendum and for conducting the referendum itself would not be effective at this point);

(h) Invite bids;

(i) Receive and tally the bids;

(j) Conditionally accept the bids that meet the bid acceptance criteria (acceptance is expressly subject to the condition that a subsequent referendum approves the fee system);

(k) Conduct a referendum;

(l) Notify all who were mailed ballots that the referendum approved the fee system and notify all whose bids we accepted that our previously conditional acceptance of their bids is now unconditional, and that the reduction contracts resulting from bid acceptance are now in full force and effect;

(m) Adopt the previously published final program plan and by a notice published in the **Federal Register** announce the adoption and make the program regulations fully effective including those implementing the fee system;

(n) Reduce the capacity through distributing the loan's proceeds to those whose bids we accepted (all dependent provisions of the reduction amendment are effective at this point);

(o) Begin to receive fees and continue to receive them until the loan is paid in full; and

(p) After the loan is repaid, repeal the program regulations.

For a subsidized program, the framework regulations would require the requester to prepare and submit to us a preliminary development plan for the reduction program. A preliminary development plan is a more precursory and generalized reduction proposal than the business plan required for a financed program. Because the reduction cost of a subsidized program is not borrowed, a development plan does not include anything about a loan, fees, or a referendum.

We would use the preliminary development plan to prepare a final development plan. We would then submit the final development plan to the requester for approval and for reaffirmance of the request. The requester would prepare and adopt a reduction amendment based on our final program development plan and submit, along with its reaffirmation, the reduction amendment (and draft regulations to implement it if the reduction amendment is to a Federal FMP) to us for approval (and if for a Federal FMP, for proposal and issuance of regulations to implement the reduction amendment). We would then prepare a program plan and proposed program regulations based on the final development plan, and after 60-days notice and opportunity for comment, adopt the final program plan and issue the program regulations.

The reason we require a request for a financed program to include a final business plan (instead of a preliminary business plan, with us preparing a final business plan) is that a financed program involves a loan. We are the lender, and the harvesters remaining in the program fishery after reduction are the borrower. It would be inappropriate for a lender to develop any part of a borrowers' business plan.

Under the proposed regulations, the following sequence would apply to a subsidized program that is in a council-managed fishery, requires a reduction amendment to the applicable FMP, has Federal appropriations available to fund the reduction program's total reduction

cost, and results in our decision to conduct a reduction program:

(1) The appropriate council:

(a) Prepares a preliminary development plan;

(b) Holds a public hearing; and

(c) Submits a program request (based on the preliminary development plan) to us;

(2) We:

(a) Preliminarily determine that the reduction program meets all statutory and regulatory requirements;

(b) Prepare a final development plan; and

(c) Submit the final development plan to the council for approval;

(3) The council:

(a) Approves the final development plan;

(b) Reaffirms (based on the final development plan) its request for a reduction program; and

(c) Prepares and submits to us a reduction amendment and draft regulations to implement the reduction amendment; and

(4) We:

(a) Determine that the request meets all statutory and regulatory requirements;

(b) Determine the sufficiency of all required appropriation and apportionment authority;

(c) Announce the availability for public comment of the reduction amendment and propose regulations to implement it;

(d) Approve the reduction amendment;

(e) Issue regulations to implement the reduction amendment (except for any independent provisions,

these regulations become effective only when we actually reduce capacity);

(f) Propose a program plan and program regulations;

(g) Adopt the final program plan and issue the final program regulations;

(h) Invite bids;

(i) Receive and tally the bids;

(j) Accept the bids which meet the bid acceptance criteria; and

(k) Complete the program (all dependent provisions of the reduction amendment become effective at this point).

A financed program might sometimes be limited to harvesters in a fishery who use a particular fishing-gear type. Some harvesters in a fishery may, for example, use trawl gear, while others may use pot or long-line gear. A program in that fishery could, for example, involve: (1) only trawl harvesters, (2) only pot harvesters, (3) only long-line harvesters, (4) some combination of any of them, or (5) all of them.

When a financed program does not involve all gear types in a fishery, reduction amendments must appropriately allocate post-reduction fish resources between harvesters who are included in the program and those who are not. This ensures that the harvesters who must repay the loan that funded the reduction both receive the reduction's long-term benefit and remain capable of repaying the loan.

Paramount fishery conservation and management considerations might, however, require post-reduction reallocation between gear types different from the allocations upon which reduction decisions were based. Assume, for example, that a financed program involves trawl-gear fishing permits. Assume that the reduction amendment contained allocation provisions designed to ensure that the holders of trawl-gear permits realize the post-reduction benefit of their reduction investment and remain capable of repaying the loan. Assume that paramount post-reduction fishery conservation and management considerations later, however, require reallocating all trawl-gear allocations to pot and long-line gear allocations. How can trawl-gear operators (the borrower) and the loan be protected?

One potential way is for all reallocations to belong to the trawl-gear operators, even though they may be unable to use the reallocations with their trawl gear. Under this approach, the trawl fishing permits would simply be changed to pot or long-line fishing permits, but the permit holders would remain the same. The permit holders might, depending on the provisions of the reduction-amendment, then have several alternatives. First, they might use the reallocations by changing their gear types. Second, they might dispose, for value, of their permits involving the reallocations to other gear operators who are prepared to use the permits. At any rate, the fee obligations necessary to repay the loan follow the original permits upon which the loan was based, regardless of changes in gear type, fishing permit owners, or fishing permit users.

However it may be accomplished, reduction amendments must contain provisions adequate to protect both the reduction borrower and lender. Whenever any program is restricted to fewer than all the operators or areas of operations in a fishery, the reduction amendment must fully dispose of this allocation issue to our and the borrower's satisfaction.

Subsidized programs involve neither borrowers nor lenders. Instead, they usually would involve large expenditures of public resources. If we receive a request for a subsidized program, we would consult with all interested parties in preparing a final development plan designed to ensure that reduction is an effective and equitable expenditure of public funds.

Reduction involves either revoking fishing permits or both revoking fishing permits and withdrawing vessels from all domestic fishing. Owners could withdraw vessels by scrapping them. The owners of federally-documented vessels also could withdraw them by subjecting their titles to permanent restrictions that prevent their vessels from being used in any domestic fishing. In financed programs involving the withdrawal of vessels from domestic fishing, for federally documented vessels we will not require the vessels to be scrapped or subject the vessels to any restriction other than a prohibition on their use for domestic fishing. This accords with the statutory objective of achieving the maximum reduction for the minimum cost and in the minimum time. Reduction is more cost-effective, and loan amounts that must be repaid are reduced, when vessel owners are free to seek the highest market return available for vessels that can no longer be used to fish domestically. The owners of federally-documented vessels, thus, would be free, in financed programs that involve the withdrawal vessels from domestic fishing, to submit bids that reflect their vessels' residual value for any use other than for domestic fishing. The owners of non-federally documented vessels would not have that freedom since their vessels would have to be scrapped. Because subsidized programs involve the expenditure of public funds, they may require a different approach. If the public wants to pay for the extra cost of scrapping federally-documented vessels, we can require both federally-documented vessels and non-federally documented vessels in a subsidized program to be scrapped.

Some vessels have fishing permits for multiple fisheries. For a financed program for a reduction program fishery, we would not require the surrendering of fishing permits in any non-reduction fishery. Neither would we impose any restrictions on any fishing permit in a non-reduction fishery. This makes a financed program more cost-effective and reduces the amount of the loan required to fund reduction in the reduction fishery. Again, because subsidized programs involve the expenditure of public funds, they may require a different approach. If the public wants to pay the extra cost of having an owner surrender all of his or her fishing permits, we can require the surrender of both the fishing permit

in the reduction fishery and all other fishing permits associated with the reduction vessel in non-reduction fisheries.

A financed program that reduces fishing permits in the reduction fishery may result in vessel owners shifting into other fisheries for which they also have permits. This shift could, however, occur at any time without a reduction program. Moreover, we cannot expect post-reduction harvesters in a reduction fishery to borrow and repay the cost of reducing capacity in non-reduction fisheries. This would not be equitable to them or to the permit holders in the non-reduction fishery who would receive a reduction benefit that the permit holders in the reduction fishery pay for instead of them.

Requiring permit holders in a reduction fishery to borrow and repay the cost of reducing permits in any non-reduction fishery would also frustrate the statutory requirements in several ways. First, it would impede the statutory objective of achieving the maximum reduction for the minimum cost. Second, it would functionally make every reduction program virtually a permit and vessel reduction, rather than enabling the statutory option of either a permit reduction or a permit and vessel reduction. This is true because a fishing vessel that cannot fish has a greatly reduced value.

Permit holders in non-reduction fisheries are free to support reducing capacity in their own fisheries at any time. They can do so either with loans of their own or with whatever other resources may otherwise be available for funding reduction costs in their fisheries.

Federal appropriations (or appropriation authority) is a prerequisite for all programs except those that are completely funded by non-Federal sources. These are the types of reduction programs that require Federal appropriation action (and the type of appropriation action that each requires):

(1) *Subsidized programs paid for by Federal appropriations.* Actual funds equal to the entire federally-funded portion of a reduction program's reduction cost must be appropriated.

(2) *Financed programs with no Federal Credit Reform Act (FCRA) cost.* The principal amount of the loan must be authorized in an appropriations act. No actual funds are, however, appropriated. Basically, this involves an appropriation act establishing a loan ceiling. After we approve the loan, we borrow the loan's principal from the U.S. Treasury. We then re lend to the program borrower what we borrowed from the Treasury. As the borrower repays us, we repay the Treasury.

(3) *Financed programs with FCRA cost.* Actual funds equal to a loan's FCRA cost must be appropriated. The FCRA cost is the net present value of any loan principal that we project we may be unable to collect over the loan's life. The amount of loan authority available depends on how the FCRA cost-rate determination relates to the FCRA cost appropriated. For example, a one percent FCRA cost and a $1 million FCRA cost appropriation produce a loan authority of $100 million. As in a financed program with no FCRA cost, we borrow the loan principal from the U.S. Treasury (less the FCRA cost appropriation). We then re-lend to the program borrower both the appropriated FCRA cost plus what we borrowed from the Treasury (which, together, equal the principal amount of the loan). As the borrower repays us, we repay the Treasury.

We believe these loans involve no FCRA cost. The interest income we earn from these loans is two percent higher than the interest expense we pay to the U.S. Treasury for the loan capital we borrow. Our loan-loss risk should not exceed this risk premium. Our risk is low for several reasons. First, up to the first five percent of an entire fishery's delivered value is available for loan repayment. This means we are paid before anyone else. Second, fish buyers deduct the loan repayment fee from the sales proceeds of each post-reduction fishing trip before they pay harvesters anything. This means the borrower's loan repayment is automatic. These are major loan-repayment advantages.

A loan's initial amortization cannot exceed 20 years. Should unforeseen circumstances prevent repayment within that maximum amortization period, however, the fee would continue for as long as full loan repayment requires.

Thus, only complete and permanent biological or market failure of an entire fishery resource could reasonably prevent a loan's eventual payment in full. Both are so unlikely as to exclude us from projecting them as a realistic basis for initially assigning positive FCRA cost to these loans. Reduction will generally occur only in fisheries whose resources have a long-established market presence. The Magnuson Act requires fisheries conservation and management that preserve the maximum sustainable yield of fishery resources. Reduction programs facilitate fisheries conservation and management.

Unless they are multi-year appropriations, FCRA appropriations and loan authorities cease to exist at the end of the fiscal year for which they were appropriated if they are not obligated during that fiscal year. The Federal budgetary cycle occurs over several years. This cycle and reduction's uncertain appropriation needs may not be a good match. Unless the Federal budget cycle makes provision several years in advance for programs that may never be implemented (or might not even yet have then been requested), reduction appropriations may have to proceed as supplemental appropriation requests. Otherwise, we may have to postpone a program until appropriation authority is available through the regular budget cycle. This may involve significant delay in the reduction process.

We would not adopt a final program plan and program regulations unless appropriation and apportionment authority adequate to effect the program first exists. Moreover, in a financed program, we would not adopt a final program plan and program regulations unless a loan adequate to support the program has first received all required approvals. This is because we must be prepared to disburse loan funds immediately after a referendum approves the fee required to repay the loan.

Regulations for fisheries assistance programs appear at 50 CFR part 253. Part 253 now has three subparts. This proposed framework rule would add a fourth, subpart D, to govern reduction programs. Sections 253.25 through 253.38 of subpart D would be framework rules common to all potential programs. Section 253.39 would be reserved for individual program regulations (to be individually proposed and adopted as we implement each program). It should be noted that the program regulations may contain provisions governing fee payment, fee collection, fee collection deposit, and/or fee collection records in addition to, or different from, those contained in § 253.36 and/or § 253.37 of this subpart if special circumstances in the reduction fishery make those additional or different provisions necessary to ensure full, complete, accurate and timely fee payment and/or full, complete, accurate and timely fee deposit, disbursement, accounting, records keeping, and reporting. It is the responsibility of the business planners and requester of a financed program to include such conditions in the business plan. However, we will deviate from the framework regulations in this regard only to the minimum extent necessary.

Classification

This proposed rule has been determined to be significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, does not have a significant economic impact on a substantial number of small entities. The proposed rule does not implement any program. Instead, the proposed rule only establishes a framework for implementing future programs in specific fisheries. Each program requires its own program regulations to implement its own program plan. We cannot at this time determine the future effect on small entities resulting from program regulations implementing reduction in individual fisheries. We will consider this effect at the time that we individually propose program regulations for each reduction in each program fishery. Consequently, we did not prepare a regulatory flexibility analysis.

The proposed rule contains collection-of-information requirements subject to Office of Management and Budget review and approval under the Paperwork Reduction Act.

Notwithstanding any other provision of law, no person is required to respond to, nor is any person subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid Control Number assigned by the Office of Management and Budget.

For a financed program, the collection of information subject to these requirements includes preparing the business plan, bidding, voting in a referendum, and all fee payment and collection (including records keeping and reporting) during the first year after a loan as well as each subsequent year of loan repayment. We estimate that the public reporting burden for this would average 10,075 hours if a council requests the program and 10,344 hours if a state requests the program. In both cases, this estimate is through the first year of loan repayment. We estimate that the public reporting burden for each subsequent year of loan repayment would average 241 hours per year.

For a subsidized program that a council requests, bidding is the only public reporting burden subject to these requirements. We estimate that this burden would average a total of 1,600 hours per program. When a state makes the same request, however, we estimate that total reporting burden would increase to an average of 8,504 hours.

The above estimates are based on individual response times of 6,634 hours to prepare a business plan, 270 hours to prepare a state request, 4 hours for a referenda vote, 4 hours to prepare a bid, 10 minutes to submit a fish ticket for a trip, 3 hours to prepare a monthly buyer report, 4 hours to prepare an annual buyer report, and 2 hours to prepare a seller/buyer report.

We have submitted this collection of information to the Office of Management and Budget for approval and we invite the public to comment on it. Is this collection of information necessary for properly conducting reduction? Does the information we propose to collect have practical utility? Is the burden-hour estimate accurate? How could we improve the quality, utility, and clarity of the information we propose to collect? How could we minimize the collection-of-information burden? Would the use of automated-collection techniques or other forms of information technology help? Send comments regarding this burden estimate, or any other aspect of this collection of information, to us (see ADDRESSES) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

List of Subjects in 50 CFR Part 253

Fishing capacity reduction, Fisheries, Fishing vessels, Intergovernmental relations, Loan programs-business, Reporting and record keeping requirements, Research.

For the reasons set out the preamble, 50 CFR part 253 is proposed to be amended by adding a subpart D to read as follows:

PART 253—FISHERIES ASSISTANCE PROGRAMS

Subpart D—Fishing Capacity Reduction
Sec.
253.25 Definitions.
253.26 Requests for a program.
253.27 Content of a request for a financed program.
253.28 Acceptance of a request for, and determinations as to whether to initiate a, financed program.
253.29 Content of a request for a subsidized program.
253.30 Acceptance of a request for, and determinations as to whether to conduct a, subsidized program.
253.31 Reduction amendments.
253.32 Program plan and program regulations.
253.33 Bids.
253.34 Referenda.
253.35 Reduction methods.
253.36 Fee payment and collection.
253.37 Fee collection deposits and records.
253.38 Prohibitions and penalties.
253.39 Program regulations for each reduction program. [Reserved]

Subpart D—Fishing Capacity Reduction

Authority: 16 U.S.C. 1861a (b) through (e).

§ 253.25 Definitions.

In addition to the definitions in the Magnuson-Stevens Fisheries Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and in § 600.10 of this chapter, the terms used in this subpart have the following meanings:

Borrower means each post-reduction permit holder or vessel owner fishing in the program fishery.

Business plan means the document containing the information specified in § 253.27(q) and required to be submitted with a request for a financed program.

Consistency requirement means the requirement of section 312(b)(1)(B) of the Magnuson Act that each reduction program be consistent with the management plan in effect for a reduction fishery.

Control requirement means the requirement of section 312(b)(1)(B)(ii) of the Magnuson Act that each management plan in effect for a reduction fishery establish a specified or target total allowable catch or other measures that trigger closure of the reduction fishery or other adjustments to reduce the reduction fishery's catch whenever fishery conservation and management require it;

Council means a Fishery Management Council established under the Magnuson Act.

Delivery value means the full, fair-market value that a fish buyer pays, in an arm's-length transaction, to a fish seller for each pound of fee fish (in the form in which the fee fish exists at the time of fish delivery) that the fish seller delivers to the fish buyer, before any deductions whatsoever.

Deposit principal means all collected fees that a fish buyer deposits in a segregated account maintained at a federally-chartered national bank for the sole purpose of aggregating collected fees before sending them to NMFS for repaying a reduction loan.

Fee means the amount deducted for reduction loan repayment (under the industry fee system provided for in section 312(d) of the Magnuson Act) from the delivery value of fee fish and calculated by multiplying the applicable fee rate by the delivery value.

Fee fish means all fish harvested from a reduction fishery involving a financed program during the period in which any

amount of the program's reduction loan remains unpaid.

Final development plan means the document NMFS prepares for a subsidized program containing the information specified in § 253.29(g) and based on the initial development plan the reduction program requester submits.

Financed means funded by a reduction loan.

Fish buyer means the first ex-vessel party who, in an arm's- length transaction, purchases fee fish from a fish seller.

Fish delivery means the point at which a fish buyer first takes title to, or possession of, fee fish from a fish seller.

Fish seller means the party who catches and, in an arm's-length transaction, first sells fee fish to a fish buyer.

Federal Fishery Management Plan or *Federal FMP* means any plan (including amendments thereto) approved or adopted by the Secretary of Commerce pursuant to section 303 of the Magnuson Act.

Fund means the Fishing Capacity Reduction Fund (and each subaccount for each reduction program) established in the U.S. Treasury for the deposit into, and disbursement from, all funds (including all reduction loan capital and all fee revenue) involving each reduction program.

Management plan means any Federal FMP or state fishery management plan or program pursuant to which a fishery is managed.

Necessity requirement means the requirement in section 312(b)(1)(A) of the Magnuson Act that each reduction program be necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the reduction fishery;

Nonreplacement requirement means the requirement in section 312(b)(1)(B)(i) of the Magnuson Act that each management plan in a reduction fishery prevent the replacement of the fishing capacity that the reduction program removes through a moratorium on new entrants to the reduction fishery, restrictions on vessel upgrades, and whatever other effort control measures may be required, taking into account the reduction fishery's full potential fishing capacity.

Post-reduction means after a reduction program reduces capacity in a reduction fishery.

Preliminary development plan means the document containing the information specified in § 253.29(g) and required to be submitted with a request for a subsidized program.

Program plan means the implementation plan that section 312(e) of the Magnuson Act requires for implementing each reduction program.

Program regulations mean the implementation regulations that section 312(e) of the Magnuson Act requires for implementing each reduction program.

Reduction means the act of reducing fishing capacity under any reduction program.

Reduction amendment means any amendment to a management plan that this subpart requires for a reduction program.

Reduction contract means the contents of a reduction bid and NMFS' conditional or non-conditional acceptance of such a bid.

Reduction cost means the total dollar amount of all reduction payments to fishing permit owners, fishing vessel owners, or both, in a reduction fishery.

Reduction fishery means the portion of a fishery to which a reduction program applies.

Reduction loan means a loan, under sections 1111 and 1112 of Title XI of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1279f & 1279g), for financing any portion, or all, of a program's reduction cost.

Reduction payment means the Federal Government's fishing capacity reduction payment to a fishing permit owner, fishing vessel owner, or both, under a program.

Reduction permit means any permit covered by a reduction contract.

Reduction program means a fishing capacity reduction program authorized under section 312(b)-(e) of the Magnuson Act and this subpart, starting with a request for a reduction program and ending (for a financed program) with full reduction loan repayment.

Reduction vessel means any vessel covered by a reduction contract.

Referendum means the referendum that section 312(d)(1) of the Magnuson Act requires to authorize an industry fee system for repaying a reduction loan for any reduction program.

Requester means a council or a Governor identified in § 253.26(b) and (c).

Scrap a vessel means to completely and permanently reduce to small fragments having value, if any, only as raw materials for reprocessing, a vessel's hull, superstructures, and other fixed structural components

Subsidized means not funded in whole or in part by a reduction loan.

§ 253.26 Requests for a program.

(a) A council managing a proposed reduction fishery or the Governor of a state managing a proposed reduction fishery may request NMFS to conduct a reduction program in such fishery. Each request must be in writing and must be addressed to the Chief, Financial Services Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Each request must satisfy the requirements of § 253.27 or § 253.29, as applicable, of this subpart, and enable NMFS to make the determinations required by § 253.28 or § 253.30, as applicable, of this subpart.

(b) For a council-managed fishery, only the council can make the request. If two or more councils manage the fishery, they must make a joint request. No council may make a request (or join in making a request) until after it conducts a public hearing about the request.

(c) For a state-managed fishery, only the Governor of that state can make the request. If two or more states manage the fishery, the Governors of those states must make a joint request. No Governor of a state may make a request (or join in making a request) until the state conducts a public hearing about the request.

(d) NMFS cannot conduct a reduction program in any council- or state-managed fishery, unless NMFS first receives a request from the council or the Governor of the state managing the reduction fishery. For a fishery subject to U.S. jurisdiction, but not council or state managed, NMFS may conduct a reduction program on its own motion by fulfilling so much of the request requirements of this subpart as NMFS, in its discretion, determines reasonably applies to a reduction program not initiated by a request.

§ 253.27 Content of a request for a financed program.

A request for a financed program must:

(a) Specify the reduction fishery;

(b) Project the amount of the reduction and specify what a reduction of that amount achieves;

(c) Project the reduction cost and specify the amount of the reduction cost to be financed and, if less than 100 percent of such cost is to be financed, specify the amounts of, and document the availability of, all funding from sources other than a reduction loan;

(d) Project the availability of all Federal appropriation authority or other funding, if any, that the reduction program requires (including timing in relation to the projected reduction program process);

(e) Demonstrate how the reduction program meets the necessity requirement;

(f) Demonstrate how the reduction program meets the consistency requirement;

(g) Demonstrate how the business plan is consistent with the management plan including any reduction amendment;

(h) Demonstrate how the management plan including any reduction amendment meets the nonreplacement requirement;

(i) Demonstrate how the management plan including any reduction amendment meets the control requirement.

(j) If the reduction fishery involves only one of several types of harvesting gear in a fishery (or is otherwise limited by area or other circumstance), demonstrate how the management plan ensures post-reduction allocations between gear types (or between operating areas or other circumstances) in the fishery, that adequately protect both NMFS' reduction-loan interest and the borrower's interest in the pre-reduction allocations involved in the fishing capacity that the reduction program reduces;

(k) Include any required reduction amendment. The reduction amendment must be based on the business plan. If the requester is a council, the requester must, at the time of the request, have adopted the reduction amendment and drafted proposed regulations to implement it;

(l) Request that NMFS conduct, at the appropriate time, a referendum under this subpart;

(m) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery. This must be based on the best information available to the requester and take into account any limitation by type of fishing gear operated, area of operation, or other consideration that the reduction program involves;

(n) Specify the annual total allowable catch of fish during each of the past five years and the allocations of it for each of those years to those listed under paragraph (m) of this section;

(o) Specify the criteria for determining the types and number of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the reduction program. The criteria must take into account: the characteristics of the fishery, whether the program is limited to a particular gear type in the fishery (or otherwise limited by some other operational consideration), whether the reduction program is limited to fishing permits or involves both fishing permits and fishing vessels, the management plan requirements, the needs of fishing communities, and minimizing the reduction cost;

(p) Include any other information or guidance that would assist NMFS in developing a program plan and program regulations;

(q) Include a business plan, prepared by, or on behalf of, knowledgeable and concerned harvesters in the reduction fishery, that:

(1) Specifies a detailed reduction methodology that accomplishes the most reduction at the least reduction cost and in the shortest time and otherwise achieves the reduction program result the requester specifies under paragraph (b) of this section. The methodology must be sufficiently detailed to enable NMFS to readily design, propose, and adopt a timely and reliable program plan, to propose and issue timely and reliable program regulations, to invite bids, to accept or reject bids, to conduct a referendum, and to complete a reduction program in accordance with this subpart. The methodology must include: contents and terms of invitations to bid, eligible bidders, type of information that bidders must supply, criteria for accepting or rejecting bids, terms of bid acceptances, referendum procedures, and all other technical matters required to conduct a program;

(2) Based on actual experience for a reasonable number of past years in the reduction fishery, projects and justifies (with documented analysis) the reduction fishery's annual delivery value during the reduction loan's repayment period;

(3) Specifies the principal amount and repayment term of the reduction loan (if the reduction loan's principal amount is less than the reduction cost, the business plan must adjust all affected aspects accordingly). The reduction loan's principal amount cannot (at the interest rate most likely to prevail) exceed the principal amount that can be amortized in 20 years by five percent of the projected delivery value of fee fish;

(4) Specifies the minimum amount of reduction required for the reduction loan (and the reduction cost, if greater than the reduction loan) to be cost effective;

(5) Fully analyzes and justifies the reduction loan's cost effectiveness at the minimum reduction level and at various reduction-level increments reasonably greater than the minimum one, based on the:

(i) Best historical fishing revenue and expense data (and any other relevant productivity measures) available in the reduction fishery; and

(ii) Projected effect of the reduction program on the post-reduction operating economics of typical harvesters in the reduction fishery (particularly, the extent to which the reduction increases the ratio of delivery value to fixed cost and improves harvesting's other relevant productivity measures);

(6) Specifies how the management plan including any reduction amendment meets the nonreplacement requirement;

(7) Specifies how the management plan including any reduction amendment meets the control requirement;

(8) If the reduction program involves only one of several types of fishing gear operating in the reduction fishery (or is limited by operational area or other considerations), specifies management-authority provisions for the post-reduction allocation of the fish for which capacity will be reduced that both allow the borrower to repay the reduction loan and preserve for the borrower the reduction benefit contemplated by the borrower's obligation to repay the reduction loan.

(9) Specifies the names and addresses of record of all fish buyers who can, after reduction, reasonably be expected to receive deliveries of fee fish;

(10) Specifies any special circumstances in the reduction fishery that may require fee payment, fee collection, fee collection deposit, and/or fee collection record keeping program regulations in addition to, or different from, those contained in § 253.36 and/or § 253.37 of this subpart to ensure full, complete, accurate, and timely fee payment and collection and/or full, complete, accurate, and timely fee deposit, disbursement, accounting, record keeping, and reporting.

(11) Demonstrates by the results of a survey of potential referendum voters, or by other convincing means, a widespread degree of support by potential referendum voters for the business plan and confidence in its feasibility; and

(r) Includes the requester's certification that, in the requester's best judgment, the business plan, the management plan, and all other request aspects constitute a complete, realistic, and practical prospect for successfully completing a reduction program in accordance with this subpart.

§ 253.28 Acceptance of a request for, and determinations as to whether to initiate a, financed program.

(a) *Acceptance of a request.* NMFS will review any request submitted to it to determine whether the request conforms with the requirements of

§ 253.27. If the request conforms, NMFS will accept the request. If the request does not conform, NMFS will return the request to the requester with guidance on how to make the request conform.

(b) *Determination of whether to initiate a financed program.* After receipt of a conforming request for a financed reduction program, NMFS will initiate the reduction program if it determines that:

(1) The reduction program meets the necessity requirement;

(2) The reduction program meets the consistency requirement;

(3) The management plan including any reduction amendment meets the nonreplacement requirement;

(4) The management plan including any reduction amendment meets the control requirement;

(5) The management plan including any reduction amendment contains post-reduction allocation provisions adequate to ensure reduction-loan repayment;

(6) The reduction program is cost effective;

(7) The business plan is complete, comprehensive, practical, and supports a determination that the reduction program is reasonably capable of being successfully implemented and the borrower is capable of repaying the reduction loan. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable program plan and propose and issue timely and reliable program regulations and otherwise complete the reduction program in accordance with this subpart;

(8) The reduction program is consistent with the business plan; and

(9) The reduction program is in accord with all other applicable provisions of the Magnuson Act and this subpart.

§ 253.29 Content of a request for a subsidized program.

A request for a subsidized program must:

(a) Specify the reduction fishery;

(b) Project the amount of the reduction and specify what a reduction of that amount achieves;

(c) Project the reduction cost and specify the amount of the reduction cost to be funded by Federal appropriations and the amount, if any, to be funded by other sources;

(d) Project the availability of Federal appropriations or other funding, if any, that completion of the reduction program requires (including timing in relation to the projected reduction program process);

(e) Specify the number of fishing permits authorizing the harvest of fish from the reduction fishery or the number of fishing vessels authorized to harvest fish from the reduction fishery, or both, and the conditions under which permit or vessel owners are authorized to fish;

(f) Specify the annual total allowable catch of fish from the reduction fishery during each of the past five years and the allocations of it for each of those years to those currently authorized to harvest fish from the reduction fishery;

(g) Include a preliminary development plan that:

(1) Specifies a detailed reduction methodology that accomplishes the most reduction at the least reduction cost and in the shortest time and otherwise achieves the reduction-program result that the requester specifies under paragraph (b) of this section. The methodology must be sufficiently detailed to enable NMFS to prepare a final development plan to serve as the basis for NMFS to readily design, propose, and adopt a timely and reliable program plan and propose and issue timely and reliable program regulations. The methodology must include: contents and terms of invitations to bid, eligible bidders, type of information that bidders must supply, criteria for accepting or rejecting bids, and terms of bid acceptances;

(2) Specifies criteria for determining the types and numbers of fishing permits or fishing permits and fishing vessels eligible to participate in the reduction program. The criteria must take into account: the characteristics of the fishery, whether the reduction program is limited to a particular gear type in the fishery (or is otherwise limited by some other operational consideration), whether the reduction program is limited to fishing permits or involves both fishing permits and fishing vessels, the management plan requirements, the needs of the fishing communities, and the need to minimize the reduction program's reduction cost; and

(3) Demonstrates the reduction program's cost effectiveness;

(h) Demonstrate how the reduction program meets the necessity requirement;

(i) Demonstrate how the reduction program meets the consistency requirement;

(j) Demonstrate that the preliminary development plan is consistent with the management plan or would be consistent after any needed reduction amendment;

(k) Specify the management plan measures included those in any reduction amendment to be submitted that meet the nonreplacement requirement;

(l) Specify the management plan measures included those in any reduction amendment to be submitted that meet the control requirement;

(m) Specify any other information or guidance that assists NMFS in preparing a final development plan and a proposed program plan and proposed program regulations; and

(n) State why the requester believes that, in its best judgment, the reduction program constitutes a reasonably realistic and practical prospect for successfully completing a reduction program in accordance with this subpart.

§ 253.30 Acceptance of a request for, and determinations as to whether to conduct a, subsidized program.

(a) *Acceptance of a request.* NMFS will review any request submitted to it to determine whether it conforms with the requirements of § 253.29. If the requests conforms, NMFS will accept the request. If the request does not conform, NMFS will return the request to the requester with guidance on how the request can conform.

(b) *Determination as to whether to prepare, and preparation of, a final development plan.* After receipt of a conforming request, NMFS will prepare a final development plan if it determines that the reduction program requested constitutes a realistic and practical prospect for successfully completing a reduction in accordance with this subpart and enables NMFS to readily design, propose, and adopt a timely and reliable program plan and propose and issue timely and reliable program regulations and otherwise complete the reduction program in accordance with this subpart. NMFS will based the final development plan on the requester's preliminary development plan. NMFS will consult, as NMFS deems appropriate, with the requester, Federal agencies, state and regional authorities, affected fishing communities, participants in the program fishery, conservation organizations, and other interested parties in preparing of the final development plan.

(c) *Reaffirmation of the request.* After completing the final development plan, NMFS will submit it to the requester for its reaffirmation of the request. Based on the final development plan, the reaffirmation must:

(1) Certify that the final development plan is consistent with the management plan including any reduction amendment;

(2) Demonstrate that the management plan including any reduction amendment meets the nonreplacement requirement;

(3) Demonstrate that the management plan including any reduction amendment meets the control requirement; and

(4) Include any required reduction amendment and, if the requester is a council, proposed regulations to implement it. The requester must base the reduction amendment on the final development plan;

(d) *Determinations as to whether to conduct a subsidized program*. After NMFS' receipt of the requester's reaffirmation and any needed reduction amendment and any needed proposed regulations to implement it, NMFS will conduct the reduction program if it determines that:

(1) The reduction program meets the necessity requirement;

(2) The reduction program meets the consistency requirement;

(3) The reduction program is consistent with the management plan including any reduction amendment;

(4) The management plan including any reduction amendment meets the nonreplacement requirement;

(5) The management plan including any reduction amendment meets the control requirement;

(6) The reduction program is reasonably capable of being successfully implemented;

(7) The reduction program, if successfully implemented, will be cost effective; and

(8) The reduction program is in accord with all other applicable provisions of the Magnuson Act and this subpart.

§ 253.31 Reduction amendments.

(a) Each reduction amendment may contain provisions that are either dependent upon a reduction program or independent of a reduction program. Each provision of a reduction amendment is considered to be a dependent provision unless the amendment expressly designates the provision as independent.

(b) Independent provisions are effective without regard to any subsequent reduction program actions.

(c) Dependent provisions are initially effective only to enable initiation and completion of the pre-capacity reduction stage of a reduction program, i.e., to enable inviting bids, bidding, and accepting bids, and, if a financed program is involved, to enable the conduct of a referendum.

(d) All dependent provisions of each reduction amendment for a financed program not initially effective become fully in force and effective when NMFS, under § 253.34(f) of this subpart, notifies those who were mailed referendum ballots that the industry fee system for the reduction program was approved by referendum; provided, however, that nothing subsequently prevents actual reduction payment and reduction. If a referendum, in accordance with this subpart and any special referendum provisions in the program regulations, does not approve the required industry fee system, no dependent provision of the reduction amendment then has any further force or effect.

(e) All dependent provisions of a reduction amendment for a subsidized program not initially effective become fully in force and effective when NMFS, under § 253.33(e), notifies bidders that NMFS accepts the bidders' offers; provided, however, that nothing subsequently prevents actual reduction payment and reduction. If NMFS does not, in accordance with this subpart and any special provisions in the program regulations, accept the bidders' offers, no dependent provision of the reduction amendment then has any further force or effect.

§ 253.32 Program plan and program regulations.

(a) As soon as practicable after deciding to initiate a reduction program, NMFS will prepare and publish for a 60-day, public-comment period, a proposed program plan and program regulations. During the public-comment period, NMFS will conduct a public hearing of the proposed program plan and program regulations in each state that the program would affect.

(b) To the greatest extent practicable, NMFS will base the program plan and program regulations for a financed program on the business plan. The program plan for a financed program will describe in detail all relevant aspects of implementing the reduction program, including:

(1) The reduction fishery;

(2) The reduction methodology;

(3) The maximum reduction cost;

(4) The maximum reduction loan amount (if different from the maximum reduction cost);

(5) The reduction-cost funding, if any, other than a reduction loan;

(6) The minimally acceptable reduction level;

(7) The fee;

(8) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the reduction program;

(9) The invitation-to-bid and bidding procedures;

(10) The criteria for determining bid acceptance;

(11) The referendum eligibility criteria, including a list of eligible voters and their addresses of record, with notice and opportunity to respond for:

(i) Parties who are not, but believe they should be, listed as eligible voters; and

(ii) Parties whose address of record is incorrect;

(12) The referendum procedures; and

(13) Any relevant post-referendum reduction procedures other than those in the program regulations or this subpart.

(c) NMFS will base each program plan and program regulations for a subsidized program on the final development plan. The program plan will describe in detail all relevant aspects of implementing the reduction program, including:

(1) The reduction program fishery;

(2) The reduction methodology;

(3) The maximum reduction cost;

(4) The reduction-cost funding (if any) other than Federal appropriations;

(5) The minimally acceptable reduction level;

(6) The fee;

(7) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the reduction program;

(8) The invitation-to-bid and bidding procedures;

(9) The criteria for determining bid acceptance; and

(10) Any relevant post-bidding program procedures other than those in the program regulations or this subpart.

(d) The program regulations will:

(1) Specify, for invitations to bid, bids, and reduction contracts under § 253.33:

(i) Bidder eligibility;

(ii) Bid submission requirements and procedures;

(iii) A bid opening date (before which a bidder may not bid) and a bid closing date (after which a bidder may not bid);

(iv) A bid expiration date after which the irrevocable offer contained in each bid expires unless NMFS, before that date, accepts the bid by mailing a written acceptance notice to the bidder;

(v) The manner of bid submission and the information each bidder must supply for NMFS to deem a bid responsive;

(vi) The conditions under which NMFS will accept or reject a bid;

(vii) The manner in which NMFS will accept or reject a bid; and

(viii) The manner in which NMFS will notify each bidder of bid acceptance or rejection;

(2) Specify any other special referendum procedures or criteria; and

(3) Specify such other provisions, in addition to and consistent with those in this subpart, necessary to regulate the individual circumstances of each reduction program and reduction loan. This includes, but is not limited to:

(i) The borrower's obligation to repay a reduction loan in a certain principal amount, at a certain interest rate, and over a certain term (and the consequences of not doing so);

(ii) Fee rates or amount determinations; and

(iii) Any other aspect of fee payment, collection, deposit, disbursement, reporting, and accounting.

(e) NMFS will issue final program regulations and, except for a financed program, adopt a final program plan within 45 days of the close of the public-comment period. For a subsidized program, all the program regulations issued will go into effect 30 days after the date of filing for public inspection with the Office of the Federal Register. For a financed program, NMFS will publish in the **Federal Register** the final program plan it will adopt after, and if, a referendum approves the industry fee system. For a financed program, all the program regulations issued will go into effect 30 days after the date of filing for public inspection with the Office of the Federal Register, except for those involving the industry fee system. Thus, the program regulations governing inviting bids, bidding, accepting bids, any other program activities required to precede and conduct a referendum, will go into effect. If a referendum does not approve an industry fee system, the program regulations involving the industry fee system will not become effective and all other program regulations will be repealed. If a referendum approves an industry fee system, NMFS will immediately publish a document in the **Federal Register** adopting the final program plan previously published in the **Federal Register** and making the program regulations fully effective. NMFS will then complete the reduction.

§ 253.33 Bids.

(a) Each invitation to bid, bid, bid acceptance, reduction contract, and bidder (or any other party in any way affected by any of the foregoing) under this subpart is subject to the terms and conditions in this section:

(1) Each invitation to bid constitutes the entire terms and conditions of a reduction contract under which:

(i) Each bidder makes an irrevocable offer to the United States of fishing capacity for reduction; and

(ii) NMFS accepts or rejects, on behalf of the United States, each bidder's offer;

(2) NMFS may, at any time before the bid expiration date, accept or reject a bid;

(3) In a financed program, NMFS' acceptance of any bid is subject to the express condition subsequent, that the industry fee system necessary to repay the reduction loan is approved by a referendum conducted under § 253.34. Approval or disapproval of the industry fee system by referendum is an event that neither the United States nor the bidders can control. Disapproval of the industry fee system by referendum fully excuses both parties from any performance, and fully discharges all duties, under any reduction contract;

(4) All bids are subject to the express condition that, upon NMFS' acceptance of the bid, (provided, however, that NMFS' later tenders a reduction payment to the bidder in an amount equal to the bid amount) the bidder gives the bidder's full, irrevocable, and incontestible consent for:

(i) NMFS to forever revoke any reduction permit; and

(ii) Where the reduction program also involves the withdrawal of reduction vessels from fishing (with or without scrapping):

(A) For the U.S. Coast Guard, upon NMFS' request, to restrict the title of any reduction vessel that is federally-documented to forever prohibit and effectively prevent any future use of that vessel for fishing in any area subject to the jurisdiction of the United States or any state, territory, commonwealth, or possession of the United States; and

(B) Where reduction vessel scrapping is involved and the vessel owner does not comply with the owner's obligation under the reduction contract to scrap the vessel, for NMFS to enter upon the premises where the vessel is located and (at the vessel owner's risk and expense) take such measures as necessary to cause the vessel's prompt scrapping. Afterwards, NMFS will take such action as may be necessary to recover from the vessel owner any cost or expense NMFS incurred in causing the vessel to be scrapped;

(5) Money damages not being an adequate remedy for a bidder's breach of a reduction contract, the United States is, in all particulars, entitled to specific performance of each reduction contract. This includes, but is not limited to, reduction vessel scrapping in programs involving scrapping;

(6) Any reduction payment is available, upon adequate notice to NMFS, to satisfy liens against any reduction permit or reduction vessel; provided, however, that:

(i) No reduction payment to any bidder either relieves the bidder of responsibility to discharge the obligation which gives rise to any lien or relieves any lien holder of responsibility to protect the lien holder's interest;

(ii) No reduction payment in any way gives rise to any liability of the United States or of any of its officers or agents for the obligation underlying any lien;

(iii) No lien holder has any right against the United States or any of its officers or agents in connection with the revocation of any reduction permit or the title restriction or scrapping of any reduction vessel under this subpart; and

(iv) No lien holder has any right or standing to seek to set aside any revocation of any reduction permit or the title restriction or scrapping of any reduction vessel for which the United States made any reduction payment, but is, in lieu of the reduction permit and/or reduction vessel, limited to recovery against the reduction payment itself or otherwise against the reduction permit or reduction vessel owner's other assets; and

(7) Each invitation to bid will specify such other terms and conditions as NMFS believes necessary to enforce specific performance of each reduction contract and otherwise to ensure completing each program (including, but not limited to, each bidder's certification, subject to the penalties in § 253.38, of its full authority to submit each bid and to dispose of the property involved in the bid in the manner contemplated by each invitation to bid).

(b) NMFS will not invite bids for any reduction program until NMFS determines that:

(1) Any necessary reduction amendment is fully and finally approved and all provisions except those dependent on the completion of reduction are implemented;

(2) The final program regulations are issued and the final program plan for a subsidized program is adopted or for a financed program is published;

(3) All required program funding is approved and in place (including all Federal appropriation and apportionment authority);

(4) Any reduction loan involved is fully approved;

(5) Any non-Federal funding involved is fully available for NMFS disbursement as reduction payments; and

(6) All other actions prerequisite to disbursing reduction payments (except for matters involving bidding and referenda) are completed.

(c) Promptly after making the affirmative determinations required

under paragraph (b) of this section, NMFS will file with the Office of the Federal Register for publication a document inviting eligible bidders to offer, under this subpart, fishing capacity to the United States for reduction.

(d) For good cause shown, NMFS may extend a bid closing date and/or a bid expiration date for a reasonable period. NMFS may also issue serial invitations to bid (if the program regulations so provide).

(e) After the bid expiration date, NMFS, without delay, will:

(1) Analyze responsive bids;

(2) Determine which bids, if any, NMFS accepts; and

(3) Notify, by U.S. mail, those bidders whose bids NMFS accepts, that a reduction contract (subject, in the case of a financed program, to the express condition subsequent that a following referendum approve the necessary industry fee system) now exists between them and the United States.

(f) NMFS will keep strictly confidential the identity of all bidders whose bids NMFS does not accept. In financed programs, NMFS also will keep strictly confidential the identity of all bidders whose bids NMFS accepts until after completing a referendum under § 253.34 approving the industry fee system.

§ 253.34 Referenda.

For a financed program, after NMFS accepts bids and notifies accepted bidders under § 253.33(e), it will conduct, without delay, a referendum on the industry fee system needed to repay the reduction loan. NMFS will conduct the referendum in accordance with the following:

(a) *Ballot issuance*. By U.S. certified mail, return receipt requested, NMFS will mail a ballot to each fishing permit or fishing vessel owner whose name appears on the list referred to in § 253.27(m). All owners whose names appear on this list are eligible referendum voters. Each ballot will bear a randomly derived, 5-digit number assigned to each eligible voter. Each ballot will contain a place for the voter to vote ''for'' (yes) or ''against'' (no) the proposed industry fee system and a place, adjacent to the 5-digit number, for the signature of the permit or vessel owner to whom the ballot is addressed or if the permit or vessel owner is an organization, the person purported to have authority to vote the ballot on the organization's behalf. Each ballot also will contain a place for the person signing the ballot to print his or her name. NMFS will enclose with each ballot a specially-marked, postage-paid, pre-addressed envelope that each voter must use to return the ballot to NMFS.

(b) *Voter certification*. Each ballot also will contain a certification, subject to the penalties set forth in § 253.38, that the person signing the ballot is the permit or vessel owner to whom the ballot is addressed or if the permit or vessel owner is an organization, the person having authority to vote the ballot on the organization's behalf.

(c) *Information included on a ballot*. Each ballot mailing will:

(1) Summarize the referendum's nature and purpose;

(2) Specify the date by which NMFS must receive a ballot in order for the ballot to be counted as a referendum vote. This date may be no later than the end of the twentieth day from the date on which NMFS mails the ballot unless the twentieth day is a Saturday, Sunday, or a Federal holiday, in which event the receipt date may be no later than the next business day. NMFS will not count as referendum votes any ballot received after such date;

(3) Identify the place on the ballot for the voter to vote ''for'' (yes) or ''against'' (no) the industry fee system, the place on the ballot where the voter must sign the ballot, and the purpose of the return envelope;

(4) Specify the amount of reduction, the reduction cost, the reduction loan amount (if different from the reduction cost), and the reduction loan term;

(5) Specify the fee rate prospectively necessary to amortize the reduction loan over its term and the actual fee rate for the year following reduction; and

(6) Specify whatever else NMFS deems appropriate.

(d) *Enclosures to accompany a ballot*. Each ballot mailing will include:

(1) A specially-marked, postage-paid, and pre-addressed envelope that a voter must use to return the original of a ballot to NMFS by whatever means of delivery the voter chooses;

(2) A copy of the program plan and program regulations; and

(3) Such other material as NMFS deems appropriate.

(e) *Vote qualification*. When NMFS receives a ballot returned by a voter, NMFS will enter the date of receipt and whether the ballot qualifies to be counted as a referendum vote. A completed ballot qualifies to be counted as a referendum vote if the ballot:

(1) Is physically received by NMFS on or before the last day NMFS specified for receipt;

(2) Is cast ''for'' (yes) or ''against'' (no);

(3) If from a voter that is an individual, purports to be signed by that individual;

(4) If from a voter that is a corporation or other limited liability organization, purports to be signed by an official of that organization authorized to vote the ballot on the organization's behalf;

(5) If from a voter that is a partnership or other joint venture organization, purports to be signed by an official of that organization authorized to vote the ballot on the organization's behalf;

(6) Is the original ballot sent to the voter bearing the same 5-digit number that NMFS assigned to the voter; and

(7) Was returned to NMFS in the specially-marked envelope that NMFS provided for the ballot's return.

(f) *Vote tally and notification*. No later than seven business days after the last day for receipt of a ballot, NMFS will:

(1) Tally all ballots qualified to be counted as referendum votes;

(2) By U.S. mail, notify all parties to whom ballots were mailed of:

(i) The number of potential voters;

(ii) The number of actual voters who returned a ballot;

(iii) The number of returned ballots that qualified to be counted as referendum votes;

(iv) The number of votes for and against the industry fee system; and

(v) Whether the referendum approved or disapproved the industry fee system.

(3) If the referendum approved the industry fee system, NMFS, at the same time and in the same way, will notify the bidders whose bids were conditionally accepted that the express condition subsequent pertaining to the reduction contracts between them and the United States is fulfilled.

(g) *Conclusiveness of referendum determinations*. NMFS' ballot qualification and determinations about other vote matters are conclusive and final.

§ 253.35 Reduction methods.

Programs may involve either the surrender of reduction permits or both the surrender of reduction permits and the withdrawal from fishing or scrapping of reduction vessels.

(a) *Reduction permit revocation and surrender*. Each reduction permit is, upon NMFS' tender of the reduction payment for such permit, forever revoked. The holder of a reduction permit must, upon NMFS' tender of reduction payment, surrender the original of the permit to NMFS. The reduction permit holder, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction permit and with the fishing vessel that was used to harvest fishery resources under that permit that could qualify the permit holder or the fishing vessel owner for any present or future limited access system fishing permit in the reduction program fishery.

(b) *Reduction vessel title restriction or scrapping.* Each reduction vessel that is not required to be scrapped, is, upon NMFS' tender of the reduction payment, forever prohibited from any future use for any fishing in any area subject to the jurisdiction of the United States or any State, territory, possession, or commonwealth of the United States. NMFS will request the U.S. Coast Guard to permanently restrict each such reduction vessel's title to exclude the vessel's future use for fishing. The owner of each reduction vessel required to be scrapped (and any reduction vessel that is not federally-documented must always be scrapped) must, upon NMFS' tender of the reduction payment, immediately cease all further use of vessel and arrange, without delay, to scrap the vessel to NMFS' satisfaction. The owner of each such reduction vessel, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction vessel that could qualify the owner for any present or future limited access system fishing permit in the reduction program fishery.

(c) *Fishing permits in a non-reduction fishery.* No financed program may either require any holder of a reduction permit in a reduction fishery to surrender any fishing permit in any non-reduction fishery or involve any restriction or revocation of any fishing permit other than a reduction permit in the reduction fishery. Any subsidized program may, however, require surrendering and revoking all fishing permits (except those that constitute an individual fishing quota whose title the permit's title holder can transfer exclusively of the title to any fishing vessel) that the holder of a reduction permit in the reduction fishery also holds in any non-reduction fishery.

(d) *Reduction vessel dispositions.* No financed program involving reduction vessels may require, for federally-documented vessels, anything other than the prohibition from any future use for any fishing in any area subject to the jurisdiction of the United States or any state, territory, possession, or commonwealth of the United States. Any subsidized program may, however, require the scrapping of federally-documented reduction vessels. Reduction vessels that are not federally-documented must always be scrapped, regardless of whether the reduction program is financed or subsidized.

(e) *Reduction payments.* NMFS will make all reduction payments in the amount and in manner prescribed in its reduction contracts. For financed programs, the total amount of all reduction payments NMFS disburses (or appropriate portion of the reduction payment's amount if a financed program is partially funded from some source other than a reduction loan) equals the reduction loan's principal amount and is exclusively repayable by fees.

§ 253.36 Fee payment and collection.

(a) *Amount.* The fee amount is the delivery value of fee fish times the fee rate.

(b) *Rate.* NMFS will establish the fee rate. The fee rate may never exceed five percent of delivery value. NMFS will establish the initial fee rate by determining the fee revenues annually required to amortize a reduction loan over its term, projecting the annual delivery value of fee fish, and expressing the former as a percentage of the latter. Before each anniversary of the initial fee-rate determination, NMFS will redetermine the fee rate reasonably required to ensure reduction loan repayment. This will include any changed delivery value projections and any adjustment required to correct for previous delivery values higher or lower than projected. NMFS' fee rate determinations are conclusive and final.

(c) *Payment and collection.* (1) The full fee is due and payable at fee fish delivery. The fish buyer must collect the fee at the time of the fish seller's fee fish delivery by deducting the fee from the delivery value before paying the delivery value, minus the fee, to the fish seller. The fish seller must pay the fee at the time of the fish seller's fee fish delivery by receiving from the fish buyer the delivery value minus the fee.

(2) In the event of any bonus or other retrospective payment, whose amount depends on conditions subsequent to fee fish delivery, that increases the delivery value of fee fish, the fish seller shall pay, and the fish buyer shall collect, at the time the fish buyer pays the bonus or retrospective payment to the fish seller, the additional fee that would otherwise have been due and payable as if the amount of the retrospective payment had been known, and as if the retrospective payment had consequently occurred, at the time of initial delivery of the fee fish.

(3)(i) Each fish seller shall, for the purposes of the fee collection, deposit, disbursement, and accounting requirements of this subpart, be both the fish seller and the fish buyer (and all requirements and penalties under this subpart applicable to both a fish seller and a fish buyer shall equally apply to the fish seller) each time the fish seller sells fee fish to:

(A) Any party whose place of business is not located in the United States, who does not take delivery, title, or possession of the fee fish in the United States, who is not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart;

(B) Any party who is a restaurant, a retailer, a consumer, or some other type of end-user; or

(C) Any other party who the fish seller has good reason to believe will not comply with the fee collection, deposit, disbursement, and accounting requirements of this subpart applicable to a fish seller.

(ii) In each such case the fish seller shall, with respect to the fee fish involved in each such case, discharge all the fee collection, deposit, disbursement, and accounting requirements this subpart otherwise imposes on the fish buyer, and the fish seller shall be subject to all the penalties this subpart provides for the fish buyer's failure to discharge such requirements.

(4) Fee payment begins on the date NMFS specifies under the notification procedures of paragraph (d) of this section and continues without interruption at the fee rates specified by NMFS in accordance this subpart's requirements until NMFS determines that the reduction loan is fully repaid. If a reduction loan is not fully repaid at the maturity of the reduction loan's original amortization period, fee payment and collection will continue until the reduction loan is fully repaid (notwithstanding that the time required to fully repay the reduction loan exceeds the reduction loan's initially permissible maturity).

(d) *Notification.* (1) At least 30 days before the effective date of any fee or of any fee-rate change, NMFS will file with the Office of the Federal Register for publication a document establishing the date from and after which the fee or fee-rate change is effective. NMFS then also will send, by U.S. mail, an appropriate notification to each affected fish seller and fish buyer of whom NMFS has notice.

(2) When NMFS determines that a reduction loan is fully repaid, NMFS will file with the Office of the Federal Register for publication a document that the fee is no longer in effect and should no longer be either paid or collected. NMFS then will also send, by U.S. mail, notification to each affected fish seller and fish buyer of whom NMFS has knowledge.

(3) If NMFS fails to notify a fish seller or a fish buyer by U.S. mail (or if the fish seller or fish buyer otherwise does not receive the notice) of the date fee payments start or of the fee rate in effect, each fish seller is, nevertheless, obligated to pay the fee at the fee rate

in effect and each fish buyer is, nevertheless, obligated to collect the fee at the fee rate in effect.

(e) *Failure to pay or collect.* (1) If a fish buyer refuses to collect the fee in the amount and manner that this subpart requires, the fish seller must then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's fee collection obligation. If the fish buyer still refuses to properly collect the fee, the fish seller, within the next 24 hours, must forward the fee to NMFS. The fish seller at the same time must also advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number;

(ii) The name of the fishing vessel from which the fish seller made fee fish delivery and the date of doing so;

(iii) The quantity and delivery value of each species of fee fish that the fish seller delivered; and

(iv) The fish seller's reason (if known) for refusing to collect the fee in accordance with this subpart.

(2) If a fish seller refuses to pay the fee in the amount and manner that this subpart requires, the fish buyer must then advise the fish seller of the fish buyer's collection obligation and of the fish seller's payment obligation. If the fish seller still refuses to pay the fee, the fish buyer must then either deduct the fee over the fish seller's protest or refuse to buy the fee fish. The fish buyer must also, within the next 24 hours, advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number;

(ii) The name of the fishing vessel from which the fish seller made or attempted to make fee fish delivery and the date of doing so;

(iii) The quantity and delivery value of each species of fee fish the fish seller delivered or attempted to deliver;

(iv) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish; and

(v) The fish seller's reason (if known) for refusing to pay the fee in accordance with this subpart.

(f) *Program regulations.* If any special circumstances in a reduction fishery require fee payment and/or collection regulations in addition to, or different from, those contained in this section in order to ensure full, complete, accurate and timely fee payment and/or collection, NMFS may include such regulations in the program regulations for that reduction program.

§ 253.37 Fee collection deposits and records.

(a) *Deposit accounts.* Each fish buyer this subpart requires to collect fees must maintain a segregated account at a federally-chartered national bank for the sole purpose of depositing collected fees and disbursing them directly to NMFS in accordance with paragraph (c) of this section.

(b) *Fee collection deposits.* Each fish buyer, no more infrequently than at the end of each business week, must deposit, in the deposit account established under paragraph (a) of this section, all fees, not previous deposited, that the fish buyer collects through a date not more than two days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fees for disbursement to the Fund in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest (if any), but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(c) *Deposit principal disbursement.* On the last business day of each calendar month, the fish buyer must disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer must do this by check made payable to ''NOAA Fishing Capacity Reduction Fund.'' The fish buyer must mail each such check to the Fund lockbox account that NMFS establishes for the receipt of the disbursements. Each reduction program has its own lockbox. Each disbursement must be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the Fund's lockbox account and manner and form of settlement sheet by means of the notification in § 253.36(d).

(d) *Records maintenance.* Each fish buyer, on or in such forms as NMFS specifies, must maintain accurate records of all transactions involving fees. Each fish buyer must maintain the records in a secure and orderly manner for a period of at least three years from the date of each transaction involved.

(1) Each fish buyer must maintain the following information (including the fish tickets or other materials documenting such information) for all deliveries of fee fish that the fish buyer buys from each fish seller:

(i) Delivery date;

(ii) Fish seller's name;

(iii) Number of pounds of each species of fee fish bought;

(iv) Name of fishing vessel from which the fee fish off-loaded;

(v) Delivery price per pound of each species of fee fish bought;

(vi) Total delivery value of fee fish bought;

(vii) Net delivery value of fee fish bought;

(viii) Name of party to whom net delivery value paid if other than the fish seller;

(ix) Date net delivery value paid;

(x) Total fee amount collected; and

(xi) Such other information as NMFS decides is reasonably necessary for each program.

(2) Each fish buyer must maintain the following information for all fee collection deposits to and disbursements from the deposit account:

(i) Dates and amounts of deposits; and

(ii) Dates and amounts of disbursements to the Fund's lockbox account that NMFS designates.

(e) *Annual report.* In each year (on the date to be specified in each program regulations) succeeding the year during which NMFS first implemented a fee, each fish buyer must submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year (or whatever longer period may be involved in the first annual report) for all fee fish each fish buyer purchases from each fish seller:

(1) Total pounds;

(2) Total net ex-vessel paid;

(3) Total fee amounts collected;

(4) Total fee collection amounts deposited by month;

(5) Dates and amounts of monthly disbursements to each Fund lockbox account;

(6) Total amount of deposit interest fish buyer withdrew; and

(7) Depository account balance at year-end.

(f) *Audits.* NMFS may cause agents that NMFS selects to audit, in whatever manner NMFS believes reasonably necessary, the books and records of fish buyers (including, but not limited, to fish tickets) and fish sellers in each program fishery in order to ensure proper fee payment, collection, deposit, disbursement, record keeping, and reporting. Fish buyers and fish sellers must make records (including, but not limited to, fish tickets) of all program transactions involving post-reduction fish catches and deliveries, fee payment, collection, deposit, and disbursement available to NMFS or its agents at reasonable times and places and promptly provide all requested information reasonably related to these records. No state law or regulations involving the confidentiality of fish tickets shall prevent NMFS from having full access to such fish tickets for the purposes of this subpart.

(g) *Refunds.* When NMFS determines that a reduction loan is fully repaid,

NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers must return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

(h) *Program regulations*. If any special circumstances in a reduction fishery require fee collection deposit and/or record keeping regulations in addition to, or different from, those contained in this section in order to ensure full, complete, accurate and timely fee deposit, disbursement, accounting, record keeping, and reporting, NMFS may include such regulations in the program regulations for that reduction program.

§ 253.38 Prohibitions and penalties.

(a) The following activities are prohibited, and it is unlawful for any party to:

(1) Vote in any referendum under this subpart if the party is ineligible to do so;

(2) Vote more than once in any referendum under this subpart;

(3) Sign or otherwise cast a ballot on behalf of a voter in any referendum under this subpart unless the voter has fully authorized the party to do so and doing so otherwise comports with this subpart;

(4) Interfere with or attempt to hinder, delay, buy, or otherwise unduly influence any eligible voter's vote in any referendum under this subpart;

(5) Submit a fraudulent, unauthorized, incomplete, misleading, unenforceable (by specific performance) or inaccurate bid in response to an invitation to bid under this subpart or, in any other way, interfere with or attempt to interfere with, hinder, or delay, any invitation to bid, any bid submitted under any invitation to bid, or any other reduction program process in connection with any invitation to bid;

(6) Revoke or attempt to revoke any bid under this subpart;

(7) Fail to comply with the terms and conditions of any invitation to bid, bid, or reduction contract under this subpart;

(8) Avoid, decrease, interfere with, hinder, or delay payment, collection, deposit, or disbursement of any fee due and payable under this subpart or convert any paid, collected, or deposited fee or otherwise use any fee for any purpose other than the purpose this subpart intends;

(9) Fail to fully and properly deposit on time all fees collected under this subpart into a deposit account and to disburse deposit principal to the Fund's lockbox account—all as this subpart requires;

(10) Fail to maintain full, timely, and proper fee payment, collection, deposit, and/or disbursement records or to make full, timely, and proper reports of such information to NMFS—all as this subpart requires;

(11) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(12) Refuse to allow agents designated by NMFS to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, and disbursement under this subpart or otherwise to interfere with, hinder, or delay agents in the course of their activities under this subpart;

(13) Make false statements to NMFS, any of the its employees, or any of its agents about any of the matters in this subpart; and

(14) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any investigation

NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart.

(b) Any party who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide (including, but not limited to: civil penalties, sanctions, forfeitures, and punishment for criminal offenses) and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

§ 253.39 Implementation regulations for each reduction program. [Reserved]

Dated: February 4, 1999.

Gary C. Matlock,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 990128037–9037–01; I.D. 010899B]

RIN 0648–AM11

Pacific Halibut Fisheries; Catch Sharing Plan

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

ACTION: Proposed changes to catch sharing plan and sport fishing management; availability of draft environmental assessment and regulatory impact review.

SUMMARY: NMFS proposes, under authority of the Northern Pacific Halibut Act (Halibut Act), to approve and implement changes to the Area 2A Pacific halibut Catch Sharing Plan (Plan) to adjust the management of the sport fisheries off Oregon and Washington, to clarify catch-sharing language in the commercial fisheries portion of the Plan, and to clarify halibut retention language for the portion of the Plan that addresses treaty Indian ceremonial and subsistence fisheries. NMFS also proposes sport fishery regulations to implement the Plan in 1999. A draft environmental assessment and regulatory impact review (EA/RIR) on this action is also available for public comment.

DATES: Comments must be received by February 26, 1999.

ADDRESSES: Send comments or requests for a copy of the Plan and/or the EA/RIR to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, Seattle, WA 98115. An electronic copy of the Plan, including proposed changes for 1999, is also available at the NMFS Northwest Region website: http://www.nwr.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, 206-526-6120.

SUPPLEMENTARY INFORMATION: The Halibut Act, at 16 U.S.C. 773c, gives the Secretary of Commerce (Secretary) general responsibility for carrying out the Halibut Convention between the United States and Canada and requires the Secretary to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. Section 773c(c) of the Halibut Act authorizes the Regional Fishery Management Councils to develop regulations that are not in conflict with regulations adopted by the International Pacific Halibut Commission (IPHC) to govern the Pacific halibut catch that occurs in their regions. Each year since 1988, the Pacific Fishery Management Council (Council) has developed a catch sharing plan in accordance with the Halibut Act, to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-Indian harvesters and among non-Indian commercial and sport fisheries in IPHC statistical Area 2A (off Washington, Oregon, and California).

In 1995, upon recommendation of the Council, NMFS implemented the Plan (60 FR 14651, March 20, 1995) as

recommended by the Council. Several minor revisions, primarily pertaining to sport fishery structuring, were made in 1996 (61 FR 1137, March 20, 1996), in 1997 (62 FR 12759, March 18, 1997), and in 1998 (63 FR 13000, March 17, 1998). The Plan allocates 35 percent of the Area 2A TAC to Washington treaty Indian tribes in Subarea 2A–1 and 65 percent to non-Indian fisheries in Area 2A. The allocation to non-Indian fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into a directed commercial fishery that is allocated 85 percent of the 31.7 percent and an incidental catch in the salmon troll fishery that is allocated 15 percent of the commercial allocation. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53'18'' N. lat.), Oregon, and California. The Plan also divides the sport fisheries into seven geographic subareas, each with separate allocations, seasons, and bag limits.

Council Recommended Changes to the Plan

At its September 1998 public meeting, the Council adopted for public comment the following changes to the Plan: (1) A re-structuring of the Washington south coast subarea sport fishery including allowance of landings from a small nearshore area on days that the offshore fishery is closed, changes to the Columbia River subarea bag limit, and modification to the boundaries of a sport fishing closed area; (2) modification of the Oregon sport fishery south of Cape Falcon including changes in all-depth season and sub-area allocations, changing the possession and bag limit for south of Cape Falcon, and modification of Oregon sport fishery allocations at TACs in excess of 550,000 lb (249.5 metric tons (mt)); and (3) clarification of current catch sharing plan language that describes the inseason division of the commercial quota.

At its November 1998 public meeting, the Council considered the results of State-sponsored workshops on the proposed changes to the Plan and public comments and made final recommendations for six modifications to the Plan as follows:

(1) Modify the sport season structuring intent for the Washington south coast subarea (Queets River southward to Leadbetter Point) to specify a goal of maximizing the season length while ''maintaining a quality fishing experience.'' To that end, allow the nearshore fishery (east of 124°40'00'' W. long. and north of 47°00'00'' N. lat.) to fish 7 days a week whenever the halibut season is open. This change is expected to give the nearshore fishery the opportunity to land incidentally caught halibut during the 2-days per week that the offshore fishery in this subarea is usually closed.

(2) Reduce the size of a sport fishing closed ''hot spot'' within the Washington south coast subarea to better reflect the location and size of this zone of halibut concentration. The closed area would have the following dimensions: 47°19'00'' N. lat., 124°53'00'' W. long.; 47°19'00'' N. lat., 124°48'00'' W. long.; 47°16'00'' N. lat., 124°53'00'' W. long.; and 47°16'00'' N. lat., 124°48'00'' W. long. The purpose of closing a ''hot spot'' is to lengthen the season in this subarea by preventing fishers from having access to this area of high halibut abundance. Changing the size of the closed ''hot spot'' is not expected to shorten the season in this subarea. The new dimensions are expected to more accurately reflect the area where halibut are most concentrated.

(3) Revise the sport season structure for Oregon central coast and south coast subareas so that the nearshore fisheries (inside the 30–fathom depth contour) open on May 1 and continue until their subquotas are taken or on September 30, whichever occurs first. This change is proposed to separate quota set aside for the nearshore fisheries from quota set aside for the larger offshore fisheries. In the past, the nearshore fisheries for these subareas were structured to occur between the May and August all-depth fisheries. The August all-depth fisheries had access to any nearshore fisheries quota during the August all-depth season. Under this system, the August all-depth fisheries could conceivably take both the all-depth and the nearshore fisheries quotas, which would close the nearshore fisheries in mid-August. This proposal separates the all-depth quotas from the nearshore quotas so that the nearshore fishery may have a longer season.

(4) Move the boundary of the southernmost Oregon/California subarea from the Oregon-California border north to Humbug Mountain, Oregon (42°40'30'' N. lat.) and increase the subarea quota allocation from 2.6 percent to 3.0 percent of the Oregon/California recreational allocation. Halibut landed from Oregon waters south of Humbug Mountain are few. This change would be consistent with management for southernmost Oregon halibut landings to California halibut landings management. Because halibut landings south of Humbug Mountain would be separated from the larger northern fishery season structures, the season south of Humbug Mountain is expected to be longer than past seasons in southernmost Oregon waters.

(5) Set the daily possession and bag limit for halibut sport fisheries south of Leadbetter Point equal to the first Pacific halibut caught that is 32 inches (81.3 cm) or longer in length. This possession and bag limit would be similar to the limit that was in place in 1998 in the Columbia River and California subareas. For other subareas south of Leadbetter Point, the Central and South Coast of Oregon subareas, the daily bag limit would change from two halibut per person, one with a minimum 32–inch (81.3 cm) size limit and the second with a minimum 50–inch (125.5 cm) size limit to the first halibut caught that is 32 inches (81.3 cm) or longer in length. This change is expected to eliminate confusion by unification of the bag limit for a large stretch of Area 2A coast, and to reduce incidental hooking mortality for Oregon coast areas by elimination of the incentive for fishers to continue fishing until they have caught a second, larger sized halibut.

(6) Confirm the commercial season catch division by clarifying catch sharing language within the commercial portion of the Area 2A Halibut Catch Sharing Plan. This is a housekeeping change intended to clarify Plan language without changing Plan intent or implementation.

NMFS is proposing to implement the six changes to the Plan recommended by the Council as well as a minor correction to the Plan that would distinguish between the take of halibut for subsistence purposes and for ceremonial purposes by treaty Indians. The current Plan restricts treaty Indian fishing for halibut for ceremonial purposes to two halibut per day, per person. This restriction unnecessarily prevents a single treaty Indian fishing vessel from fishing for halibut on behalf of a tribe in the event of a ceremony requiring halibut. The restriction on ceremonial fishing was mistakenly set into the Plan through instructions from the tribes. The treaty Indian tribes that harvest halibut have requested clarification of Plan language to distinguish between subsistence and ceremonial fishing. NMFS proposes a correction to Plan language to provide this distinction between the two types of fishing to provide this clarification. Any halibut taken for subsistence or ceremonial purposes are counted as part

of the overall tribal share. Halibut caught in treaty Indian ceremonial or subsistence fisheries may not be offered for sale or sold.

Proposed Changes to the Catch Sharing Plan

NMFS is proposing to approve the Council recommendations and to make the following changes to the Plan:

In section (d) of the Plan, Treaty Indian Fisheries, paragraph (1) would be revised to read as follows:

The tribal ceremonial and subsistence fishery begins on January 1 and continues through December 31. No size or bag limits will apply to the ceremonial and subsistence fishery except that, when the tribal commercial fishery is closed, treaty Indians may take and retain not more than two halibut per day per person for subsistence purposes. Ceremonial fisheries shall be managed by tribal regulations promulgated inseason to meet the needs of specific ceremonial events. Halibut taken for ceremonial or subsistence purposes may not be offered for sale or sold.

In section (e) of the Plan, Non-Indian Commercial Fisheries, paragraph (1)(iii) would be revised to read as follows:

If the quota for this fishery is not harvested during the May/June salmon troll fishery, the IPHC will move any remaining quota from this fishery to the directed halibut fishery on July 1.

In section (e) of the Plan, Non-Indian Commercial Fisheries, the first sentence of paragraph (1)(iv) would be revised to read as follows:

If the overall quota for the non-Indian commercial fishery has not been harvested by July 31 and the quota for the salmon troll fishery was not harvested during the May/June fishery, landings of halibut caught incidentally during salmon troll fisheries will be allowed effective August 1 and will continue (while additional directed fishery openings are set to harvest all of the remaining commercial allocation) until the amount of halibut that was initially available as quota for the troll fishery is taken or the overall non-Indian commercial quota is estimated to have been achieved by the IPHC.

In section (e) of the Plan, Non-Indian Commercial Fisheries, paragraph (2) would be revised to read as follows:

Directed fishery targeting halibut. Eighty-five percent of the non-Indian commercial fishery allocation is allocated to the directed fishery targeting halibut (e.g., longline fishery) in southern Washington, Oregon, and California. The allocation for this directed catch fishery is approximately 17.5 percent of the Area 2A TAC. This fishery is confined to the area south of Subarea 2A–1 (south of Point Chehalis, WA; 46°53'18'' N. lat.). After June 30, the overall quota for the non-Indian commercial fishery will be available to the directed commercial fishery in accordance with the specifications provided in sections (e)(1)(iii) and (iv) above. The commercial fishery opening date(s), duration, and vessel trip limits, as necessary to ensure that the quota for the non-Indian commercial fisheries is not exceeded, will be determined by the IPHC and implemented in IPHC regulations. If the IPHC determines that poundage remaining in the quota for the non-Indian commercial fisheries is insufficient to allow an additional day of directed halibut fishing, the remaining halibut will be made available for incidental catch of halibut in the fall salmon troll fisheries (independent of the incidental harvest allocation).

In section (f) of the Plan, Sport Fisheries, paragraph (1)(iii) would be revised as follows:

(iii) *Washington south coast subarea.* This sport fishery is allocated 12.3 percent of the first 130,845 lb (59.4 mt) allocated to the Washington sport fishery and 32 percent of the Washington sport allocation between 130,845 lb (59.4 mt) and 224,110 lb (101.7 mt) (except as provided in section (e)(3) of this Plan). This subarea is defined as waters south of the Queets River (47°31'42'' N. lat.) and north of Leadbetter Point (46°38'10'' N. lat.). The structuring objective for this subarea is to maximize the season length, while maintaining a quality fishing experience. The fishery will open on May 1. If May 1 falls on a Friday or Saturday, the fishery will open on the following Sunday. The fishery will be open Sunday through Thursday in all areas, except where prohibited, and the fishery will be open 7 days per week in the area from Queets River south to 47°00'00'' N. lat. and east of 124°40'00''. The fishery will continue until September 30, or until 1,000 lb (0.45 mt) are projected to remain in the subarea quota, whichever occurs first. Immediately following this closure, the area from the Queets River south to 47°00'00'' N. lat. and east of 124°40'00'' W. long. will reopen for 7 days per week until either the subarea quota is estimated to have been taken and the season is closed by the IPHC, or until September 30, whichever occurs first. The daily bag limit is one halibut per person, with no size limit. Sport fishing for halibut is prohibited in the area within a rectangle defined by these four corners: 47°19'00'' N. lat., 124°53'00'' W. long.; 47°19'00'' N. lat., 124°48'00'' W. long.; 47°16'00'' N. lat., 124°53'00'' W. long.; 47°16'00'' N. lat., 124°48'00'' W. long.

In section (f) of the Plan, Sport Fisheries, the last sentence in paragraph (iv) would be revised to read as follows:

The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

In section (f) of the Plan, Sport Fisheries, paragraphs (v), (vi), and (vii) for the Oregon central and south coast subareas, and for the California (now south of Humbug Mountain) subarea are revised to read as follows:

(v) *Oregon central coast subarea.* If the Area 2A TAC is 388,350 lb (176.2 mt) and greater, this subarea extends from Cape Falcon to the Siuslaw River at the Florence north jetty (44°01'08'' N. lat.) and is allocated 88.03 percent of the Oregon/California sport allocation, which is approximately 18.13 percent of the Area 2A TAC. If the Area 2A TAC is less than 388,350 lb (176.2 mt), this subarea extends from Cape Falcon to the Humbug Mountain, Oregon (42°40'30'' N. lat.) and is allocated 95.0 percent of the Oregon/California sport allocation. The structuring objectives for this subarea are to provide two periods of fishing opportunity in May and in August in productive deeper water areas along the coast, principally for charterboat and larger private boat anglers and to provide a period of fishing opportunity in the summer for nearshore waters for small boat anglers. Fixed season dates will be established preseason for the May and August openings and will not be modified inseason, except that the August openings may be modified inseason if the combined Oregon all-depth quotas are estimated to be achieved. Recent year catch rates will be used as a guideline for estimating the catch rate for the May and August fishery each year. The number of fixed season days established will be based on the projected catch per day with the intent of not exceeding the subarea season subquotas. The Oregon Department of Fish and Wildlife (ODFW) will monitor landings and provide a post-season estimate of catch within 2 weeks of the end of the fixed season. If sufficient catch remains for an additional day of fishing after the May season or the August season, openings will be provided if possible in May and August respectively. Potential additional open dates for both the May and August seasons will be announced preseason. If a decision is made inseason to allow fishing on 1 or more additional days, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No all-depth halibut

fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline. Any poundage remaining unharvested in the May all-depth subquota will be added to the August all-depth sub-quota. Any poundage that is not needed to extend the inside 30–fathom fishery through to September 30 will be added to the August all-depth season if it can be utilized, and any poundage remaining unharvested from the August all-depth fishery will be added to the inside 30–fathom fishery subquotas. The daily bag limit for all seasons is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length. ODFW will sponsor a public workshop shortly after the IPHC annual meeting to develop recommendations to NMFS on the open dates for each season each year. The three seasons for this subarea are as follows.

A. The first season opens on May 1, only in waters inside the 30–fathom (55 m) curve, and continues daily until 7 percent of the subarea quota is taken, or until September 30, whichever is earlier. Poundage that is estimated to be above the amount needed to keep this season open through September 30 will be transferred to the August all-depth fishery if it can be utilized. Any overage in the all-depth fisheries would not affect achievement of allocation set aside for the inside 30–fathom curve fishery.

B. The second season is an all-depth fishery that begins on the second Thursday in May and is allocated 68 percent of the subarea quota. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the subquota for this season. No inseason adjustments will be made, except that additional opening days (established preseason) may be allowed if any quota for this season remains unharvested. The fishery will be structured for 2 days per week (Friday and Saturday) if the season is for 4 or fewer fishing days. The fishery will be structured for 3 days per week (Thursday through Saturday) if the season is for 5 or more fishing days.

C. The last season is a coastwide (Cape Falcon, Oregon to Humbug Mountain, Oregon) all-depth fishery that begins on the first Friday in August and is allocated 25 percent of the subarea quota. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the combined Oregon all-depth quotas for the Central and South Oregon Coast subareas. The fishery will be structured for 2 days per week (Friday and Saturday). No inseason adjustments will be made (unless the combined Oregon all-depth quotas are estimated to be achieved), except that additional opening days may be allowed if quota remains unharvested. If quota remains unharvested, but is insufficient for one day of an all-depth fishery, that additional quota will be transferred to the fisheries inside the 30–fathom (55 m) curve.

(vi) *Oregon south coast subarea*. If the Area 2A TAC is 388,350 lb (176.2 mt) and greater, this subarea extends from the Siuslaw River at the Florence north jetty (44°01'08'' N. lat.) to Humbug Mountain, Oregon (42°40'30'' N. lat.) and is allocated 6.97 percent of the Oregon/California sport allocation, which is approximately 1.43 percent of the Area 2A TAC. If the Area 2A TAC is less than 388,350 lb (176.2 mt), this subarea will be included in the Oregon Central Coast subarea. The structuring objective for this subarea is to create a south coast management zone that has the same objectives as the Oregon central coast subarea and is designed to accommodate the needs of both charterboat and private boat anglers in the south coast subarea where weather and bar crossing conditions very often do not allow scheduled fishing trips. Fixed season dates will be established preseason for the May and August openings and will not be modified inseason except that the August openings may be modified inseason if the combined Oregon all-depth quotas are estimated to be achieved. Recent year catch rates will be used as a guideline for estimating the catch rate for the May and August fishery each year. The number of fixed season days established will be based on the projected catch per day with the intent of not exceeding the subarea season subquotas. ODFW will monitor landings and provide a post season estimate of catch within 2 weeks of the end of the fixed season. If sufficient quota remains for an additional day of fishing after the May season or the August season, openings will be provided if possible in May and August respectively. Potential additional open dates for both the May and August seasons will be announced preseason. If a decision is made inseason to allow fishing on 1 or more additional days, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No all-depth halibut fishing will be allowed on the additional dates unless the opening date has been announced on the NMFS hotline. Any poundage remaining unharvested in the May all-depth subquota will be added to the August all-depth sub-quota. Any poundage that is not needed to extend the inside 30–fathom fishery through to September 30 will be added to the August all-depth season if it can be utilized, and any poundage remaining unharvested from the August all-depth fishery will be added to the inside 30–fathom fishery subquotas. The daily bag limit for all seasons is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length. ODFW will sponsor a public workshop shortly after the IPHC annual meeting to develop recommendations to NMFS on the open dates for each season each year. The three seasons for this subarea are as follows.

A. The first season opens on May 1, only in waters inside the 30–fathom (55 m) curve, and continues daily until 20 percent of the subarea quota is taken, or until September 30, whichever is earlier. Poundage that is estimated to be above the amount needed to keep this season open through September 30 will be transferred to the August all-depth fishery if it can be utilized. Any overage in the all-depth fisheries would not affect achievement of allocation set aside for the inside 30–fathom curve fishery.

B. The second season is an all-depth fishery that begins on the second Thursday in May and is allocated 80 percent of the subarea quota. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the subquota for this season. No inseason adjustments will be made, except that additional opening days (established preseason) may be allowed if any quota for this season remains unharvested. The fishery will be structured for 2 days per week (Friday and Saturday) if the season is for 4 or fewer fishing days. The fishery will be structured for 3 days per week (Thursday through Saturday) if the season is for 5 or more fishing days.

C. The last season is a coastwide (Cape Falcon, OR, to Humbug Mountain, OR) all-depth fishery that begins on the first Friday in August. Fixed season dates will be established preseason based on projected catch per day and number of days to achievement of the combined Oregon all-depth quotas for the Central and South Oregon Coast subareas. The fishery will be structured for 2 days per week (Friday and Saturday). No inseason adjustments will be made (unless the combined Oregon all-depth quotas are estimated to be achieved), except that additional opening days may be allowed if quota remains unharvested. If quota remains unharvested, but is insufficient for 1 day

of an all-depth fishery, that additional quota will be transferred to the fisheries inside the 30 fathom (55 m) curve.

(vii) *South of Humbug Mountain subarea*. This sport fishery subarea is allocated 3.0 percent of the Oregon/California subquota, which is approximately 0.62 percent of the Area 2A TAC. This area is defined as the area south of Humbug Mountain, OR (42°40'30'' N. lat.), including California waters. The structuring objective for this subarea is to provide anglers the opportunity to fish in a continuous, fixed season that is open from May 1 through September 30. The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length. Due to inability to monitor the catch in this area inseason, a fixed season will be established preseason by NMFS based on projected catch per day and number of days to achievement of the subquota; no inseason adjustments will be made; and estimates of actual catch will be made postseason.

In section (f), Sport Fisheries, paragraph (3) is revised to read as follows:

(3) *Possession limits*. The sport possession limit on land north of Leadbetter Point, WA, is two daily bag limits, regardless of condition, but only one daily bag limit may be possessed on the vessel. The possession limit on land south of Leadbetter Point, WA, is the same as the bag limit.

Proposed 1999 Sport Fishery Management Measures

NMFS is proposing sport fishery management measures that are necessary to implement the Plan in 1999. The 1999 TAC is unknown at this time, but IPHC staff have made a preliminary catch limit recommendation of an Area 2A TAC of 660,000 lb (299.4 mt). The final TAC will be determined by the IPHC at its annual meeting in January 1999. The proposed 1999 sport fishery regulations are based on an Area 2A TAC that ranges between the IPHC staff preliminary recommendation of 660,000 lb (299.4 mt) and the 1998 Area 2A TAC of 820,000 lb (372 mt), as follows:

Washington Inside Waters Subarea Puget Sound and Straits

This subarea would be allocated between 45,011 and 57,191 lb (20.4–25.9 mt) at an Area 2A TAC of 660,000–820,000 lb (299.4– 372 mt) in accordance with the Plan. The season would be reduced from 54 days in 1998 because of an increased catch per day in recent years of 1,470 lb (0.7 mt) per day in 1997 and of 1,357 lb (0.62 mt) per day in 1998, compared with 844 lb (0.4 mt) per day in 1996. In accordance with the procedure developed with IPHC to project the catch in this subarea based on past catch per ''fishing day equivalent'' (FED), where a weekday is equal to 1 FED and a weekend/holiday is equal to 2.5 FEDs, a range of 36–46 FEDs were calculated for the subarea quota range described above. This calculation was based on an average catch of 1,224 lb (0.56 mt) per FED in the past 3 years. The proposed number of fishing days was based on setting a season that opens in May and continues at least through July 4 in accordance with the Plan. At the low end of the TAC range, there would not be enough FEDs available to accommodate that time-span. A subquota allocation of 45,011 lb (2.4 mt) would result in an approximately 22-day season, beginning May 28 (Friday), and continuing for 5 days per week (Thursday through Monday) and ending on June 26 (Saturday). At the higher end of the subarea allocation range, season setting provisions of the Plan could be met without exceeding the number of FEDs available. Under the higher subarea allocation, there would be a 27-day season that would open on May 28 (Friday) and continue for 5 days per week (Thursday through Monday) through July 3 (Saturday). The final determination of the season dates would be based on the allowable harvest level, projected 1999 catch rates and on recommendations developed in a public workshop sponsored by Washington Department of Fish and Wildlife after the 1999 TAC is set by the IPHC. The daily bag limit would be one halibut of any size per day per person.

Washington North Coast Subarea (North of the Queets River)

This subarea would be allocated between 83,872 and 96,052 lb (38–43.6 mt) at an Area 2A TAC of 660,000–820,000 lb (299.4–372 mt) in accordance with the Plan. The fishery would open on May 1 and continue for 5 days per week (Tuesday through Saturday) until the quota is taken. Based on the 1998 catch of 1,567 lb (0.71 mt) per day, it is anticipated that the season would extend past July 4 regardless of where the subarea allocation falls within the possible range, thereby achieving the three priorities for this subarea in the Plan. The daily bag limit would be one halibut of any size per day per person. A portion of this subarea located about 19 nm (35 km) southwest of Cape Flattery would be closed to sport fishing for halibut. The size of this closed area is described in the Plan, but may be modified preseason by NMFS to maximize the season length.

Washington South Coast Subarea

This subarea would be allocated between 24,467 and 36,348 lb (11.1–16.6 mt) at an Area 2A TAC of 660,000–820,000 lb (299.4 - 372 mt) in accordance with the Plan. The fishery would open on May 2 (Sunday) and continue 5 days per week (Sunday through Thursday) until 1,000 lb (0.45 mt) are projected to remain in the quota. The fishery would be open Sunday through Thursday in all areas, except where prohibited, and Friday and Saturday only in the area from the Queets River south to 47°00'00'' N. lat. and east of 124°40'00'' W. long. When 1,000 lb (0.45 mt) are projected to remain in the quota, fishing would be allowed 7 days per week in the area from the Queets River south to 47°00'00'' N. lat. and east of 124°40'00'' W. long. The daily bag limit would be one halibut of any size per day per person. A portion of this area would be closed to sport fishing for halibut. The closed area is a rectangle with the following dimensions: 47°19'00'' N. lat., 124°53'00'' W. long.; 47°19'00'' N. lat., 124°48'00'' W. long.; 47°16'00'' N. lat., 124°53'00'' W. long.; 47°16'00'' N. lat.,124°48'00'' W. long.

Columbia River Subarea

This subarea would be allocated between 6,384 and 8,565 lb (2.9–3.9 mt) at an Area 2A TAC of 660,000–820,000 lb (299.4–372 mt) in accordance with the Plan. The fishery would open on May 1 and continue 7 days per week until the quota is reached or September 30, whichever occurs first. The daily bag limit would be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

Oregon Central Coast Subarea

This subarea would be allocated between 119,715 and 149,362 lb (54.3–67.8 mt) at an Area 2A TAC of 660,000–820,000 lb (299.4 –372 mt) in accordance with the Plan. The May all-depth season would be allocated between 81,406 and 101,141 lb (36.9–45.9 mt). Based on an observed catch per day trend in this fishery, an estimated 13,700 lb to 17,000 lb (6.21 mt to 7.71 mt) would be caught per day in 1999, resulting in a 5– to 6-day fixed season. In accordance with the Plan, the season dates would be May 13, 14, 15, 20, 21, and 22 (if the Area 2A TAC is 820,000 lb (372 mt)). If the quota is not taken, an appropriate number of fishing days would be scheduled for late May or early June. The restricted depth fishery inside 30 fathoms would be allocated between 8,380 lb and 10,412 lb (3.8–4.7 mt) and would be open

starting May 1, and continue until September 30, or until the allocation is attained. The August coastwide all-depth fishery (Cape Falcon to Humbug Mountain) would be allocated between 29,929 and 37,185 lb (13.6–16.9 mt), which may be sufficient for a 1-day opening on August 6, based on the expected catch per day. If sufficient quota remains after this season for additional days of fishing, the dates for an all-depth fishery would be in mid-August. The final determination of the season dates will be based on the allowable harvest level, projected catch rates, and recommendations developed in a public workshop sponsored by ODFW after the 1999 TAC is set by the IPHC. The daily bag limit would be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

Oregon South Coast Subarea

This subarea would be allocated between 9,479 and 11,777 lb (4.3–5.3 mt) at an Area 2A TAC of 660,000–820,000 lb (299.4–372 mt) in accordance with the Plan. The May all-depth season would be allocated between 7,583 and 9,421 lb (3.4–4.3 mt) and, based on observed catch per day trend in this fishery, an estimated 1,400 –1,900 lb (0.64–0.86 mt) would be caught per day in 1999, resulting in a 5– to 6-day fixed season. In accordance with the Plan, the season dates would be May 13, 14, 15, 20, 21, and 22 (if the Area 2A TAC is 820,000 lb (372 mt)). If the quota is not taken, an appropriate number of fishing days would be scheduled for late May or early June. The restricted depth fishery inside 30 fathoms would be allocated between 1,896 and 2,355 lb (0.86 - 1.1 mt) and would open on May 1 and continue until September 30 or attainment of its allocation. The August coastwide all-depth fishery (Cape Falcon to Humbug Mountain) would be open for 1 day on August 6, based on the expected catch per day. If sufficient quota remains for additional fishing days after this season, the dates for an all-depth fishery would be in mid-August. The final determination of the season dates would be based on the allowable harvest level, projected catch rates, and recommendations developed in a public workshop sponsored by ODFW after the IPHC sets the 1999 TAC. The daily bag limit would be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

Humbug Mountain, OR, through California Subarea

This subarea would be allocated between 4,080 and 5,069 lb (1.9–2.3 mt) at an Area 2A TAC of 660,000–820,000 lb (299.4–372 mt) in accordance with the Plan. The proposed 1999 sport season for this subarea would be the same as last year, with a May 1 opening and continuing 7 days per week until September 30. The daily bag limit would be modified to be the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

NMFS requests public comments on the Council's recommended modifications to the Plan and the proposed sport fishing regulations. The Area 2A TAC will be set by the IPHC at its annual meeting on January 25 through 28, 1999, in Prince Rupert, British Columbia. Comments are requested by February 16, 1999, after the IPHC annual meeting, so that the public will have the opportunity to consider the final Area 2A TAC before submitting comments on the proposed sport fishing regulations. The States of Washington and Oregon will conduct public workshops shortly after the IPHC meeting to obtain input on the sport season dates. After the Area 2A TAC is known, and after NMFS reviews public comments and comments from the States, NMFS will issue final rules for the Area 2A Pacific halibut sport fishery concurrent with the IPHC regulations for the 1999 Pacific halibut fisheries.

Classification

NMFS has prepared a draft EA/RIR on the proposed changes to the Plan. Copies of the ''Draft Environmental Assessment and Regulatory Impact Review of Changes to the Catch Sharing Plan for Pacific Halibut in Area 2A'' are available from NMFS (see ADDRESSES). Comments on the EA/RIR are requested by February 26, 1999.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the changes to the Plan would not have a significant economic impact on a substantial number of small entities as follows:

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603 *et seq.*, requires agencies to consider the impacts of proposed actions on small entities. NMFS has established standards for determining whether an action will have a significant economic impact on a substantial number of small entities. NMFS has determined that, in general, a substantial number of small entities would be 20 percent of those small entities affected by the rule. Economic impacts on small entities are considered to be ''significant'' if the proposed action would result in any of the following: (a) reduction in annual gross revenues by more than 5 percent; (b) increase in total costs of production by more than 5 percent as a result of an increase in compliance costs; (c) compliance costs as a percent of sales for small entities are at least 10 percent higher than compliance costs as a percent of sales for large entities; (d) capital costs of compliance represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or, (e) as a rule of thumb, 2 percent of small business entities being forced to cease business operations. For the fishing industry, a small entity is a small business with receipts of up to $3 million annually. Charterboats operating in Washington and Oregon sport fisheries are viewed as small entities affected by the proposed changes to the Plan.

The proposed action would result in minor adjustments and refinements to existing management measures that, based on 1998 permits data, could affect up to 140 charter vessels. One proposed change would move the management line for the southernmost subarea north to include a small amount of the southern Oregon coast and move a small portion of the Oregon/California sport quota (0.4 percent of the Oregon/California recreational fishery subquota, or 0.08 percent of the Area 2A TAC), to match the movement of the management line. Historically, halibut landings south of Humbug Mountain (the location of the new proposed management line) have been incidental to sport fisheries directed at other species, similar to sport landings of Pacific halibut in California. The incidental nature of halibut landings in these southernmost Oregon waters is more similar to California fisheries than to the larger, northern Oregon sport fisheries. This action is expected to allow the retention of incidentally caught halibut south of Humbug Mountain without significantly increasing halibut landings. This proposed action is not expected to result in a shortened season for fishers landing halibut north of Humbug Mountain. Therefore, there would be no adverse impacts from this change.

Other proposed changes to the Plan are expected to have no adverse effect, but to provide a modest increase in fishery and regulatory convenience. The proposal to modify the boundaries of a sport fishing closed area within the Washington south coast subarea does not defeat the original purpose of creating a closed area, which was to prohibit fishing in a zone of high halibut abundance so that the season might be lengthened by eliminating access to that zone. Reducing the size of the current closed area is expected to better define the actual boundaries of the zone of halibut abundance and to allow fishing in a larger area, without actually increasing the halibut landings rate in this subarea. Restructuring the Washington south coast subarea sport fishery to allow landing from a small nearshore area on days that the offshore fishery is closed is also not expected to significantly increase the halibut landings rate for this subarea. Halibut landings rates from the nearshore area are significantly lower than from the offshore area. The purpose of this change is to acknowledge that halibut may be caught incidentally in nearshore waters on days that the deepwater fishery is closed, and that it is desirable to allow fishers to land halibut that they may catch incidentally on fishing trips targeting other species, such as rockfish.

Modifying the Oregon sport fishery south of Cape Falcon to allow the nearshore fisheries better access to its quota is not expected to reduce the number of open days in the all-depth fisheries. Under the current Plan, the August all-depth fisheries have access to both the all-depth quota and to the nearshore quota in setting the all-depth season length. In recent years, the all depth fisheries have landed about 20,000 lb (90.7 mt) of halibut per day, while daily catch rates for the nearshore fisheries may have been less than 150 lb (68 kg) per day and usually in the 25–75 lb (11.3–34 kg) range. Given that the quota for the nearshore fisheries south of Cape Falcon is expected to be 10,276–12,767 lb (466.1–5,791 kg) in 1999, eliminating all-depth fishery access to the portion of that quota that would remain unharvested in August would not preempt a day of fishing in the all-depth fishery.

Sport fishers operating in the subareas south of Leadbetter Point had expressed concern over the possible hooking mortality associated with a 2–fish bag limit with one fish being over 32 inches (81.3 cm) in length and the other fish exceeding 50 inches (125.5 cm) in length. By allowing anglers to pursue a fish over 50 inches (125.5 cm), the risk of mortality of the discards of fish under 32 inches (81.3 cm) in length was too high in their opinion. Hoping to reduce such practices and to possibly lengthen the large, Oregon all-depth fisheries south of Cape Falcon, anglers proposed changing the bag and possession limits for all areas south of Leadbetter Point, Washington to the first fish longer than 32 inches (81.3 cm). Many charterboat operators already limit their angler clients to one halibut per person and this bag limit change is not expected to affect participation in the popular all-depth Oregon sport fisheries.

Proposed changes to clarify current Plan language that describes the inseason division of the commercial quota and to clarify the current halibut retention language for treaty Indian ceremonial and subsistence fisheries are housekeeping changes that are expected to have no effect on the fisheries managed by those sections of the Plan. Proposed changes to the Plan have no adverse effect on the managed fisheries. The proposed sport management measures for 1999 would implement the Plan at an appropriate level of TAC; their impacts are within the scope of the impacts analyzed for the Plan. Therefore, a regulatory flexibility analysis was not prepared.

This action has been determined to be not significant for purposes of E.O. 12866.

Dated: February 5, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–3432 Filed 2–10–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 28
Thursday, February 11, 1999

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

Foreign Agricultural Service

Types and Quantities of Agricultural Commodities Available for Donation Overseas Under Section 416(b) of the Agricultural Act of 1949, as Amended, in Fiscal Year 1999

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: On December 18, 1998, the President of the Commodity Credit Corporation, who is the Under Secretary of Agriculture for Farm and Foreign Agricultural Services, determined that an additional 2.5 million metric tons grain equivalent of wheat and wheat products that may be acquired by the Commodity Credit Corporation (CCC) under its surplus removal operations is available for donation overseas under section 416(b) of the Agricultural Act of 1949, as amended, during fiscal year 1999. This determination increases the amount of wheat and wheat products available for donation overseas under section 416(b) during fiscal year 1999 to 5.0 million metric tons grain equivalent.

FOR FURTHER INFORMATION CONTACT: Ira Branson, Director, CCC Program Support Division, FAS, USDA, (202) 720–3573.

Dated: February 5, 1999.

Christopher E. Goldthwait,

General Sales Manager, CCC.

[FR Doc. 99–3339 Filed 2–10–99; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Blue Mountains Natural Resources Institute, Board of Directors, Pacific Northwest Research Station, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Blue Mountains Natural Resources Institute (BMNRI) Board of Directors will meet on March 5, 1999, at the Island City Hall, 10605 Island Avenue, La Grande, Oregon. The meeting will begin at 9:00 a.m. and continue until 4:00 p.m. Agenda items to be covered will include: (1) Program review; (2) alternatives for new mission and scope, (3) public comments. All BMNRI Board Meetings are open to the public. Interested citizens are encouraged to attend. Members of the public who wish to make a brief oral presentation at the meeting should contact Larry Hartmann, BMNRI, 1401 Gekeler Lane, La Grande, Oregon 97850, 541–962–6537, no later than 5:00 p.m. March 1, 1999, to have time reserved on the agenda.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Larry Hartmann, Manager, BMNRI, 1401 Gekeler Lane, La Grande, Oregon 97850, 541–962–6537.

Dated: February 2, 1999.

Lynn Starr,

Acting Manager.

[FR Doc. 99–3323 Filed 2–10–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 4–99]

Foreign-Trade Zone 31, Granite City, Illinois Application for Subzone; Clark Refining & Marketing, Inc. (Oil Refinery Complex) Hartford, Illinois

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Tri-City Regional Port District, grantee of FTZ 31, requesting special-purpose subzone status for the oil refinery complex of Clark Refining & Marketing, Inc., located in Hartford, Illinois. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 1, 1999.

The refinery complex (400 acres) is located at two sites in Hartford, Illinois (Madison County), some 15 miles northeast of St. Louis, Missouri: *Site 1* (65,000 BPD capacity, 240 acres)'main refinery complex and storage facility (72 tanks, 2 million barrel capacity), located at 201 E. Hawthorne; *Site 2* (160 acres)—river dock and three connecting pipelines, located west of the refinery on the Mississippi River.

The refinery (300 employees) is used to produce fuels and petrochemical feedstocks. Fuel products include gasoline, jet fuel, distillates, residual fuels, and motor fuel blendstocks. Petrochemical feedstocks and refinery by-products include propane, propylene, ethylene, butane, butylene, butadiene, liquified natural gas, benzene, toluene, xylene, carbon black oil, petroleum coke, sulfur and asphalt. Some 75 to 80 percent of the crude oil (90 percent of inputs) and some motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting incoming foreign crude oil and natural gas condensate in non-privileged foreign status. The duty rates on inputs range from 5.25¢/barrel to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

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

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 27, 1999.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 8182 Maryland Avenue, Suite 303, St. Louis, Missouri 63105

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce,

14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: February 2, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–3415 Filed 2–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 5–99]

Foreign-Trade Zone 22, Chicago, Illinois Application for Subzone; Clark Refining & Marketing, Inc. (Oil Refinery Complex) Cook County, IL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Illinois International Port District, grantee of FTZ 22, requesting special-purpose subzone status for the oil refinery complex of Clark Refining & Marketing, Inc., located in Cook County, Illinois (Chicago area). The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 1, 1999.

The refinery complex (165 acres) is located at three sites in Cook County, Illinois (Chicago area): *Site 1* (85,000 BPD capacity, 120 acres)—main refinery complex, located at 131st and Kedzie Avenue on the Calumet Sag Canal, Blue Island; *Site 2* (45 acres)—crude oil tank farm (7 tanks, 431,290 barrel capacity), located at 131st and Homan, ¼ mile northwest of the refinery and *Site 3* (5 tanks, 170,000 barrel capacity)—leased from the Texas Eastern Product Pipeline Company storage facility located at 3645 West 131st Street, Alsip, ¼ mile west of the refinery.

The refinery (300 employees) is used to produce fuels and petrochemical feedstocks. Fuel products include gasoline, jet fuel, distillates, residual fuels, and motor fuel blendstocks. Petrochemical feedstocks and refinery by-products include propane, propylene, ethylene, butane, butylene, butadiene, liquified natural gas, benzene, toluene, xylene, carbon black oil, petroleum coke, sulfur and asphalt. About half of the crude oil (95 percent of inputs) and some motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting incoming foreign crude oil and natural gas condensate in non-privileged foreign status. The duty rates on inputs range from 5.25¢/barrel to 10.5¢/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

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

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 27, 1999.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 55 West Monroe Street, Suite 2440, Chicago, Illinois 60603

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: February 2, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–3416 Filed 2–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 3–99]

Foreign-Trade Subzone 229A—Buffalo, WV; Expansion of Manufacturing Authority; Toyota Motor Manufacturing West Virginia, Inc. (Automobile Engines)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Toyota Motor Manufacturing West Virginia, Inc. (TMMWV), operator of Subzone 229A, requesting an expansion of the scope of manufacturing authority to include new automobile engine manufacturing capacity under FTZ procedures within Subzone 229A at the TMMWV plant in Buffalo, West Virginia. It was formally filed on February 1, 1999.

Subzone 229A was approved in 1998 with activity granted for the manufacture of internal-combustion engines for automobiles (Board Order 955, 63 FR 9177, 2–14–98).

TMMWV is now requesting that its scope of manufacturing authority be extended to include increased capacity for the production of six-cylinder engines. The completed engines will be shipped to Toyota's automobile assembly plants in California and Kentucky. The TMMWV plant's capacity will be increased from 400,000 engines per year to a total of 500,000 engines annually, and the activity will involve machining and assembly using domestic and foreign-origin components. The expanded operations will maintain or reduce the current level of foreign-sourced components used in the manufacturing process. Components to be sourced from abroad include (comprising about 45% of the finished engines' material value): spark plug tubes, oil control/camshaft timing assemblies, oil control valve filters, connector tubes, plate washers, intake-air surge assemblies, gaskets, exhaust manifolds, fuel pipe subassemblies, emission control valves, and fuel vapor hoses (duty rates: free, 2.6%).

FTZ procedures would exempt TMMWV from Customs duty payments on the foreign components used in production for export. On engines shipped to domestic auto assembly plants, company would be able to choose the 2.5 percent automobile duty rate for the foreign inputs noted above when the engines (as components of autos) are processed for Customs entry. The engine rate (2.6%) would apply to the foreign components if the finished engines are directly entered from the TMMWV plant. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

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

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 27, 1999.

A copy of the application and the accompanying exhibits will be available

for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, Suite 807, 405 Capitol Street, Charleston, WV 25301

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: February 1, 1999.

Dennis Puccinelli,

Acting Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 99–3414 Filed 2–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended investigation; Opportunity To Request Administrative Review

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

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with Sec. 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of February 1999, interested parties may request an administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

	Period
Antidumping Duty Proceedings	
Austria: Railway Track Maintenance Equipment A–433–064	02/01/98–01/31/99
Brazil: Stainless Steel Bar A–351–825	02/01/98–01/31/99
Canada: Racing Plates (Aluminum Horsehoes) A–122–050	02/01/98–01/31/99
Germany: Sodium Thiosulfate A–428–807	02/01/98–01/31/99
India: Stainless Steel Flanges A–533–809	02/01/98–01/31/99
India: Stainless Steel Bar A–533–810	02/01/98–01/31/99
Indonesia: Melamine Institutional Dinnerware A–560–801	02/01/98–01/31/99
Japan: Malamine In Crystal Form A–588–056	02/01/98–01/31/99
Japan: Carbon Steel Butt-Weld Pipe Fittings A–588–602	02/01/98–01/31/99
Japan: Mechanical Transfer Presses A–588–810	02/01/98–01/31/99
Japan: Benzyl P-Hydroxybenzoate (Benzyl Paraben) A–588–816	02/01/98–01/31/99
Japan: Stainless Steel Bar A–588–833	02/01/98–01/31/99
South Korea: Telephone Systems and Subassemblies Thereof A–580–803	02/01/98–01/31/99
South Korea: Stainless Steel Butt-Weld Pipe Fittings A–580–813	02/01/98–01/31/99
Taiwan: Stainless Steel Flanges A–583–821	02/01/98–01/31/99
Taiwan: Melamine Institutional Dinnerware A–583–825	02/01/98–01/31/99
The People's Republic of China: Natural Bristle Paint Brushes and Brush Heads A–570–501	02/01/98–01/31/99
The People's Republic of China: Axes/adzes A–570–803	02/01/98–01/31/99
The People's Republic of China: Bars/wedges A–570–803	02/01/98–01/31/99
The People's Republic of China: Coumarin A–570–830	02/01/98–01/31/99
The People's Republic of China: Hammers/sledges A–570–803	02/01/98–01/31/99
The People's Republic of China: Picks/Mattocks A–570–803	02/01/98–01/31/99
The People's Republic of China: Sodium Thiosulfate A–570–805	02/01/98–01/31/99
The People's Republic of China: Manganese Metal A–570–840	02/01/98–01/31/99
The People's Republic of China: Melamine Institutional Dinnerware A–570–844	02/01/98–01/31/99
United Kingdom: Sodium Thiosulfate A–412–805	02/01/98–01/31/99
Countervailing Duty Proceedings—None	
Suspension Agreements	
Brazil: Frozen Concentrated Orange Juice C–351–005	02/01/98–01/31/99
Venezuela: Gray Portland Cement And Cement Clinker A–307–803	02/01/98–01/31/99

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations 62 FR 27295, 27494 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state

specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation for requests received by the last day of February 1999. If the Department does not receive, by the last day of February 1999, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 4, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–3413 Filed 2–10–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Montana State University; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Numbers: 98–065 and 98–066. *Applicant:* Montana State University, Bozeman, MT 59717–3840. *Instrument:* (2) Optical Helium Cryostats. *Manufacturer:* Institute of Physics, Ukraine, CIS. Intended Use: See notice at 63 FR 71268, December 24, 1998. Reasons: The foreign instruments provide: (1) Rapid cool-down (30–60 min.), (2) minimal initial vacuum (10^{-3} Torr), (3) portable operation and (4) low evaporation (2–3 liters per cooling cycle). Advice received from: The National Institute of Standards and Technology, June 25, 1998.

The National Institute of Standards and Technology advised that (1) the capabilities of each of the foreign instruments described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of the instruments (comparable cases).

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to either of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–3418 Filed 2–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Princeton University; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Decision: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following dockets.

Docket Number: 98–039. *Applicant:* Princeton University, Princeton, NJ 08544. *Instrument:* Laser Optics, Version 2. *Manufacturer:* Radiant Dyes Laser Accessories, GmbH, Germany. *Date of Denial Without Prejudice to Resubmission:* October 13, 1998.

Docket Number: 98–040. *Applicant:* Princeton University, Princeton, NJ 08544. *Instrument:* Laser, Model SL404G–10. *Manufacturer:* Spectron Laser Systems, United Kingdom. *Date of Denial Without Prejudice to Resubmission:* October 13, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–3417 Filed 2–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011499C]

Atlantic Tuna Fisheries; Public Hearings; Advisory Panel Meetings; Correction

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

ACTION: Notice of public hearing; correction.

SUMMARY: On January 22, 1999, NMFS published a notice announcing a series of public hearings to receive comments from fishery participants and other members of the public regarding proposed regulations to implement the draft Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and draft Amendment 1 to the Atlantic Billfish Fishery Management Plan (Billfish Amendment). NMFS announces a change of location for one of the public hearings.

DATES: The public hearing in Ocean City, MD will be held from 7:00 p.m. to 10:00 p.m. on Wednesday, March 3, 1999.

Written comments on the proposed rule must be received by March 4, 1999.

ADDRESSES: Written comments should be sent to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin at (978) 281–9146.

Correction

In the Federal Register issue of January 22, 1999, in FR Doc. 99–1418, on page 3487, in the second column, in the next to the last location, under the heading, ''Wednesday, March 3, 1999, Ocean City, MD, 7–10 p.m.,'' the location is corrected to read as follows:

Princess Royale Oceanfront Hotel and Conference Center, 9100 Coastal Highway, Ocean City, MD 21842.

All other previously published information remains unchanged.

Dated: February 5, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–3429 Filed 2–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020299D]

Pacific 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 Pacific Fishery Management Council's (Council) Groundfish Total Catch Determination Committee (Committee) will hold a public meeting.

DATES: The meeting will be held on Tuesday, March 2, beginning at 1 p.m. and may go into the evening until business for the day is completed. The meeting will reconvene at 8 a.m. on Wednesday, March 3 and continue until the agenda has been completed.

ADDRESSES: The meeting will be held in the conference room at the Pacific Fishery Management Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: This ad-hoc committee has been instructed to continue the investigation and development of a program to determine total groundfish fishing mortality and discard and to provide the information necessary to assess the effects of trip limit management. The ad-hoc Committee will review the goals for a data collection program, discuss design of a program, and review information that has been prepared since the previous meeting. The Committee will prepare a report to the Council for presentation at the April Council meeting.

Although other issues not contained in this agenda may come before this Committee 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. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: February 3, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–3431 Filed 2–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020499A]

Endangered Species; Permits

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

ACTION: Receipt of applications for scientific research permits (1194, 1195, 1196) and modifications to scientific research permits (948, 998, 1036); Issuance of scientific research permits (1181, 1183, 1184) and modifications to scientific research permits (895, 1124).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received permit applications from: NMFS, Northwest Fisheries Science Center in Seattle, WA (NWFSC)(1194), U.S. Forest Service, Pacific Northwest Research Station in Corvallis, OR (USFS)(1195), and Washington Department of Fish and Wildlife in Olympia, WA (WDFW)(1196); NMFS has received applications for modifications to existing permits from: Northern Wasco County People's Utility District in The Dalles, OR (NWCPUD)(948), Shoshone-Bannock Tribes in Fort Hall, ID (SBT)(998), and U.S. Geological Survey in Cook, WA (USGS) (1036); NMFS has issued permits to: Mendocino Redwood Company (MRC)(1181), Ross N. Taylor (RNT)(1183), and Garcia and Associates (GAA)(1184); and NMFS has issued modifications to scientific research permits to: U.S. Army Corps of Engineers, Walla Walla District at Walla Walla, WA (Corps) (895) and Idaho Department of Fish and Game at Boise, ID (IDFG)(1124).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before March 15, 1999.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 895, 948, 998, 1036, 1124, 1194, 1195, and 1196: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

For permits 1181, 1183, and 1184: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT:

For permits 895, 948, 998, 1036, 1124, 1194, 1195, and 1196: Leslie Schaeffer, Portland, OR (503–230–5433).

For permits 1181, 1183, and 1184: Dan Logan, Protected Resources Division, Santa Rosa, CA (707–575–6066).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the ESA, is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Permits and modifications are issued in accordance with and are subject to parts 217–222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in this Notice

The following species and evolutionarily significant units (ESUs) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Snake River (SnR) spring/summer, SnR fall, Upper Columbia River (UCR) spring

Coho salmon (*O. kisutch*): Central California coast (CCC), southern Oregon/northern California coast (SONCC)

Sockeye salmon (*O. nerka*): SnR

Steelhead trout (*O. mykiss*): UCR, SnR, southern California coast (SCC)

To date, neither a listing determination for UCR spring chinook salmon under the ESA, nor protective regulations for threatened SnR steelhead under section 4(d) of the ESA have been promulgated by NMFS. This notice of receipt of applications requesting takes of these species is issued as a precaution in the event that NMFS issues an UCR spring chinook salmon listing determination and/or SnR steelhead protective regulations. The initiation of a 30-day public comment period on the applications, including their proposed takes of UCR spring chinook salmon and/or SnR steelhead, does not presuppose a listing determination or the contents of the eventual protective regulations, respectively.

New Applications Received

NWFSC (1194) requests a 5-year permit that would authorize annual direct takes of adult, threatened, artificially propagated, SnR spring/summer chinook salmon and adult, endangered, artificially propagated, UCR steelhead associated with an evaluation of passive integrated transponder (PIT) tag interrogation systems at Bonneville Dam on the lower Columbia River. The objectives of the study are to evaluate the ability of the prototype PIT-tag detection systems to detect PIT-tagged adult salmon passing through the facility, and evaluate the effects of the detection systems on adult behavior as they approach and pass through the system. ESA-listed fish are proposed to be captured, tagged with PIT and Peterson disk tags, released in the adult ladder below the detection systems, and allowed to volitionally pass to the main adult fish ladder. ESA-listed adult fish indirect mortalities are also requested.

USFS (1195) requests a 5-year permit that would authorize annual direct takes of juvenile, threatened, SnR fall chinook salmon and juvenile, threatened, SnR steelhead associated with a project designed to answer questions about life history strategies and the contribution of tributary production to overall steelhead abundance in the upper Grande Ronde River Basin. The study objectives are to continue long-term monitoring of steelhead smolt production in the Meadow Creek Basin, to enumerate steelhead smolt production in McCoy Creek, and to describe the range and interaction(s) of life-history strategies used by steelhead in the Meadow Creek Basin. ESA-listed fish are proposed to be captured, sampled for biological data and/or tagged or fin-clipped, and released. A small percentage of fish will be released upstream and recaptured to allow for calculation of trap efficiency. ESA-listed juvenile fish indirect mortalities are also requested.

WDFW (1196) requests a 5-year permit that would authorize annual direct takes of adult and juvenile, UCR spring chinook salmon. Takes of UCR spring chinook salmon are requested in anticipation of a possible listing decision of this species by NMFS. The program is intended to supplement naturally spawning populations of UCR spring chinook salmon and produce captive brood fish for stock preservation and recovery purposes. For the supplementation program, adult UCR spring chinook salmon are proposed to be collected for broodstock and spawned in a hatchery. Progeny are proposed to be reared in artificial production facilities and released into the Methow, Chewuch, Twisp, and Chiwawa Rivers. For the captive broodstock program, UCR spring chinook are proposed to be collected in the gamete, egg, fry, and/or smolt stage; marked and/or tagged; reared to spawning adult stage; and spawned with the resultant second generation of smolts released into the Methow, Chewuch, Twisp, and Chiwawa Rivers. Adult and juvenile fish indirect mortalities are also requested.

Modification Requests Received

NWCPUD requests modification 3 to permit 948, which authorizes annual direct takes of juvenile, endangered, SnR sockeye salmon; juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; juvenile, threatened, SnR fall chinook salmon; and juvenile, endangered, artificially propagated and naturally produced, UCR steelhead associated with a study designed to assess run of the river juvenile anadromous fish condition after passage through the screened turbine intake channel at The Dalles Dam, located on the Columbia River. For modification 3, NWCPUD requests annual direct takes of juvenile UCR spring chinook salmon in anticipation of a possible listing decision of this species by NMFS. ESA-listed juvenile fish indirect mortalities are also requested. Modification 3 is requested to be valid for the duration of permit 948, which expires on September 30, 1999.

SBT requests modification 2 to permit 998, which authorizes annual direct takes of juvenile, endangered, SnR sockeye salmon and juvenile, threatened, naturally produced, SnR spring/summer chinook salmon associated with a study designed to evaluate smolt outmigration from Pettit and Alturas Lakes in Idaho. For modification 2, SBT requests an increased take of ESA-listed juvenile sockeye salmon for the purpose of conducting mark/recapture studies and to evaluate downstream mortality of the fish to the lower Snake River dams. ESA-listed juvenile sockeye salmon are proposed to be captured, anesthetized, tagged with passive integrated transponders, allowed to recover from the anesthetic, released upstream of the trap, recaptured, inspected for tags, and released. An associated increase in ESA-listed juvenile fish indirect mortalities is also requested. Modification 2 is requested to be valid for the duration of permit 998, which expires on December 31, 2000.

USGS requests modification 2 to permit 1036, which authorizes annual direct takes of adult and juvenile, threatened, artificially propagated and naturally produced, SnR spring/summer chinook salmon; adult and juvenile, threatened, SnR fall chinook salmon; and adult and juvenile, endangered, artificially propagated and naturally produced, UCR steelhead associated with research designed to determine the post release attributes and survival of hatchery and natural fall chinook salmon in the Snake River. For modification 2, USGS requests annual takes of adult and juvenile UCR spring chinook salmon in the Hanford Reach of the Columbia River to predict the effects of reservoir drawdown on juvenile salmonids and their predators in free-flowing river reaches and to compare the effects with a similar study in the Hells Canyon Reach of the Snake River. Takes of UCR spring chinook salmon are requested in anticipation of a possible listing decision of this species by NMFS. Also for modification 2, USGS requests takes of ESA-listed juvenile fish associated with a change in the location of fish sampling for a race and residualism study. ESA-listed juvenile fish indirect mortalities are also requested. Modification 2 is requested to be valid for the duration of permit 1036, which expires on December 31, 2001.

Permits and Modifications Issued

Notice was published on October 28, 1998 (63 FR 57666), that an application

had been filed by the Corps for modification 5 to enhancement permit 895. Modification 5 to permit 895 was issued to the Corps on January 28, 1999. Permit 895 authorizes the Corps annual direct takes of juvenile, endangered, SnR sockeye salmon; juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; juvenile, threatened, SnR fall chinook salmon; and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with the operation of the Juvenile Fish Transportation program at four hydroelectric projects on the Snake and Columbia Rivers in the Pacific Northwest (Lower Granite, Little Goose, Lower Monumental, and McNary Dams). Permit 895 also authorizes the Corps annual incidental takes of adult salmonids associated with fallbacks through the juvenile fish bypass systems at the four dams. For modification 5, the Corps is authorized an increase in the annual direct take of juvenile, threatened, SnR fall chinook salmon. An associated increase in juvenile fall chinook salmon indirect mortalities is also authorized. Modification 5 is valid for the duration of the permit, which expires on December 31, 1999.

Notice was published on November 18, 1998 (63 FR 64064), that an application had been filed by IDFG for modification 1 to scientific research permit 1124. Modification 1 to permit 1124 was issued to IDFG on January 28, 1999. Permit 1124 authorizes IDFG annual direct takes of adult and juvenile, endangered, SnR sockeye salmon; adult and juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; and juvenile, threatened, SnR fall chinook salmon associated with scientific research in the state of Idaho. For modification 1, IDFG is authorized an increase in the annual direct take of juvenile, threatened, naturally produced, SnR spring/summer chinook salmon. IDFG underestimated parr production and emigration of this species in 1998. Modification 1 is valid for the duration of the permit, which expires on December 31,2002.

Notice was published on October 21, 1998 (63 FR 56148), that an application had been filed by MRC for a scientific research permit. Permit 1181 was issued to MRC on January 28, 1999, and authorizes takes of adult and juvenile, threatened, CCC coho salmon associated with fish population and habitat studies on MRC properties within the CCC ESU. ESA-listed fish may be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. Indirect mortalities are also authorized. Permit 1181 expires on June 30, 2004.

Notice was published on October 21, 1998 (63 FR 56148), that an application had been filed by RNT for a scientific research permit. Permit 1183 was issued to RNT on February 2, 1999. Permit 1183 authorizes RNT takes of adult and juvenile, threatened, CCC and SONCC coho salmon in California, associated with fish population and habitat studies in the coastal stream drainages within the ESUs. ESA-listed fish will be captured, anesthetized, handled, allowed to recover from the anesthetic, and released. ESA-listed salmon indirect mortalities associated with the research are also authorized. Permit 1183 expires on June 30, 2004.

Notice was published on November 18, 1998 (63 FR 64063), that an application had been filed by GAA for a scientific research permit. Permit 1184 was issued to GAA on February 2, 1999. Permit 1184 authorizes takes of adult and juvenile, threatened, CCC coho salmon, and adult and juvenile, endangered, SCC steelhead associated with fish population and habitat studies throughout these ESUs. ESA-listed fish may be observed or captured, anesthetized, handled, allowed to recover from the anesthetic, and released. Indirect mortalities are also authorized. Additionally, fish rescue operations may be authorized by NMFS on a case-by-case basis. Permit 1184 expires on June 30, 2004.

Dated: February 5, 1999.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–3430 Filed 2–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education, and State Agencies for Approval of Nurse Education

AGENCY: Department of Education.

ACTION: Request for comments on agencies applying to the Secretary for renewal of recognition.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accreditation and Eligibility Determination Division, U.S. Department of Education, 7th and D Streets, SW, Room 3915 ROB–3, Washington, DC 20202–5244, telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions or programs within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. A notice published in the **Federal Register** on December 24, 1998 (Volume 63, page 71275) invited interested third parties to present written comments on agencies scheduled for review at the May 1999 meeting of the National Advisory Committed on Institutional Quality and Integrity (NACIQI). The purpose of this notice is to add an accrediting agency whose interim report is scheduled for review at the May meeting. The name of that agency is included at the end of this notice. This notice also extends the deadline for interested third parties to submit written comments, only for the agency named in this notice, from February 8, 1999 to March 15, 1999. All other provisions of the December 24, 1998 **Federal Register** notice remain in effect.

Interim Report

1. Transnational Association of Christian Colleges and Schools, Accrediting Commission.

Dated: February 5, 1999.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance Programs.

[FR Doc. 99–3422 Filed 2–10–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has

been requested by February 26, 1999. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 12, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503. Comments regarding the regular clearance and requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. 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.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: February 5, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Applications for Institute for International Public Policy.

Abstract: Institute for International Public Policy: Collect program and budget information to make grants to a consortium higher education institutions.

Additional Information: Collection of information is necessary in order for the Secretary of Education to make a grant to a consortium of higher education institutions to establish an Institute for International Public Policy which will significantly increase the number of African Americans and other underrepresented minorities in the international service in both the governmental and the private sectors.

Frequency: Every three to four years.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Burden:

Responses: 5.

Burden Hours: 250.

[FR Doc. 99–3340 Filed 2–10–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: February 25, 1999 from 1:00 p.m to 6:00 p.m.

ADDRESSES: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3100, ROB #3, Washington, DC 20202–5175. Telephone: (202) 708–5750. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 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.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Section 1001 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1131a–1). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants of a given kind.

The meeting of the National Board is open to the public. The National Board will meet on Thursday, February 25, from 1:00 p.m. to 6:00 p.m. to provide an overview of FIPSE's programs, appropriations for FY 1999 and 2000, and special initiatives.

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device or materials in an alternative format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building #3, 7th & D streets, SW, Washington, DC 20202 from the hours of 8:00 a.m. to 4:30 p.m.

Dated: February 5, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–3369 Filed 2–10–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments concerning the proposed revision to the Form EIA–871A/F, ''1999 Commercial Buildings Energy Consumption Survey.''

DATES: Written comments must be submitted on or before April 12, 1999. If you have difficulty in submitting comments within the 60 days, contact the person identified below as soon as possible.

ADDRESSES: Send comments to Martha Johnson, Project Manager, EI–63, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585–0660. Alternatively, Martha may be reached by phone at 202–586–1135, by e-mail (Martha.Johnson@eia.doe.gov), or by FAX (202-586–0018).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha Johnson at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) requires the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands. In addition, as specified in Section 171 (b)(k)(1) of the Energy Policy Act of 1992 (Pub. L. 102–486), EIA conducts surveys of residential and commercial energy use.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) for the collections under Section 3507(h) of the Paperwork Reduction Act of 1995.

The Commercial Buildings Energy Consumption Survey (CBECS) has been conducted six times previously covering the years 1979, 1983 and 1986 under the name of the Nonresidential Buildings Energy Consumption Survey, and years 1989, 1992 and 1995 under the current name, Commercial Buildings Energy Consumption Survey. CBECS collects baseline data on energy consumption and expenditures in commercial buildings, and on the energy-related characteristics of those buildings. To obtain this information, interviews are conducted for a sample of commercial buildings in the 50 states and the District of Columbia. For buildings in the survey, data are collected on the types, amount and cost of energy consumed in the building, how the energy is used, structural characteristics of the buildings, activities conducted inside the buildings, building ownership and occupancy, energy conservation measures, and energy-using equipment. The information will be collected using Computer Assisted Telephone Interviewing (CATI) for the 1999 CBECS. For those buildings that cannot provide energy consumption data for the building, the data will be obtained in a mail survey from the suppliers of electricity, natural gas, fuel oil and district heat to the building, after receiving permission from the building owner, manager or tenant. This mail survey is mandatory.

The data obtained from this survey are available to the public in a variety of EIA publications and electronic tables and reports. (The 1995 CBECS data were published in A Look at Commercial Buildings in 1995: Characteristics, Energy Consumption and Energy Expenditures.) These reports can also be obtained at http://www.eia.doe.gov/ consumption. Public use files that have been screened to protect the identity of the individual respondents are also available electronically. Selected data from the surveys are also published in the Monthly Energy Review and the Annual Energy Review.

II. Current Actions

This will be a proposed revision and three-year clearance request to OMB. The request in the expiration data will extend the EIA–871A/F to May 31, 2002.

Other anticipated changes for the 1999 CBECS include:

- Collecting the data by telephone (rather than in a personal interview) using CATI techniques;
- Collecting the energy consumption and expenditures data (Form EIA–871C–F) at the building level rather than from the energy suppliers;
- Resampling from the 1995 CBECS sample;
- Excluding buildings from the sample that are 10,000 square feet and less in size and that were constructed after 1995;
- Eliminating some building characteristics questions (Form EIA–871A) that are of a lower priority to CBECS data users, are no longer relevant, or that had a high item nonresponse in previous surveys;
- Reformatting the Building Characteristic Questionnaire (Form EIA–871A) so that fewer respondents are asked all questions.

III. Request for Comments

Prospective respondents and other interested parties are invited to comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected.

As a Potential Respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average approximately 45 minutes per interview (Form EIA–871A) and about 30 minutes per energy supplier response in those cases where the data must be collected from the energy suppliers (Forms EIA–871C-F). The estimated burden includes the total time, effort or financial resources expended to generate, maintain, retain, or disclose or provide the information.

Please comment on (1) the accuracy of the agency's estimate, and (2) how the agency could minimize the burden of collecting this information, including the use of information technology.

D. The agency estimates respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) total dollar amount annualized for capital and start-up costs, and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. Does any other Federal, State or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, D.C. February 5, 1999.

Jay H. Casselberry,

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

[FR Doc. 99–3401 Filed 2–10–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99–216–000 and CP98–6–001]

Dauphin Island Gathering Partners; Notice of Proposed Change in FERC Gas Tariff

February 5, 1999.

Take notice that on February 2, 1999, Dauphin Island Gathering Partners (DIGP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below to become effective February 3, 1999. The tariff sheets are to implement maximum rates and negotiated rates for Phase II service under Rate Schedule FT–2.

Original Sheet No. 6
Original Sheet No. 8
Original Sheet No. 9
Original Sheet No. 10

DIGP states that copies of this filing are being served on all affected customers and applicable 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. 99–3367 Filed 2–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1373–000]

Illinois Power Company; Notice of Filing

February 5, 1999.

Take notice that on January 15, 1999, Illinois Power Company (IP), tendered for filing in compliance with the Commission's December 16, 1999 Order regarding the North American Electric Reliability Council (NERC) Transmission Loading Relief (TLR) Procedures. IP hereby adopts NERC's Transmission Loading Relief (TLR) Alternative Transmission Tariff Amendment and IP's own Open Access Transmission Tariff shall be considered so modified by IP's adoption of NERC's TLR-related tariff amendment.

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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before February 12, 1999. Protests will be considered by the Commission to determine 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.

David P. Boergers,

Secretary.

[FR Doc. 99–3368 Filed 2–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–184–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

February 5, 1999.

Take notice that on January 29, 1999, Koch Gateway Pipeline Company (Koch Gateway), Post Office Box 1478, Houston, Texas 77251–1478, filed a request with the Commission in Docket No. CP99–184–000, pursuant to Sections 157.205 and 157.211(a)(2) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate as a jurisdictional facility certain delivery facilities installed in conjunction with an emergency natural gas transaction under Section 284.270(b) pursuant to its blanket certificate issued in Docket No. CP82–430–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Koch Gateway reports that an existing jurisdictional meter station was

upgraded on its Five Flags lateral line as an emergency natural gas transaction. Koch Gateway further reports the upgrade included the installation of approximately 60 feet of 6-inch pipeline; approximately 20 feet of 3-inch pipeline; flow computer; and a regulator to serve Air Products and Chemicals, Inc. (Air Products), an end-user, in Santa Rosa County, Florida. Koch Gateway states that Air Products requested Koch Gateway to upgrade this meter station to provide the gas quality service to properly operate its plant facilities. Koch Gateway continues that these revisions satisfied Air Products' request for natural gas service under Koch Gateway's Interruptible Transportation Service. Air Products estimates that the maximum peak day volumes to be delivered at 40,000 MMBtu and average day volumes to be delivered at 5,000 MMBtu. The estimated cost of the upgrade is $149,725. Koch Gateway transports these volumes under its blanket certificate issued in Docket No. CP88–6–000.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, 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 NGA.

David P. Boergers,

Secretary.

[FR Doc. 99–3313 Filed 2–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–178–000]

MidAmerican Energy Company; Notice of Application

February 5, 1999.

Take notice that on January 28, 1999, MidAmerican Energy Company (MidAmerican), 401 Douglas Street, Sioux City, Iowa 51102, filed in Docket No. CP99–178–000 an application pursuant to Section 7(f) of the Natural Gas Act (NGA) for a service area determination, a finding that with respect to the enlarged service area determination, MidAmerican is a local distribution company for purposes of Section 311 of the Natural Gas Policy Act (NGPA), and for a waiver of the Commission's regulatory requirements, including reporting and accounting requirements applicable to natural gas companies under the NGA and NGPA, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MidAmerican seeks a determination by the Commission to enlarge its existing service area northward to include the areas bounded by Clinton County, Jackson County and Dubuque County, Iowa. It is averred that the expansion of this service area would permit this service area to extend across state lines from MidAmerican's interconnection with the facilities of Northern Natural Gas Company (Northern) near Dubuque, Iowa to its facilities interconnecting with Natural Gas Pipeline Company of America (Natural) near Moline, Illinois.

MidAmerican states that it currently serves 77 retail customers in the enlarged portion of this service area, and has an estimated annual load of 10,500 MMBtu to those customers. It is stated that while no facilities now need to be constructed, any future construction of facilities within this service area will be fully subject to applicable federal, state, and local environmental and safety laws governing such facilities.

In further support of its request MidAmerican states that the enlarged service area will embrace the natural reach of potential retail distribution service by MidAmerican in the States of Iowa and Illinois in this defined sector of MidAmerican's distribution system. MidAmerican states that each respective state commission, namely the Iowa Utilities Board and the Illinois Commerce Commission, will have jurisdiction under Section 7(f) to review such further facility expansions and enlargements located in their respective states consistent with the public interest.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 26, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 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.

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 MidAmerican to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–3312 Filed 2–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–187–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

February 5, 1999.

Take notice that on February 1, 1999, Southern Gas Pipeline Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP99–187–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205 and 157.211) under the Natural Gas Act (NGA) for authorization to construct and operate delivery point facilities in Lee County, Alabama, under Southern's blanket certificate issued in Docket No. CP82–406–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the

Commission and open to public inspection.

Southern proposes to construct and operate delivery point facilities, consisting of a meter station and appurtenant facilities, on Southern's 30-inch South Main Loop Line in Lee County for service to South Eastern Electric Development Corporation (SEEDC), a subsidiary of Morgan Stanley Capital Group, Inc. It is stated that the delivery point would be used to deliver on an interruptible basis up to 32,000 MMBtu of natural as on a peak day, 20,000 MMBtu on an average day, and 3,000,000 MMBtu on an annual basis. Southern estimates the cost of the facilities at $433,000 and states that SEEDC would reimburse Southern for the cost.

It is asserted that Southern has sufficient capacity to make the deliveries without detriment or disadvantage to the firm requirements of its firm customers. It is further asserted that Southern's tariff does not prohibit the addition of new delivery points.

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) a 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. 99–3315 Filed 2–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–420–003]

Southern Natural Gas Company; Notice of One-Year Report

February 5, 1999.

Take notice that on December 28, 1998, Southern Natural Gas Company (Southern) filed a one-year report regarding operational flow orders implemented on its system during the past year.

Southern states that the report is submitted pursuant to a Commission Order Following Technical Conference issued December 24, 1997, in Docket No. RP97–420–000.

Southern states that copies of the report have been served on each person designated on the official service list.

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 on or before February 17, 1999. 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. 99–3316 Filed 2–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–217–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

February 5, 1999.

Take notice that on February 2, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheet with the proposed effective date of March 1, 1999.

First Revised Sheet No. 34B

Southern submits the revised tariff sheet to its FERC Gas Tariff, Seventh Revised Volume No. 1, to reflect the consolidation of the T&C and Southern Energy billing determinants for nine municipal systems, which were acquired by Alabama Gas Company (Alagasco), with Alagasco's billing determinants effective March 1, 1999.

Southern states that copies of the filing were served upon all parties listed on the official service list compiled by the Secretary in this proceeding.

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. 99–3318 Filed 2–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–178–002]

TransColorado Gas Transmission Company; Notice of Tariff Filing

February 5, 1999.

Take notice that on February 3, 1999, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute First Revised Sheet No. 220, to be effective January 1, 1999.

TransColorado states that on December 1, 1998, TransColorado filed tariff sheets to modify its tariff provisions to be consistent with the operating requirements of K N Energy, the operator of the TransColorado pipeline system. By Commission Order issued December 30, 1998, the filing was accepted to be effective January 1, 1999, subject to the outcome of a technical conference. In its order, the Commission addressed concerns raised in a protest filed by Dynegy Marketing and Trade (Dynegy) and on January 22, 1999, a Notice of Technical Conference was issued to address these concerns. In addition, a data request dated January 22, 1999, was submitted to TransColorado.

TransColorado requests that the Commission withdraw its order for a technical conference in light of (1) the resolution of Dynegy's concerns and Dynegy's subsequent withdrawal of its protest, (2) the filing of Substitute First Revised Sheet No. 220 to reflect the resolution of Dynegy's concerns and (3) TransColorado's response, filed on February 2, 1999, to the Commission's January 22, 1999, data request.

TransColorado states that a copy of this filing has been served upon its customers and the Colorado Public Utilities Commission and New Mexico Public Regulatory Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 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. 99–3317 Filed 2–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–186–000]

Williston Basin Interstate Pipeline Company; Notice of Application

February 5, 1999.

Take notice that on January 29, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP99–186–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) Regulations, for a certificate of public convenience and necessity authorizing Williston Basin to increase the maximum allowable operating pressure (MAOP) of Williston Basin's Pine Unit lateral pipeline, which consists of 9.6 miles of 6-inch pipeline located in Wilbaux and Fallan Counties, Montana. Williston Basin also requests authorization to construct 40 feet of 6-inch piping at it's Cabin Creek Compressor Station in Fallon County, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williston Basin proposes to increase the MAOP of the Pine Unit lateral pipeline, from 200 psig to 727 psig, after pressure testing with natural gas. The Pine Unit lateral pipeline will be severed from its connection to the Baker # 2 Storage line, which has no currently available capacity, and connected, by means of the proposed associated station piping, to the Section No. 5 mainline, which has available firm capacity. Williston Basin states that its proposal is made at the request of Pine Gas Gathering, L.L.C. (Pine Gas), a local gas gathering company. The estimated total cost is given as $22,058, which Williston Basin states will be completely reimbursed by Pine Gas.

Williston Basin also made a concurrent filing, in Docket No. CP99–185–000, pursuant to the prior notice procedure under its blanket certificate for authorization to remove and abandon three sales taps on the Pine Unit lateral pipeline.

Any person desiring to be heard or making any protest with reference to said application should on or before February 26, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, 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 be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protectors provide copies of their protests to the party or person to whom the protests are directed. 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 issued by the Commission, filed by the applicant, or filed by all other 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 serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 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 such 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 NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications 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 Williston Basin to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–3314 Filed 1–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and As-Built Exhibits

February 5, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection. The application may also be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

a. *Application Type:* Amendment of License and As-Built Exhibits.

b. *Project No:* 11077–022.

c. *Dates Filed:* September 4, 1998 and January 11, 1999.

d. *Applicant:* Goat Lake Hydro, Inc.

e. *Name of Project:* Goat Lake Project.

f. *Location:* On Pitchfork Falls, near the town of Skagway, in the First Judicial District, Alaska. The project occupies lands of the Tongass National Forest.

g. *Filed Pursuant to:* 18 CFR § 4.200.

h. *Applicant Contact:* Glen Martin, Project Compliance Manager, Goat Lake Hydro, Inc., P.O. Box 222, Port Townsend, WA 98368, (800) 982–0136.

i. *FERC Contact:* Paul Shannon at (202) 219–2866.

j. *Comment Date:* March 18, 1999.

k. *Description of Amendment:* Goat Lake Hydro, Inc., filed as-built exhibits A, F, and G to show the constructed configuration of the Goat Lake Project. Along with the exhibits, the licensee applied to amend its license to allow Goat Lake to be drawn down 10 feet lower than currently authorized. The amendment would allow Goat Lake to fluctuate between elevations 2925 and 2885 feet, a difference of 40 feet. The license currently authorize Goat Lake to operate between elevations 2925 and 2895 feet, a difference of 30 feet. (The exhibit A in the application for license actually said the project would be operated between elevations 2915 and 2885 feet. However, a new survey in 1996 indicated these elevations were off by 10 feet. Under the 1996 survey, the licensed reservoir operating range is between elevations 2925 and 2895 feet.)

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–3311 Filed 2–10–99; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

OMB Approval Number: 3060–0221.

Expiration Date: 12/31/2001.

Title: 90.155 Time in which station must be placed in operation.

Form No.: N/A.

Estimated Annual Burden: 2,055 annual hours; 1 hour per response; 2,055 responses.

Description: The information collection requirement contained in Section 90.155 is needed to provide flexibility to state and local governments that would normally be unable to meet the requirement of placing their radio station in operation within 8 months. The information is used to evaluate if the exception to the 8 month requirement is warranted. If the information was not collected the Commission's information regarding actual loading of frequencies would be inaccurate. As a result of comments to the Notice of Proposed Rule Making, the Report & Order revised this burden to approximately 2,055 respondents that would take an average of 1 hour to comply with the rules.

OMB Approval Number: 3060–0805.

Expiration Date: 12/31/2001.

Title: 90.527 Regional plan requirements & 90.523 Eligibility.

Form No.: N/A.

Estimated Annual Burden: 647,675 annual hours; 23.8 hours per response; 26,656 responses.

Description: The First Report and Order, FCC 98–191, in WT Docket No. 96–86 amended service rules to make the spectrum available for licensing to public safety entities. In order to satisfy local and regional needs and preferences, the Commission required submission of regional plans drafted by planning committees made up of representatives from the public safety community. Creation of these plans will necessarily impose some burden, both on the eligible entities that make their needs known, and on the planners who seek to accommodate them. The Commission also established a National Coordination Committee that will develop national standards for the operation and use of the spectrum allocated for nationwide interoperability.

OMB Approval Number: 3060–0262.

Title: 90.179 Shared use of radio stations.

Expiration Date: 12/31/2001.

Form No.: N/A.

Estimated Annual Burden: 30,750 annual hours; .75 hours per response; 41,000 responses.

Description: The Third Notice of Proposed Rule Making in, FCC 98–191, in WT Docket No. 96–86 invites comments on how to license 8.8 megahertz of spectrum in the 700 MHz band that is allocated for public safety services. For example, comment is sought on whether to license 700 MHz band spectrum directly to each individual state. The Commission also invites comments on whether to revise Section 90.179 to allow state licensees to authorize approximately 39,000 additional public safety agencies within the state and its political subdivisions to use the spectrum. We assume that the respondents would spend .75 hours to keep a written sharing agreement as part of the station records.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3329 Filed 2–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval.

February 1, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 15, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0384.

Title: Section 64.904, Annual Auditor's Certification.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 19.

Estimated Time per Response: 500 hours.

Frequency of Response: Reporting annually.

Total Annual Burden: 9,500 hours.

Total Annual Costs: $1,200,000.

Needs and Uses: Local exchange carriers required to file cost allocation manuals must have performed annually, by an independent auditor, an audit that provides a positive option on whether the applicable data shown in the carrier's annual report presents fairly the information of the carrier required to be set forth in accordance with the carrier's cost allocation manual, the Commission's Joint Cost Orders, and applicable Commission rules in Parts 32 and 64 in force as of the date of the auditor's reports. This requirement assists the Commission in effectively carrying out its responsibilities.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3327 Filed 2–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

January 28, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 15, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0511.

Title: ARMIS Access Report.

Form Number: FCC Report 43–01.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 150.

Estimated Time per Response: 1,150 hours.

Frequency of Response: Reporting annually.

Total Annual Burden: 172,500 hours.

Total Annual Costs: $0.

Needs and Uses: The Access Report is needed to administer the results of the FCC's jurisdictional separations and access charge procedures in order to analyze revenue requirements, joint cost allocations, jurisdictional separations, and access charges.

OMB Control Number: 3060–0512.

Title: ARMIS Summary Report.

Form Number: FCC Report 43–01.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 150.

Estimated Time per Response: 220 hours.

Frequency of Response: Reporting annually.

Total Annual Burden: 33,000 hours.

Total Annual Costs: $0.

Needs and Uses: The ARMIS Annual Summary Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission.

OMB Control Number: 3060–0513.
Title: ARMIS Joint Cost Report.
Form Number: FCC Report 43–03.
Type of Review: Revision of a currently approved collection.
Respondents: Businesses or other for-profit entities.
Number of Respondents: 150.
Estimated Time per Response: 200 hours.
Frequency of Response: Reporting annually.
Total Annual Burden: 30,000 hours.
Total Annual Costs: $0.
Needs and Uses: The Joint Cost Report is needed to administer our joint cost rules (Part 64) and to analyze the regulated and nonregulated cost and revenue allocations by study area in order to prevent cross-subsidization of nonregulated operations by the regulated operations.

OMB Control Number: 3060–0496.
Title: ARMIS Operating Data Report.
Form Number: FCC Report 43–08.
Type of Review: Revision of a currently approved collection.
Respondents: Businesses or other for-profit entities.
Number of Respondents: 50.
Estimated Time per Response: 160 hours.
Frequency of Response: Reporting annually.
Total Annual Burden: 8,000 hours.
Total Annual Costs: $0.
Needs and Uses: The ARMIS Operating Data Report consists of statistical schedules which are needed by the Commission to monitor network growth, usage, and reliability.

ARMIS was implemented to facilitate the timely and efficient analysis of revenue requirements and rate of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. The information contained in the reports provides the necessary detail to enable the Commission to fulfill its regulatory responsibilities. Automated reporting of these data greatly enhances the Commission's ability to process and analyze the extensive amounts of data it needs to administer its rules.

OMB Control Number: 3060–0763.
Title: ARMIS Customer Satisfaction Report.
Form Number: FCC Report 43–06.
Type of Review: Extension of a currently approved collection.
Respondents: Businesses or other for-profit entities.
Number of Respondents: 8.
Estimated Time per Response: 720 hours.
Frequency of Response: Reporting annually.
Total Annual Burden: 5,760 hours.
Total Annual Costs: $0.
Needs and Uses: The Customer Satisfaction Report collects data from carrier surveys designed to capture trends in service quality.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3330 Filed 2–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

February 4, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 15, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB CONTROL NUMBER: 3060–0395.
Title: The ARMIS USOA Report; the ARMIS Service Quality Report; and the ARMIS Infrastructure Report (Formerly titled, ''Automated Reporting and Management Information System (ARMIS),'' Sections 43.21 and 43.22.
Form Number: FCC Reports 43–02, 43–05, and 43–07.
Type of Review: Revision of a currently approved collection.
Respondents: Businesses or other for-profit entities.
Number of Respondents: 50.
Estimated Time per Response: Hours.
Frequency of Response: Reporting annually.
Total Annual Burden: 62,637 hours.
Total Annual Costs: $0.
Needs and Uses: FCC Report 43–02 contains company-wide data for each account specified in the Uniform System of Accounts (USOA). It provides the annual operating results of the carriers' activities for every account in the USOA.

FCC Report 43–05 collects data at the study area level and holding company level and is designed to capture trends in service quality under price cap regulation. It provides service quality information in the areas of interexchange access service installation and repair intervals, local service installation and repair intervals, trunk blockage and total switch downtime for price cap companies.

FCC Report 43–07 is designed to capture trends in telephone industry infrastructure development under price cap regulation. It provides switch deployment and capabilities data.

Federal Communications Commission.

Magalie Roman Salas,

Secretary,

[FR Doc. 99–3331 Filed 2–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

February 4, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction

Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before March 15, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0787.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,800.

Estimated Time Per Response: 1.25–5 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 36,844 hours.

Total Annual Cost: N/A.

Needs and Uses: 47 U.S.C. 258 makes it unlawful for any telecommunications carrier to submit or execute a change in a subscriber's exchange service or toll service carrier selection except in accordance with the Commission's verification procedures, and provides that any carrier that violates these procedures and collects charges for telecommunications service from a subscriber after such violation shall be liable to the subscriber's properly authorized carrier for all charges collected. In this rulemaking, we adopt changes in 47 CFR Sections 64.1100, 64.1150, 64.1160, 64.1170, 64.1180 and proposes new requirements in CC Docket 94–129.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–3332 Filed 2–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–2604; Report No. AUC–98–22–C (Auction No. 22)]

Auction of C, D, E, and F Block Broadband PCS Licenses Scheduled for March 23, 1999; Minimum Opening Bids and Other Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This is a summary of a Public Notice (DA 98–2604) released on December 23, 1998, and corrected by a Public Notice released on January 21, 1999, setting forth notice and filing requirements, minimum opening bids, and other procedural matters for the upcoming auction of C, D, E, and F block broadband Personal Communications Services (PCS) licenses (Auction No. 22), in accordance with the Balanced Budget Act of 1997.

DATES: Auction No. 22 is scheduled to begin on March 23, 1999.

ADDRESSES: See the text of the Public Notice and attachments for information regarding important addresses.

FOR FURTHER INFORMATION CONTACT:

Media Contact: Meribeth McCarrick, (202) 418–0654.

Auctions Division: Jeff Garretson, Operations; Bob Reagle, Auctions Analysis; or Audrey Bashkin, Legal, (202) 418–0660.

Commercial Wireless Division: David Judelsohn, (202) 418–7240.

SUPPLEMENTARY INFORMATION: The complete text of this Public Notice, including four attachments that do not appear in this summary, is available for inspection and copying Monday through Thursday from 9 a.m. to 4 p.m., and Friday from 9 a.m. to 2 p.m., in the Wireless Telecommunications Bureau's Public Reference Room (Room 5608), 2025 M Street, NW, Washington, DC, 20554, or on the Commission's World Wide Web page, located at http://www.fcc.gov/wtb/auctions. Copies also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. The four attachments that do not appear in this summary, but are available as described above, are: Attachment A (Summary of Licenses to be Auctioned, Upfront Payments, Minimum Opening Bids); Attachment B (Guidelines for Completing FCC Forms 175 and 159 and Exhibits); Attachment C (Electronic Filing and Review of FCC Form 175); and Attachment D (Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules).

Synopsis

I. Introduction

1. The Commission will hold an auction for 208 30 MHz and 134 15 MHz C block licenses, as well as for three 10 MHz D block, six 10 MHz E block, and five 10 MHz F block licenses.

2. Auction Date: The auction will commence on March 23, 1999. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding will be conducted on each business day until bidding has stopped on all licenses.

3. Bidding Methodology: Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

Pre-Auction Deadlines:

- Auction Seminar—February 3, 1999
- Short Form Application (FCC Form 175)—February 12, 1999; 5:30 p.m. ET
- Upfront Payments (via wire transfer)—March 1, 1999; 6:00 p.m. ET
- Orders for Remote Bidding Software—March 9, 1999
- Mock Auction—March 18, 1999

Telephone Contacts:

- FCC National Call Center—(888) CALL–FCC ((888) 225–5322) or (717) 338–2888 (direct dial). For Bidder Information Packages, General Auction Information, and Seminar Registration, press option #2 at the prompt. Hours: 8 a.m.–5:30 p.m. ET, Monday through Friday.
- FCC Technical Support Hotline—(202) 414–1250 (voice), (202) 414–1255 (text telephone (TTY)). Hours of service:

8 a.m.–6 p.m. ET, Monday through Friday.

A. Background

4. Broadband PCS encompasses a variety of mobile and/or portable radio services, using such devices as small, lightweight, multifunction portable phones, portable fax machines, and advanced devices with two-way data capabilities that are competing with existing cellular, paging, and other land mobile services. Auction No. 22 will be the third auction of C block spectrum and the second auction of D, E, and F block spectrum.

5. Frequency blocks C and F have been designated by the Commission as ''entrepreneurs' blocks,'' meaning that participation in auctions of C and F block licenses is limited to entities qualifying as entrepreneurs under the Commission's rules. Eligibility requirements for participation in auctions of C or F block licenses are discussed in greater detail below in Part II of the Public Notice.

6. Frequency block C encompasses 1895–1910 MHz paired with 1975–1990 MHz. In the first C block auction (Auction No. 5), which began on December 18, 1995 and concluded on May 6, 1996, the Commission auctioned licenses authorizing service on 30 MHz of spectrum in each of the 493 basic trading areas (''BTAs'') in the United States and territories. In the second C block auction (Auction No. 10), the Commission made available 18 licenses of 30 MHz of spectrum each. Auction No. 10 ran from July 3, 1996 to July 16, 1996. In 1997, as one of several payment options, the Commission allowed C block licensees from Auctions 5 and 10 to disaggregate and return to the Commission 15 MHz of spectrum from their licenses. As a result, certain C block licenses available in Auction No. 22 will encompass 15 MHz of spectrum, rather than 30 MHz. The size of each license to be auctioned is indicated in Attachment A of the full text of the Public Notice (see ''Supplementary Information'' above).

7. The D, E, and F block auction (Auction No. 11) began on August 26, 1996 and concluded on January 14, 1997. The D and E blocks were open to all entities. As mentioned, the F block was restricted to entrepreneurs. In Auction No. 11, the Commission made available 1,479 broadband PCS licenses (three in each of 493 BTAs in the United States and territories) of 10 MHz (5 MHz paired) each, encompassing the following frequencies:
D block: 1865–1870/1945–1950 MHz
E block: 1885–1890/1965–1970 MHz
F block: 1890–1895/1970/1975 MHz

B. Due Diligence

8. Potential bidders are reminded that private and common carrier fixed microwave services (''FMS'') operating in the 1850–1990 MHz band (and other bands) are being relocated to available frequencies in higher bands or to other media. Bidders should become familiar with the status of FMS operation and relocation, and applicable Commission rules and orders, in order to make a reasoned, appropriate decision about their participation in Auction No. 22 and their bidding strategy.

9. Potential bidders should be aware that certain applications (including those for modification), waiver requests, petitions for reconsideration and applications for review are pending before the Commission that relate to C, D, E, and F block licensees. We note that resolution of these matters could have an effect on the availability of spectrum. In addition, while the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

10. In notes to Attachment A of the full text of the Public Notice (see ''Supplementary Information'' above), as corrected by the Public Notice released January 21, 1999, the Commission identified certain licenses that will be included in Auction No. 22 as being the subject of pending judicial proceedings. The Commission emphasizes that the auction of spectrum associated with those licenses, including spectrum associated with defaulted licenses, will not be postponed until the resolution of pending judicial appeals. It is in the public interest to include those licenses in Auction No. 22, not only because to do so will likely speed ultimate service to the public, but also because a simultaneous auction of licenses for several markets will better reflect the value of the licenses.

11. Moreover, licenses that are the subject of such proceedings will be granted at the close of the auction in order to serve the public interest in prompt implementation of PCS service, and the grant of such licenses will be conditioned on the outcome of pending proceedings. A license grant that is conditioned on the outcome of a pending proceeding may be undone if the basis for the grant is reversed as a result of the outcome of the proceeding. For this reason, applicants have a responsibility to familiarize themselves with all pending administrative or judicial proceedings that may affect the licenses on which applicants might wish to bid.

12. Winning bidders of licenses subject to pending proceedings are required to meet the normal payment and construction schedules established by the Commission. The risk that a pending proceeding might ultimately displace a winning bidder must be taken into account by auction participants as they formulate and pursue their bidding strategies. The Commission has not addressed directly whether, if an applicant becomes ineligible to hold a license because the initiator of a pending proceeding is successful, the Commission will return the payments made for the license by the applicant. This issue will be addressed separately.

13. Licensing information is contained in the Commission's licensing database, which is available for inspection in the Wireless Telecommunications Bureau's Public Reference Rooms, located at 2025 M Street, NW, Room 5608, Washington, DC 20554, and 1270 Fairfield Road, Gettysburg, PA 17325. In a future Public Notice, the Bureau will provide the new location of the Commission's licensing database in the Portals building.

14. In addition, potential bidders may search for information regarding C, D, E, and F block licenses at the Universal Licensing System site on the FCC Network. Accessing this network involves using the FCC's Dial-Up Networking facility to dial (800) 844–2784. Once the connection is established, users point their Internet browser at http://wtbwww05.fcc.gov/ and click the License Search button. On the License Search screen, choose Market-Based from the menu. On the License Search criteria screen, specify the desired Market, Channel Block, or other desired criteria, then click the Search button. Any telephone inquiries regarding accessing this data should be directed to the Technical Support Hotline at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)).

15. The Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in or near the geographic area for which they plan to bid.

C. Participation

16. Those wishing to participate in the auction must:

- Electronically submit a short form application (FCC Form 175) by February 12, 1999.

• Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by March 1, 1999.

• Comply with all provisions outlined in the Bidder Information Package.

D. Prohibition of Collusion

17. To ensure the competitiveness and integrity of the auction process, the Commission's Rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. This prohibition begins with the filing of short-form applications, and ends on the down payment due date. Bidders competing for the same license(s) are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule. The Bureau, however, cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted. In Auction No. 22, for example, the rule would apply to any applicants bidding for the same BTA. Therefore, applicants that apply to bid for ''all markets'' would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements before filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with Section 1.2105(c). In addition, Section 1.65 of the Commission's Rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, Section 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation.

E. Bidder Information Package

18. More complete details about this auction are contained in a Bidder Information Package. The Commission will provide one copy to each applicant free of charge. Additional copies may be ordered at a cost of $16.00 each, including postage, payable by Visa or Master Card, or by check payable to ''Federal Communications Commission'' or ''FCC.'' To place an order, contact the FCC National Call Center at (888) CALL–FCC ((888) 225–5322, press option #2 at the prompt). Prospective bidders that have already contacted the FCC at this number expressing an interest in this auction will receive a Bidder Information Package in approximately four weeks, and need not call again unless they wish to order additional copies.

F. Relevant Authority

19. Prospective bidders must familiarize themselves thoroughly with the Commission's Rules relating to Broadband PCS contained in Title 47, Part 24, of the Code of Federal Regulations, and those relating to application and auction procedures, contained in Title 47, Part 1, of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions contained in the *C Block Second Report and Order and Further Notice of Proposed Rule Making*, 62 FR 55348, October 24, 1997; the *C Block Reconsideration Order*, 63 FR 17111, April 8, 1998; the *C Block Fourth Report and Order*, 63 FR 50791, September 23, 1998; Part 24, Subparts A, B, C, E, H, and I of the Commission's Rules concerning broadband PCS; and Part 1, Subpart Q, of the Commission's Rules concerning competitive bidding proceedings.

20. The terms contained in the Commission's Rules, relevant orders, public notices and bidder information package are not negotiable. The Commission may amend or supplement the information contained in its public notices or the bidder information package at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission Rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp @ftp.fcc.gov or the FCC World Wide Web site at http://www.fcc.gov/wtb/auctions. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 857–3800.

21. Bidder Alerts: The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding, as they would with any new business venture.

22. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 22 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

• The first contact is a ''cold call'' from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.

• The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.

• The amount of the minimum investment is less than $25,000.

• The sales representative makes verbal representations that: (a) the Internal Revenue Service (''IRS''), Federal Trade Commission (''FTC''), Securities and Exchange Commission (''SEC''), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

23. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC,

the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 22 may also call the FCC National Call Center at (888) CALL–FCC ((888) 225–5322).

G. National Environmental Policy Act (NEPA) Requirements

24. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and licensees must comply with the Commission's NEPA rules for each wireless facility. See 47 CFR 1.1305–1.1319. These rules require that, among other things, licensees consult with expert agencies having NEPA responsibilities including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers, and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). Licensees must prepare environmental assessments for wireless facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeologic sites, Indian religious sites, floodplains, and surface features. Licensees must also prepare environmental assessments for wireless facilities that include high intensity white lights in residential neighborhoods or excessive radiofrequency emission.

II. Eligibility

A. General Requirements

25. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially, and otherwise qualified to hold a license and, as discussed below in Part II.D., that they are not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

B. Eligibility To Participate as an Entrepreneur (C and F Blocks)

(1) General Rule

26. Only entrepreneurs as defined in Section 24.709 of the Commission's Rules may be licensed in the C and F blocks.

(2) Limited Exception for C Block

27. Applicants that participated in either of the prior C block auctions, Auction No. 5 and Auction No. 10, will not be required for Auction No. 22 to meet the revenue and asset requirements of Section 24.709 of the Commission's Rules for C block licenses.

C. Attribution Rules

28. The attribution rules set forth in Section 24.709 of the Commission's Rules will apply to Auction No. 22.

D. Special C Block Eligibility Provisions Regarding Defaulters

29. The Commission decided in the *C Block Fourth Report and Order* to limit participation in future C block auctions to applicants that are not in default on any Commission licenses and are not delinquent on any non-tax debt owed to any Federal agency. Accordingly, to be able to bid on C block licenses, an applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, to be able to bid on C block licenses, an applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any federal agency. C block applicants must include this statement at Exhibit F of the FCC Form 175.

30. ''Former defaulters'' (i.e., applicants that have defaulted or been delinquent in the past, but that have since paid all of their outstanding non-tax debts and all associated charges or penalties) are eligible to bid on C block licenses, provided that they are otherwise qualified. However, as discussed below in Part III.C.(3), former defaulters will be required to pay upfront payments that are fifty percent more than the normal upfront payment amounts if they are bidding on any C block licenses.

31. An applicant must state under penalty of perjury whether or not any entity whose gross revenues and total assets are required to be attributed to the applicant under Section 24.709 of the Commission's Rules has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any Federal agency. If any entity whose gross revenues and total assets are required to be attributed to the applicant under Section 24.709 of the Commission's Rules has ever been in default on any Commission licenses or has ever been delinquent on any non-tax debt owed to any Federal agency, the applicant will be considered a ''former defaulter'' for purposes of the upfront payment requirements for Auction No. 22.

32. We note, moreover, that if any entity whose gross revenues and total assets are required to be attributed to the applicant under Section 24.709 of the Commission's Rules is in default on any Commission licenses or is delinquent on any non-tax debt owed to any Federal agency at the time the applicant files its FCC Form 175 application, the applicant will not be able to make the certification required by Section 1.2105(a)(2)(x) of the Commission's Rules and will not be eligible to participate in Auction No. 22.

33. We will not consider an applicant in default or delinquent on a Commission installment obligation for purposes of C block eligibility and upfront payment rules unless and until the obligated entity has allowed the Section 1.2110(f)(4)(ii) non-default period to pass without having made the requisite payment.

E. Special C Block Eligibility Restriction Regarding Surrendered C Block Licenses

34. C block licensees that surrendered C block licenses pursuant to the disaggregation, prepayment, and/or amnesty/prepayment election options the Commission made available in the *C Block Second Report and Order and Further Notice*, as modified by the *C Block Reconsideration Order*, are ineligible to reacquire the spectrum represented by their surrendered licenses through participation in Auction No. 22, or by any other means, for a period of two years from the start date of Auction No. 22. This prohibition extends to qualifying members of the licensee's control group, and their affiliates. See 47 CFR 24.709(b)(9)(ii). Licensees that surrendered licenses pursuant to the ''pure amnesty'' election option remain eligible to reacquire the spectrum represented by those surrendered licenses in Auction No. 22 or through a secondary market transaction.

F. General Eligibility Criteria Regarding Small and Very Small Businesses

35. The Commission has adopted special small business provisions for the C and F blocks in order to promote and facilitate the participation of small businesses in auctions of C and F block licenses and in the provision of broadband PCS.

(1) Determination of Revenues

36. To determine which entities qualify as very small businesses or small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, persons or entities holding interests in the applicant and their affiliates on a cumulative basis and aggregated subject to the exceptions set forth in Section 24.709(b) of the Commission's Rules. Therefore, the gross revenues of all of the above entities must be disclosed separately and in the aggregate as Exhibit C to an applicant's FCC Form 175.

(2) Very Small or Small Business Consortia

37. A consortium of small businesses or very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of very small or small business in Section 24.720(b)(1) or (2). Thus, each consortium member must disclose its gross revenues along with those of its affiliates and persons or entities holding interests in the consortium member and their affiliates. The Commission notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for very small or small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

(3) Application Showing

38. Applicants should note that they will be required to file supporting documentation as Exhibit C to their FCC Form 175 short form applications to establish that they meet the gross revenue and total asset limitations of Section 24.709 of the Commission's Rules, and that they satisfy the eligibility requirements to qualify as very small businesses or small businesses (or consortia of very small or small businesses) for this auction. See 47 CFR 24.709 and 1.2105. Specifically, for Auction No. 22, applicants applying to bid for C and/or F block licenses as very small or small businesses (or consortia of very small or small businesses) will be required to file as Exhibit C to their FCC Form 175 short form applications, all information required under Sections 1.2105(a), 1.2112(b), and 24.709. In addition, these applicants must disclose, separately and in the aggregate, the gross revenues for the preceding three years of each of the following: (1) the applicant; (2) the applicant's affiliates; (3) the applicant's attributable interests; and (4) the affiliates of the applicant's attributable interests. Certification that the average gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

G. Bidding Credits

39. Qualifying applicants in Auction No. 22 are eligible for a bidding credit on C and F block licenses that represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average gross revenues for the preceding three years of the bidder, its affiliates, and persons or entities that hold interests in the bidder and their affiliates:

- A bidder with average gross revenues not to exceed $40 million for the preceding three years receives a 15 percent discount on its winning bids for C and F block licenses; and,
- A bidder with average gross revenues not to exceed $15 million for the preceding three years receives a 25 percent discount on its winning bids for C and F block licenses.

40. Bidding credits are not cumulative: qualifying applicants receive either the 15 percent or the 25 percent bidding credit, but not both. The definitions of very small business and small business (or a consortium of very small or small businesses) (including calculation of average gross revenues) are set forth in 47 CFR 24.720(b).

41. Bidders for C or F block licenses should note that transfer and assignment restrictions and unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same levels of bidding credits. See 47 CFR 1.2111 and 24.714(a)(3). There are no installment payment plans in Auction No. 22.

III. Pre-auction Procedures

A. Short-Form Application (FCC Form 175)—Due February 12, 1999

(1) Electronic Filing

42. In order to be eligible to bid in this auction, applicants must first electronically submit an FCC Form 175 application. There is no application fee required when filing an FCC Form 175; however, to be eligible to bid, an applicant must submit an upfront payment. Applications may be filed at any time from January 25, 1999 until 5:30 p.m. ET on February 12, 1999. Late applications will not be accepted. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline of February 12, 1999. Applicants must press the ''Submit Form 175'' button on the ''Submit'' page of the electronic form to successfully submit their FCC Form 175s. Information about installing and running the FCC Form 175 application software is included in Attachment C of the full text of the Public Notice (see **SUPPLEMENTARY INFORMATION** above). Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service are 8 a.m.–6 p.m. ET, Monday through Friday.

(2) Completion of the FCC Form 175

43. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment B of the full text of the Public Notice (see **SUPPLEMENTARY INFORMATION** above).

(3) Electronic Review of FCC Form 175

44. The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 applications. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. For this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There is a fee of $2.30 per minute for accessing this system. For details, see Attachment C of the full text of the Public Notice (see **SUPPLEMENTARY INFORMATION** above).

B. Application Processing and Minor Corrections

45. After the FCC Form 175 filing deadline has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (1) those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (2) those applications rejected; and (3) those incomplete applications which have minor defects that may be corrected, and the deadline for filing such corrected applications. After the FCC Form 175 filing deadline has passed, applicants cannot make major modifications to their applications (e.g., change their license selections, change the certifying official, or change control of the applicant). See 47 CFR 1.2105.

C. Upfront Payments—Due March 1, 1999

(1) FCC Form 159

46. To be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). Manual filers of FCC Form 159 must use the July 1997 version of FCC Form 159. Filers of the FCC Form 175 will have access to an electronic version of FCC Form 159 after completing the FCC Form 175. Earlier versions of this form will not be accepted. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment B of the full text of the Public Notice (see **SUPPLEMENTARY INFORMATION** above), and will also be included in the Bidder Information Package.

(2) Making Auction Payments by Wire Transfer

47. All upfront payments must be received at Mellon Bank in Pittsburgh, PA, by 6:00 p.m. ET on March 1, 1999. Please note that:

- All payments must be made in U.S. dollars.
- All payments must be made by wire transfer.
- Upfront payments for Auction No. 22 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.
- Failure to deliver the upfront payment by the March 1, 1999 deadline will result in dismissal of the application and disqualification from participation in the auction.

To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/AC 910–0198
OBI Field: (Skip one space between each information item)
''AUCTIONPAY''
TAXPAYER IDENTIFICATION NO. (same as FCC Form 159, block 26)
PAYMENT TYPE CODE (enter ''APCU'')
FCC CODE 1 (same as FCC Form 159, block 23A: ''22'')
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. #358410

Note: The BNF and Lockbox numbers are specific to the upfront payments for this auction; BNF or Lockbox numbers from previous auctions should not be used. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write ''Wire Transfer—Auction Payment for Auction Event No. 22.'' Bidders may confirm receipt of their upfront payment by contacting their sending financial institution.

(3) Amount of Upfront Payment

48. The upfront payment amount for each C, D, E, and F block license to be auctioned in Auction No. 22 will be calculated as $0.06*MHz*BTA Population (''Pops''). The upfront payment amount for each license has been calculated and is listed in Attachment A of the full text of the Public Notice (see **SUPPLEMENTARY INFORMATION** above).

49. In accordance with the *C Block Fourth Report and Order*, and as proposed in *Procedural Public Notice I* and *II*, the upfront payment amount for ''former defaulters'' applying to bid on any C block licenses will be fifty percent more than the normal amount required to be paid. (In other words, ''former defaulters'' must pay an extra fifty percent in upfront payment to receive the same number of bidding units that ''non-former defaulters'' receive for the basic upfront payment. See Attachment A of the full text of the Public Notice (see **SUPPLEMENTARY INFORMATION** above). Any former defaulter that applies to bid on ''all markets,'' or designates D, E, or F block licenses in addition to at least one C block license will be subject to the higher upfront payment requirement. Former defaulters that apply to bid only on D, E, or F block licenses will not be subject to the higher upfront payment requirement.

50. In Auction No. 22, the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Please note that upfront payments are not attributed to specific licenses. For Auction No. 22, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, e.g., a $25,000 upfront payment provides the bidder with 25,000 bidding units, unless the bidder is a ''former defaulter.'' A ''former defaulter'' will be required to pay $37,500 (or 1.5 times the basic upfront payment) for 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses that the applicant has selected on FCC Form 175, but rather to cover the maximum number of bidding units that are associated with licenses the bidder wishes to place bids on and hold high bids on at any given time.

51. To place a bid on a license, in addition to having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

52. In calculating the upfront payment amount, an applicant should determine the maximum number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. Bidders should check their calculations carefully as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

53. Former defaulters that apply to bid on any C block licenses should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. The 50 percent increase calculation has been included on the spreadsheet in Attachment A of the full text of the Public Notice. To calculate the number of bidding units to assign to former defaulters applying to bid on any C block licenses, the Commission will divide the upfront payment received by

1.5 and round the result up to the nearest bidding unit.

Note: An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

(4) Applicant's Wire Transfer Information for Purposes of Refunds

54. The Commission will use wire transfers for all Auction No. 22 refunds. To avoid delays in processing refunds, applicants should include wire transfer instructions with any refund request they file; they may also provide this information in advance by faxing it to the FCC Billings and Collections Branch to the attention of Linwood Jenkins or Geoffrey Idika, at (202) 418–2843. Please include the following information: (1) Name of Bank; (2) ABA Number; (3) Account Number to Credit; (4) Correspondent Bank (if applicable); (5) ABA Number; (6) Account Number; and (7) Contact and Phone Number. (Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed below in Part V.D.

D. Auction Registration

55. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

56. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the applicant address listed in the FCC Form 175.

57. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Wednesday, March 17, 1999 should contact the FCC National Call Center at (888) CALL-FCC ((888) 225–5322, press option #2 at the prompt). Receipt of both registration mailings is critical to participating in the auction, and each applicant is responsible for ensuring that it has received all of the registration material. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing in person at the FCC Auction Headquarters, located at 2 Massachusetts Avenue, NE, Washington, DC 20002. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes.

E. Remote Electronic Bidding Software

58. Qualified bidders must purchase remote electronic bidding software for $175.00 by March 9, 1999. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 22.) A software order form is included in the upcoming Bidder Information Package.

F. Auction Seminar

59. On February 3, 1999, the FCC will sponsor a seminar for Auction No. 22 at the Park Hyatt Washington, 1201 24th Street, NW, Washington, DC 20037, (202) 789–1234. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the C, D, E, and F broadband PCS blocks and auction rules. To register, complete the registration form to be included in the Bidder Information Package. The registration form will include details about the time and location of the seminar. Registrations are accepted on a first-come, first-served basis.

G. Mock Auction

60. All applicants whose FCC Form 175 has been accepted for filing will be eligible to participate in a mock auction beginning March 18, 1999. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

61. The first round of the auction will begin on March 23, 1999. The initial round schedule will be announced in a Public Notice listing the qualified bidders, to be released approximately ten days before the start of the auction.

A. Auction Structure

(1) Simultaneous Multiple Round Auction

62. As proposed in *Procedural Public Notices I* and *II*, the Commission will use a simultaneous multiple-round design for Auction No. 22.

(2) Maximum Eligibility and Activity Rules

63. For Auction No. 22, the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. As stated above in Part III.C.(3), ''former defaulters'' must pay a fifty percent higher upfront payment amount. There is no provision for increasing a bidder's maximum eligibility during the course of an auction, as described below in Part IV.A.(4).

64. To ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their maximum eligibility during each round of the auction.

65. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current round (see Part IV.B.(3), below). A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases as the auction progresses. These procedures have proven successful in maintaining the pace of previous auctions, as discussed below in Parts IV.A.(4) and (5).

(3) Activity Rule Waivers and Reducing Eligibility

66. Each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license.

67. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any round where a bidder's activity level is below the minimum required unless: (1) there are

no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

68. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described below in Part IV.A.(4). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

69. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

(4) Auction Stages

70. Auction No. 22 will be composed of three stages, which are each defined by an increasing activity rule. The FCC reserves the discretion to further alter the activity percentages before and/or during the auction. These procedures have proven successful in maintaining the proper pace in previous auctions.

71. Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

72. Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

73. Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty-forty-ninths (50/49).

Caution: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

(5) Stage Transitions

74. Auction No. 22 will start in Stage One. Under the FCC's general guidelines it will advance to the next stage (i.e., from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive rounds of bidding, the high bid has increased on less than ten percent of the licenses being auctioned (as measured in bidding units). However, the Commission will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue.

(6) Auction Stopping Rules

75. Barring extraordinary circumstances, bidding will remain open on all licenses until bidding stops on every license. Thus, the auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. The Commission retains the discretion to close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this stopping rule procedure. We will notify bidders in advance of implementing any change to our simultaneous stopping rule.

76. The Commission retains the discretion, however, to keep an auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

77. Further, in its discretion, the Commission reserves the right to declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the FCC invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The FCC intends to exercise this option only in extreme circumstances, such as where the auction is proceeding very slowly, where there is minimal overall bidding activity, or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the FCC is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. As the Commission plans to invoke this option only in extreme circumstances, we will not routinely request bidder input prior to doing so; however, we remind bidders that they are free to make their views known to the Commission throughout the auction, and that the Suggestion Box in the Automated Auction System affords them one possible avenue of communication.

(7) Auction Delay, Suspension, or Cancellation

78. By public notice or by announcement during the auction, the Commission may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Commission, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may

cause the Commission to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Commission, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

79. We will provide bidders with reasonable notice either by Public Notice or by announcement over the Automated Auction System prior to recommencing the auction. Although we will not seek comment prior to recommencing the auction, we reiterate that bidders may make their views known to the Commission throughout the auction and, if they choose, may use the Suggestion Box in the Automated Auction System for such communication.

B. Bidding Procedures

(1) Round Structure

80. The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results.

81. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The FCC may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

(2) Reserve Price or Minimum Opening Bid

82. We adopt minimum opening bids for each of the licenses in Auction No. 22 that are reducible at the discretion of the Commission. This discretion will allow the Commission flexibility to adjust the minimum opening bids if circumstances warrant. We emphasize, however, that such discretion will be exercised, if at all, sparingly and early in the auction, i.e., before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Commission will not entertain any bidder requests to reduce the minimum opening bid on specific licenses.

83. Because all four spectrum blocks are being auctioned at the same time, under the same general conditions, we believe that it is appropriate to use a common baseline to establish the minimum opening bid formulae for all of the licenses in the auction. The net high bids from prior C block auctions provide the most comprehensive broadband PCS baseline. We, therefore, have decided to base the minimum opening bids for each license available in Auction No. 22, including D, E, and F block licenses, on the most recent net high bid for the C block license in the same BTA.

84. We adopt the following formulae for calculating minimum opening bids:

1. 30 MHz licenses—5 percent of most recent net high bid for C block licenses in same BTA
2. 15 MHz licenses—2.5 percent of most recent net high bid for C block licenses in same BTA
3. 10 MHz licenses—1.6 percent of most recent net high bid for C block licenses in same BTA

These formulae will apply without regard to the upfront payment amount required for the same license in Auction No. 22. The specific minimum opening bid for each license available in Auction No. 22 is set forth in Attachment A of the full text of the Public Notice (see **SUPPLEMENTARY INFORMATION** above).

(3) Minimum Accepted Bids

85. Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. For Auction No. 22, we will utilize an exponential smoothing methodology (further explained in the Bidder Information Package) to calculate minimum bid increments. We retain the discretion to change the minimum bid increment if we determine that circumstances so dictate.

(4) High Bids

86. Each bid will be date-and time-stamped when it is entered into the FCC computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which bids are received by the Commission, starting with the earliest bid. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date-and time-stamp than bids submitted later in a round.

(5) Bidding

87. During a bidding round, a bidder may submit bids for as many licenses for which it is eligible, as well as withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date- and time-stamp of that bid reflect the latest time the bid was submitted.

88. All bidding will take place either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when handling bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid, by placing their calls well in advance of the close of a round, because four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 22.

89. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (1) the licenses applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

90. The bidding software requires bidders to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in their registration materials. Bidders are strongly encouraged to download and print bid confirmations after they submit their bids.

91. The bid entry screen of the Automated Auction System software for Auction No. 22 allows bidders to place multiple increment bids to increase their high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license.

92. To place a bid on a license, the bidder must enter a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount per the following formula: Amount Bid = High Bid + (Bid Mult * Bid Increment) Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one

bid increment, a bidder will enter ''1'' in the bid increment multiplier column and press submit.

93. For any license on which the FCC is designated as the high bidder (i.e., a license that has not yet received a bid in the auction, or a license on which the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases, no increment exists for the licenses, and bidders should enter ''1'' in the Bid Mult field. Note that any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount.

(6) Bid Removal and Bid Withdrawal

a. Procedures

94. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the ''remove bid'' function in the software, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed. These procedures will enhance bidder flexibility and may serve to expedite the course of the auction.

95. Once a round closes, a bidder may no longer remove a bid. In the next round, however, a bidder may withdraw standing high bids from previous rounds using the ''withdraw bid'' function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109. The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described above in Part IV.B.(4).

96. The Commission will limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109.

97. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than or, in the case of tie bids, equal to, the amount of the withdrawn bid, without any bid increment. The FCC will serve as a ''place holder'' on the license until a new acceptable bid is submitted on that license.

b. Calculation

98. Generally, a bidder that withdraws a standing high bid during the course of an auction will be subject to a payment equal to the lower of: (1) the difference between the net withdrawn bid and the subsequent net winning bid; or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that license. No withdrawal payment will be assessed if a subsequent bid exceeds the withdrawn bid.

(7) Round Results

99. The bids placed during a round are not published until the conclusion of that bidding period. After a round closes, the FCC will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 22 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

(8) Auction Announcements

100. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

(9) Other Matters

101. As noted above in Part III.B., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Filers should make these changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 2025 M Street, NW, Room 5202, Washington, DC 20554 (and mail a separate copy to Audrey Bashkin, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to Audrey Bashkin of the FCC Auctions and Industry Analysis Division at (202) 418–0660.

V. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

102. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing bid withdrawal payments due.

103. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). See 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any bid withdrawal amounts due under 47 CFR 1.2104(g), as discussed above in Part IV.B.(6). (Upfront payments are applied first to satisfy any bid withdrawal liability, before being applied toward down payments.)

B. Long-Form Application

104. Within ten business days after release of the auction closing notice, winning bidders must submit a properly completed long-form application and required exhibits for each license won in Auction No. 22. Under Section 1.2112(b) of the Commission's Rules, winning bidders for C or F block licenses that are small businesses or very small businesses (or consortia of small businesses or very small businesses) must include an exhibit demonstrating their eligibility for bidding credits. Further filing instructions will be provided to auction winners at the close of the auction.

C. Default and Disqualification

105. Any high bidder that defaults or is disqualified after the close of the auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). Under Section 1.2109 of the Commission's Rules, in such event the Commission may re-auction the license or offer it to the next highest bidders (in descending order) at their final bids. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in

future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

D. Refund of Remaining Upfront Payment Balances

106. All applicants that submitted upfront payments for a license in Auction No. 22 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

107. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number (''TIN''), and a copy of their bidding eligibility screen print, to: Federal Communications Commission, Billings and Collections Branch, Attn: Regina Dorsey or Linwood Jenkins, 445 12th Street, SW, Washington, DC 20554. Bidders can also fax their request to the Billings and Collections Branch at (202) 418–2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Linwood Jenkins or Tim Dates at (202) 418–1995.

Federal Communications Commission.

Mark R. Bollinger,

Deputy Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 99–3334 Filed 2–10–99; 8:45 am]

BILLING CODE 6712–01–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 this notice appears in the **Federal Register**.

Agreement No.: 202–006190–087.

Title: Venezuelan American Maritime Association.

Parties: APL Co. PTE Ltd., Consorcio Naviero de Occidente C.A., Crowley American Transport, Inc., Ivaran Lines Limited, King Ocean Service de Venezuela, Seaboard Marine of Florida, Inc.

Synopsis: The proposed modification authorizes the members to charter space from each other, with any ocean common carrier operating independently in the trade, and with the parties of the Venezuelan Discussion Agreement on an ad hoc basis. The modification also permits the Association to enter into service contracts on behalf of any one or more of its members, and for any member, or two or more members, to independently enter into service contracts. The modification deletes current prohibitions on independent action with respect to loyalty contracts and service contracts. It also reduces the notice member lines must provide when taking independent action from ten days to two days. The parties have requested expedited review.

Agreement No.: 203–011261–004.

Title: ACL/Wallenius Space Charter and Cooperative Working Agreement.

Parties: Atlantic Container Line AB Wallenius Lines AB.

Synopsis: The proposed amendment eliminates the parties' authority to discuss and agree upon rates.

Agreement No.: 203–011448–002.

Title: U.S./Latin America Agreement.

Parties: A.P. Moller-Maersk Line Sea-Land Service, Inc.

Synopsis: The proposed amendment would expand the geographic scope of the Agreement to include Aruba, Curacao, and Trinidad. The parties have requested expedited review.

Agreement No.: 224–201068.

Title: Marine Terminal Operators of New Orleans Discussion Agreement.

Parties: Coastal Cargo, Inc., Gateway Terminal Services, Empire Stevedoring (LA), Inc., Maritrend, Inc., New Orleans Marine Contractors, Inc., I.T.O. Corporation, New Orleans Stevedoring Co., Transocean Terminal Operators, Inc.

Synopsis: Under the agreement, the parties may meet and discuss rates, charges and other conditions of service at the public wharves of the Port of New Orleans and, when appropriate, to present recommendations and requests to the owners of these public wharves.

Dated: February 5, 1999.

By Order by the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–3335 Filed 2–10–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Mega Express, Inc., 6481 Orangethorpe Ave., #25, Buena Park, CA 90620, Officer: Chung Hun Koh, President

Dated: February 8, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–3343 Filed 2–10–99; 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 February 26, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. C. Finley McRae, Graceville, Florida, Martha Kay McRae, Graceville, Florida, Robert F. McRae, Jr., Dothan, Alabama, Suzanne McRae Sheffield, Panama City, Florida, and Joseph Allen Sheffield, Panama City, Florida; all to collectively retain 23.29 percent of the voting shares of PBG Financial Services, Inc., Graceville, Florida, and thereby indirectly retain voting shares of Peoples Bank of Graceville, Graceville, Florida.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Louis Peduto and Mary M. Peduto, both of Shelbyville, Indiana; to acquire voting shares of FM Fincorp, LaOtto, Indiana, and thereby indirectly acquire voting shares of Farmers and Merchants Bank, LaOtto, Indiana.

Board of Governors of the Federal Reserve System, February 8, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–3425 Filed 2–10–99; 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 March 7, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Castle Creek Capital Partners Fund IIa, LP, and Castle Creek Capital Partners Fund IIb, LP, both of Rancho Santa Fe, California; to acquire more than 5 percent of the voting shares of Valley Bancorp, Inc., El Paso, Texas, and thereby indirectly acquire Montwood National Bank, El Paso, Texas.

2. Castle Creek Capital Partners Fund IIa, LP, and Castle Creek Capital Partners Fund IIb, LP, both of Rancho Santa Fe, California; to acquire up to an aggregate 12 percent of the voting shares of State National Bancshares, Inc., Lubbock, Texas, and thereby indirectly acquire State National Bank of West Texas, Lubbock, Texas, and Sierra Bank, Las Cruces, New Mexico.

3. Eggemeyer Advisory Corp., WJR Corp., and Castle Creek Capital, LLC, all of Rancho Santa Fe, California; to acquire up to an aggregate 25 percent of the voting shares of State National Bancshares, Inc., Lubbock, Texas, and thereby indirectly acquire State National Bank of West Texas, Lubbock, Texas, and Sierra Bank, Las Cruces, New Mexico.

Board of Governors of the Federal Reserve System, February 8, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–3424 Filed 2–10–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

OPHS Office on Women's Health; Women Living Long, Living Well (WLLLW): Draft for Public Comment

AGENCY: DHHS/OS/Office of Public Health and Science, Office on Women's Health (OWH).

ACTION: Call for comments on the draft WLLLW framework.

SUMMARY: The Department of Health and Human Services is soliciting comments on Women Living Long, Living Well (WLLLW): Draft for Public Comment, which proposes a framework for articulating, developing, and implementing women's health research, services, and education throughout the U.S. Department of Health and Human Services for the year 2001. We invite you to comment, in writing, using the mail, courier service, or the Internet.

DATES: The period for public comment opens at 9:00 a.m. EST on February 15, 1999, and closes at 5:00 p.m. EST on March 31, 1999.

AVAILABILITY OF DRAFT DOCUMENT: The full text of Women Living Longer, Living Well: Draft for Public Comment is available on the National Women's Health Information Center (NWHIC) world wide web site, http://www.4woman.gov/owh/pub/wlllw/index.htm. You also may call NWHIC at 1–800–994–WOMAN (1–800–994–9662) to request a copy of the draft WLLLW document.

ADDRESSES: The mailing address for written comments is: ATTENTION: Theresa Brown, WLLLW Document; PHS Coordinating Committee on Women's Health; Room 730–F, Hubert H. Humphrey Building; U.S. Department of Health and Human Services; 200 Independence Avenue, SW; Washington, DC 20201. You may also submit comments electronically through the NWHIC world wide web site, http://www.4woman.gov/wlllw.

FOR FURTHER INFORMATION CONTACT: PHS Coordinating Committee on Women's Health; Room 730–F, Hubert H. Humphrey Building; 200 Independence Avenue, SW; Washington, DC 20201; (202) 690–7650.

SUPPLEMENTARY INFORMATION:

Background

To further promote and expand the understanding and knowledge of women's health throughout the life span, and at the direction of the Secretary of the U.S. Department of Health and Human Services (DHHS), the U.S. Public Health Service's Coordinating Committee on Women's Health proposes a framework for articulating, developing, and implementing women's health research, services, and education throughout the U.S. Department of Health and Human Services. The theme of this framework is ''Women Living Long, Living Well.'' The acronym of the theme—WLLLW—suggests a metaphor: the willow. This family of over 100 varieties of trees represents the diversity of American women.

The goals of the WLLLW framework derive from the objectives established in Healthy People 2000 and 2010. The Healthy People 2000 Objectives are the U.S. Public Health Service's health objectives for the nation, which are currently being refined in Healthy People 2010. The WLLLW framework seeks to support and enhance the efforts

of DHHS in addressing the major causes of death and disability among women in the United States of all racial, ethnic and socioeconomic backgrounds. In particular, this framework focuses on the behavioral elements of risk while acknowledging the complexity introduced by genetic or environmental risks, which individuals often cannot control.

Accomplishing the goals of WLLLW entails three key strategies:

- Taking what we know and applying it better;
- Generating new knowledge; and
- Partnering with communities across the nation to improve the health of women.

To refine and focus the Department's activities for 2001 and beyond, and to ensure an effective response, consultation with various key constituencies and stakeholders is critical. The WLLLW framework is intended to serve as the basis for discussion and input from the community. Feed-back on the following objectives will assist us in this process to identify:

1. The three most significant means to reach and maintain the goal of a long, healthy life for a woman and the barriers to reaching this goal.
2. The critical prevention and intervention point in each stage of life that promotes good health in subsequent stages.
3. The single most important activity the Department needs to undertake, in partnership with communities, to address these issues.
4. A primary gap in women's health activities within the Department, and the two or three specific strategies to address this gap.
5. Innovative activities in which the Department should be involved.
6. In what ways women's health should be organized and incorporated into the structure of the Department.

Purpose of Public Comment

The WLLLW framework seeks to support and enhance the efforts of DHHS in addressing the major causes of death and disability among women in the United States of all racial, ethnic and socioeconomic backgrounds. To refine and focus the Department's activities for 2001 and beyond, and to ensure an effective response, consultation with various key constituencies and stakeholders is critical. The WLLLW framework is intended to serve as the basis for discussion and input from the community.

We invite your general comments and feedback, and we are especially interested in your comments on the six specific subject areas (above). You may: (1) comment where indicated on the web site; or (2) mail us you comments, in the format of your choice.

Dated: February 3, 1999.

Wanda K. Jones,

Deputy Assistant Secretary for Health (Women's Health).

[FR Doc. 99–3308 Filed 2–10–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Public Information Collection Requirement to Be Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Administration on Aging, HHS.

The Administration on Aging (AoA), Department of Health and Human Services, proposes to submit to the Office of Management and Budget (OMB) the following proposal for the collection of information in compliance with the Paperwork Reduction Act of 1995 (Pub. L. 96–511):

Title of Information Collection: State Performance Report (SPR): Reporting Requirements for Titles III and VII of the Older Americans Act.

Type of Request: Extension.

Use: To extend the expiration date of the currently approved information collection form without any change in substance or the method of collection. This form conforms to the requirements of the Older Americans Act, as amended.

Frequency: Annual.

Respondents: State Agencies on Aging.

Estimated Number of Respondents: 57.

Total Estimated Burden Hours: 141,132.

Additional Information or Comments: The Administration on Aging proposes to submit to the Office of Management and Budget for approval an extension of the existing information collection form for the state programs administered under the Older Americans Act. The AoA last announced reporting specifications for the current form in the **Federal Register** on February 13, 1996.

The Office of Management and Budget approved use of the current collection instrument subject to two conditions. First, that the Administration on Aging should be flexible in providing state-specific extensions of the compliance deadline for the FY 1997 SPR. The Administration on Aging has complied with that request. Secondly, OMB requested that the next submission for review include an analysis of state compliance with the November 30, 1996 deadline. This analysis has been prepared and will be submitted to OMB.

For copies of the reporting requirements and/or a copy of the analysis of states' compliance with the November 30, 1996 deadline call the Administration on Aging, Office of State and Community Programs at (202) 619–0011. Written comments and recommendations for the information collection requirements should be sent within sixty days of the publication of this notice directly to the following address: Edwin L. Walker, Director, Office of Program Operations and Development, Administration on Aging, 330 Independence Avenue S.W., Washington, DC 20201.

Dated: February 4, 1999.

Jeanette C. Takamura,

Assistant Secretary for Aging.

[FR Doc. 99–3307 Filed 2–10–99; 8:45 am]

BILLING CODE 4150–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Study Team for the Los Alamos Historical Document Retrieval and Assessment Project

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting.

Name: Initial Public Meeting of the Study Team for the Los Alamos Historical Document Retrieval and Assessment Project.

Time and Date: 5 p.m.—7 p.m., February 23, 1999.

Place: Los Alamos Inn, 2201 Trinity Drive, Los Alamos, New Mexico 87544. Telephone 505/662–7211, Fax 505/661–7714.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The

MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This Study Team is charged with locating, evaluating, cataloguing, and copying documents that contain information about historical chemical or radionuclide releases from facilities at the Los Alamos National Laboratory since its inception. The purpose of this meeting is to introduce the goals, methods, and schedule of the project; provide a forum for community interaction; and serve as a vehicle for members of the public to express concerns to CDC.

Matters To Be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH) and/or its contractor regarding the information gathering project that is beginning, and the National Institute for Occupational Safety and Health and ATSDR regarding the progress of current studies. There will be time for public input, questions, and comments.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Paul G. Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724. Telephone 770–488–7040, Fax 770-488–7044.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 5, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–3348 Filed 2–10–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC); Meeting.

Name: Meeting to discuss ''Developing a National Occupational Research Agenda for Prevention of Musculoskeletal Disorders.''

Time and Date: 9 a.m.–4:30 p.m., March 8, 1999.

Place: Houston Marriott Westside, 13210 Katy Freeway, Houston, TX 77079. Telephone 281/558–8338.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 70 people. Seating will be limited to approximately 50 people.

Purpose: To request public assistance in identifying research gaps in the area of work-related musculoskeletal disorders. NIOSH and its partners are developing a plan to establish a National Occupational Research Agenda on work-related musculoskeletal disorders. The working team includes members from NIOSH, other government agencies, industries, and academia. In order to obtain maximum input from practitioners, academic and corporate researchers, and organizations sponsoring research, the team adopted a multi-phase approach for seeking input on the national research agenda. The first phase, which has recently been completed, involved three public meetings with industrial practitioners and was performed in Chicago, Seattle, and Washington, D.C. The meetings included representatives from diverse industry sectors, including light and heavy manufacturing; warehouse and transportation; office environments; acute and long-term health care; forest products; construction and maritime; and agriculture and food processing. A list of research gaps was identified. The working team is moving into the second phase and is seeking individual input from academicians, researchers, and others on which research gaps could be completed within five years and if any gaps have been missed.

Contacts for More Information: Thomas Waters, Ph.D., NIOSH, CDC, M/S P03/C24, 4676 Columbia Parkway, Cincinnati, OH 45226. Telephone 513/533–8510. Hongwei Hsiao, Ph.D., NIOSH, CDC, M/S P119, 1095 Willowdale Road, Morgantown, WV 26505. Telephone 304/285–5910.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 5, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–3347 Filed 2–10–99; 8:45 am]

BILLING CODE 4160–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0255, HCFA–R–0260, and HCFA–R–0274]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: New collection; Title of Information Collection: Suggestion Program on Methods to Improve Medicare Efficiency and Supporting Regulations in 42 CFR 420.410; Form No.: HCFA-R–0255 (OMB# 0938-new); Use: The HCFA–4000 regulation establishes a program to encourage individuals to submit suggestions that could improve the efficiency of the Medicare program. Suggestions must contain a description of an existing problem or need; a suggested method for solving the problem or filling the need; and, if known, an estimate of the

savings potential that could result from implementing the suggestion. If the suggestion is adopted, a payment amount will be determined based either on the actual first-year net savings, or the average annual net savings expected to be realized over a period of not more than three years.; Frequency: On occasion; Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit institutions, Farms, and State, Local or Tribal government; Number of Respondents: 400; Total Annual Responses: 400; Total Annual Hours: 134.

2. Type of Information Request: Extension of a currently approved collection; Title of Information Collection: Quality Improvement System for Managed Care (QISMC); Form Number: HCFA–R–0260 (OMB approval #:0938–0745); Use: The primary purpose of the QISMC standards and guidelines is to implement regulatory requirements relating to Medicare and Medicaid managed care organizations' operation and performance in the areas of quality measurement and improvement, delivery of health care, and enrollee services. For Medicare, the QISMC document is equivalent to a program manual. For Medicaid, the standards and guidelines are tools for States to use at their discretion in ensuring the quality of managed care organizations with Medicaid contracts. These standards parallel many of the Balanced Budget Act of 1997 quality assurance provisions. Frequency:. Annual; Affected Public: Business or other for-profit; Number of Respondents: 952; Total Annual Responses: 952; Total Annual Hours Requested: 1 hour.

3. Type of Information Collection Request: New collection; Title of Information Collection: Evaluation of Medicare+Choice (M+C) Medical Savings Account (MSA) Demonstration, Insurer Survey Component; Form No.: HCFA–R–0274 (OMB #0938-new); Use: This survey instrument is designed for insurers to determine their marketing plans regarding high deductible health insurance plans for Medicare beneficiaries to be used in conjunction with MSA. The Insurer Survey is part of a larger evaluation of the M+C MSA demonstration mandated by the Balanced Budget Act of 1997. The overall evaluation plan includes collecting data on use of and payment for medical services from Medicare MSA enrollees through an addition to the Medicare Current Beneficiary Survey sample, collecting data from beneficiaries who disenroll from M+C MSA plans, and collecting data from insurers about their reactions to the M+C MSA demonstration.; Frequency: Annually; Affected Public: Business or other for-profit, and Not-for-profit institutions.; Number of Respondents: 350; Total Annual Responses: 350; Total Annual Hours: 155.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 4, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–3396 Filed 2–10–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0268 and HCFA–R–0271]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Collection of Assessment Information on Three Federal Government Web Sites: www.medicare.gov, www.4woman.gov, and www.healthfinder.gov; *Form Nos.:* HCFA–R–268 (OMB No. 0938–0756); *Use:* The purpose of the bounceback forms is to provide feedback to the government agencies that provide the web sites. The information collected through the bounceback forms will be used with other information collected about the web sites through focus groups, interviews, and expert evaluations. The combined information will guide future improvements to the web sites. Currently, there is no plan to distribute the information, other than through public health, medical, or other professional journals, in which we may report the results; *Frequency:* Users will have the opportunity to complete the bounceback form whenever they exit the web site; *Affected Public:* Individuals or Households, Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 636,555; *Total Annual Responses:* 212,185; *Total Annual Hours:* 21,221.

2. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Feedback Questionnaire; *Form No.:* HCFA–R–0271 (OMB# 0938-new); *Use:* The Educational and Health Promotion Group (EHPG) develops materials for beneficiary-centered education, and makes efforts to improve beneficiary ability to make informed health decisions. The purpose of this collection is post-distribution testing. One Feedback Questionnaire will be placed in each box of bulk mailings, on the back of a publication information sheet, and reorder forms. The distributor is given the option of completing the questionnaire. Those who choose to complete the questionnaire will be providing EHPG with valuable information that will assist in improving future versions of the publication.; *Frequency:* Annually; *Affected Public:* Federal Government, Business or other for-profit, Not-for-profit institutions, and State, Local, or Tribal Government; *Number of Respondents:* 20,000; *Total Annual Responses:* 2,000; *Total Annual Hours:* 500.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 4, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–3402 Filed 2–10–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–416]

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

AGENCY: Health Care Financing Administration, DHHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Annual Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) Participation Report and Supporting Regulations in 42 CFR 441.60; *Form No.:* HCFA–416 (OMB# 0938–0354); *Use:* States are required to submit an annual report on the provision of EPSDT services to HCFA pursuant to section 1902(a)(43) of the Social Security Act. These reports provide HCFA with data necessary to assess the effectiveness of State EPSDT programs. It is also helpful in developing trend patterns, national projections, responding to inquiries, and determining a State's results in achieving its participation goal.; *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 1,568.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 2, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–3395 Filed 2–10–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in March 1999.

A summary of the meeting and a roster of the members may be obtained from: Ms. Coral Sweeney, SAMHSA, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, this meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: March 22–24, 1999.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Closed: March 22–24, 1999, 8:30 a.m.—adjournment.

Panel: Substance Abuse and Mental Health Services Administration Knowledge Dissemination Conference Grants PA 98–090.

Contact: Peggy Thompson, Room 17–89, Parklawn Building, Telephone: 301–443–9912 and FAX: 301–443–3437.

Dated: February 4, 1999.

Sandi Stephens,

Team Leader, Extramural Activities Team, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–3391 Filed 2–10–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

National Recreation Lakes Study Commission

AGENCY: National Recreation Lakes Study Commission.

ACTION: Notice of fifth meeting of the National Recreation Lakes Study Commission.

SUMMARY: The Omnibus Parks and Public Land Management Act of 1996 authorizes a presidential commission to review the demand for recreation at Federal lakes, and to develop alternatives for enhanced recreation uses, primarily through innovative public/private partnerships. This will be the fifth meeting of the Commission.

DATES: March 2–3, 1999, beginning at 8:00 a.m. and ending at 5:00 p.m. each day.

ADDRESSES: The meeting will be held at the South Interior Building Auditorium, 1951 Constitution Avenue, N.W., Washington, D.C. The Commission will

hear a presentation of the comments received and will make decisions on final recommendations. Other topics may also be discussed. The Commission will invite comments from the public beginning at 1:00 p.m. on March 2.

FOR FURTHER INFORMATION CONTACT: Jeanne Whittington at 202–219–7104.

Dated: February 5, 1999.

Jana Prewitt,

Executive Director, National Recreation Lakes Study Commission.

[FR Doc. 99–3392 Filed 2–10–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collections Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) plans to submit the collection of information described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of the specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer at the address provided below.

DATES: Consideration will be given to all comments received on or before April 12, 1999.

ADDRESSES: Comments and suggestions on the requirement should be sent to Ms. Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 860–ARLSQ, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at 703/358–2287, or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). We are seeking clearance from the OMB to collect information in conjunction with implementation of an Evaluation Grants Pilot Program to be conducted under the North American Wetlands Conservation Act (Pub. L. 101–233, as amended; December 13, 1989). The Act, Section 19 (Assessment of Progress in Wetlands Conservation), requires the Secretary of the Interior, in cooperation with the North American Wetlands Conservation Council, to: (1) Develop and implement a strategy to assist in the implementation of the Act in conserving the full complement of North American wetlands systems and species dependent on those systems, that incorporates information existing on the date of the issuance of the strategy in final form on types of wetlands habitats and species dependent on the habitats; and (2) develop and implement procedures to monitor and evaluate the effectiveness of wetlands conservation projects completed under this Act. To meet this requirement, we are embarking upon an Evaluation Grants Pilot Program initative that requires the submitting, by prospective grantees, of pre-proposals and proposals that are geared specifically to project approaches that will readily provide monitoring and evaluation as an integral aspect. Current programs do not and cannot provide the data and information necessary to meet the monitoring and evaluation requirements of Section 19. Thus, we are developing a unique evaluation grants instructional handbook, which provides the basis for information collection and this request, to meet the separate needs of the initiative. At this time, we do have available for review and comment the ''Strategy For Implementing and Evaluating the Effectiveness of Wetland Conservation Projects Completed Under the NAWCA'' (Sect. 19, part 1) and the ''NAWCA Evaluation Grant Proposal Development and Review'' outline (Sect. 19, part 2), both approved by the NAWCA Council and the documents upon which the handbook will be based. The Service is requesting a three year term of approval for this information collection activity. 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.

We invite your comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Title: Information Collection In Support of Grant Programs Authorized by the North American Wetlands Conservation Act of 1989 (NAWCA).

Approval Number: New.

Service Form Number(s): N/A.

Description and Use: The North American Waterfowl Management Plan (NAWMP), first signed in 1986, is a tripartite agreement among Canada, Mexico and the United States to enhance, restore and otherwise protect continental wetlands to benefit waterfowl and other wetland associated wildlife through partnerships between and among the private and public sectors. Because the 1986 NAWMP did not carry with it a mechanism to provide for broadly-based and sustained financial support for wetland conservation activities, Congress passed and the President signed into law the NAWCA to fill that funding need. The purpose of NAWCA, as amended, is to use partnerships to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitat. Principal conservation actions supported by NAWCA are acquisition, enhancement and restoration of wetlands and wetlands-associated habitat.

As well as providing for a continuing and stable funding base, NAWCA establishes an administrative body, made up of a State representative from each of the four Flyways, three representatives from wetlands conservation organizations, the Secretary of the Board of the National Fish and Wildlife Foundation, and the Director of the Service. This administrative body is chartered, under the Federal Advisory Committee Act, by the U.S. Department of the Interior as the North American Wetlands Conservation Council (Council). As such, the purpose of the Council is to recommend wetlands conservation project proposals to the Migratory Bird Conservation Commission (MBCC) for funding.

Subsection (c) of Section 5 (Council Procedures) provides that the ''* * *Council shall establish practices and procedures for the carrying out of its functions under subsections (a) and (b) of this section* * *,'' which are consideration of projects and recommendations to the MBCC, respectively. The means by which the Council decides which project

proposals are important to recommend to the MBCC is through grants programs that are coordinated through the Council Coordinator's office (NAWWO) within the Service.

Competing for grant funds involves applications from partnerships that describe in substantial detail project locations and other characteristics, to meet the standards established by the Council and the requirements of NAWCA. The Evaluation Grants Pilot Program will differ in the respect that it will be a two-stage process wherein successful applicants will have submitted both a pre-proposal and a proposal. Pre-proposals are intended to allow screening such that only the projects that have the greatest potential for contributing to the evaluation program will be asked to continue into the proposal stage. The Council Coordinator's office currently publishes and distributes Standard and Small Grants instructional booklets that assist the applicants in formulating project proposals for Council consideration. The handbook for this new grants evaluation initiative is an additional information collection document. The instructional booklets and other instruments, e.g., **Federal Register** notices on request for proposals, are the basis for this information collection request for OMB clearance. Information collected under this program is used to respond to such needs as: audits, program planning and management, program evaluation, Government Performance and Results Act reporting, Standard Form 424 (Application For Federal Assistance), grant agreements, budget reports and justifications, public and private requests for information, data provided to other programs for databases on similar programs, Congressional inquiries and reports required by NAWCA, etc. In the case of the additional Evaluation Grants Pilot Program handbook, it responds also to the statutory requirements of the Act.

In summary, information collection under these programs is required to obtain a benefit, i.e., a cash reimbursable grant that is given competitively to some applicants based on eligibility and relative scale of resource values involved in the projects. The information collection is subject to the Paperwork Reduction Act requirements for such activity, which includes soliciting comments from the general public regarding the nature and burden imposed by the collection.

Frequency of Collection: Occasional. We intend the Evaluation Grant Pilot Program to have one project proposal submissions window per year.

Description of Respondents: Households and/or individuals; business and/or other for-profit; not-for-profit institutions; farms; Federal Government; and State, local and/or Tribal governments.

Estimated Completion Time: We estimate the reporting burden, or time involved in writing project submissions, to be 8 hours for a pre-proposal and 40 hours for a proposal.

Number of Respondents: We estimate that 30 pre-proposals and 10 proposals will be submitted each year for the grants evaluation pilot program.

Dated: February 2, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–3419 Filed 2–10–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

1999 Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service announces the dates and locations of the 1999 Federal Duck Stamp contest; the public is invited to attend.

DATES: The 1999 contest opens for submission on July 1, 1999. Persons wishing to enter this year's contest may submit entries anytime after Thursday, July 1, but *all* must be postmarked no later than midnight, Wednesday, September 15, 1999.

ADDRESSES: Requests for complete copies of the regulations, reproduction rights agreement and display and participation agreement may be requested by calling 1–888–534–0400 or requests may be addressed to: Federal Duck Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 1849 C Street, N.W., Suite 2058, Washington, D.C. 20240. You may also download the information from the Federal Duck Stamp Home Page at www.fws.gov/r9dso.

FOR FURTHER INFORMATION CONTACT: Ms. Terry Bell, telephone (202) 208–4354, or fax: (202) 208–6296.

SUPPLEMENTARY INFORMATION: Location of contest: Department of the Interior building, Auditorium (''C'' Street entrance), 1849 C Street, N.W., Washington, D.C. The public may view the 1999 Federal Duck Stamp Contest entries on Tuesday, November 2, 1999, from 10:00 a.m. to 2:00 p.m. in the Department of the Interior Auditorium. This year's judging will be held on November 3–4, 1999, beginning at 10:30 a.m. on Wednesday, November 3 and continuing at 9:00 a.m. on Thursday, November 4.

The following two eligible species for the 1999 duck stamp contest are as follows: (1) Black Scoter, (2) Mottled Duck.

The primary, author of this document is Ms. Terry Bell, U.S. Fish and Wildlife Service.

Dated: February 1, 1999.

Jamie Rappaport Clark,

Director.

[FR Doc. 99–3302 Filed 2–10–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–00; GP9–0088]

Notice of Meeting of John Day-Snake Resource Advisory Council

AGENCY: Bureau of Land Management, Prineville District Office.

ACTION: Meeting of John Day-Snake Resource Advisory Council: La Grande, Oregon; March 2 & 3, 1999.

SUMMARY: A meeting of the John Day-Snake Resource Advisory Council will be held on March 2 from 10:00 a.m. to 5:00 p.m. and on March 3 from 8:00 a.m. to 3:00 p.m. at the US Forest Services Officee, 60131 Pierce Road, La Grande, Oregon 97850. The meeting is open to the public. Public comments will be received at 10:00 a.m. on March 3. Topics to be discussed by the Council will include: John Day River Plan Preliminary Draft Management Plan/EIS review; Program of work for 1999; potential future RAC training; Hells Canyon NRA subgroup update; Governors Forest Health effort update; proposed RAC boundary adjustments and ICBEMP update.

FOR FURTHER INFORMATION CONTACT: James L. Hancock, Bureau of Land Management, Prineville District Office, 3050 NE Third Street, P.O. Box 550, Prineville, Oregon 97754, or call 541–416–6700.

Dated: February 1, 1999.

James L. Hancock,

District Manager.

[FR Doc. 99–3398 Filed 2–10–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1430–00; NMNM 35829]

Proposed Extension of Withdrawal; McGregor Range, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The Department of the Army has filed an application to extend the withdrawal of 608,384.87 acres of public land for the McGregor Range, located in Otero County, New Mexico. The land was originally withdrawn by Public Law 99–606 of November 6, 1986. The withdrawal will expire on November 5, 2001, unless extended. This withdrawal extension requires legislative action by Congress pursuant to the Act of February 28, 1958, 43 U.S.C. 155–158, commonly known as the Engle Act. The land is currently withdrawn from all forms of appropriation under the public land laws, the mining laws, the mineral leasing laws, and the geothermal leasing laws pursuant to Public Law 99–606.

DATES: Comments regarding the proposed extension must be received on or before May 1, 1999.

ADDRESSES: Comments should be sent to the BLM Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Theresa Hanley at the address above or at (505) 525–4342.

SUPPLEMENTARY INFORMATION: On October 13, 1998, the Department of the Army filed an application to extend the withdrawal for the McGregor Range. The Army has determined there is a continuing military need for the land and filed the application for extension in accordance with Section 8(a)(1) and (2) of Public Law 99–606.

The legal description for McGregor Range is published in the **Federal Register** Vol. 52, No. 133, July 13, 1987, pages 26188 and 26189 and Vol. 62, No. 209, October 29, 1997, page 56153. The area described contains 608,384.87 acres in Otero County. A copy of the legal description is available by contacting Theresa Hanley at the BLM Las Cruces Field Office.

McGregor Range is used by the Army for testing and training for aerial bombing, missile firing, tactical maneuvering and air support, and other defense related purposes. There is also a need to protect the public's health and welfare from the hazardous operations conducted by the Army. The land is contaminated with unexploded ordnance.

Three public scoping meetings were afforded in connection with the proposed withdrawal extension. The objective of the public meetings was to solicit public comments and meet the regulatory requirement for proposed extension of withdrawals that exceed 5,000 acres (43 CFR 2310.3–1(b)(2)(v)). A notice of the time and place was published in the **Federal Register** and a newspaper in the general vicinity of the lands to be withdrawn at least 30 days before the scheduled date of the meetings.

The Draft Legislative Environmental Impact Statement (EIS) was released on October 27, 1998. Three public hearings were held in January 1999, for the purpose of receiving oral public comments on the Draft Legislative EIS and to meet National Environmental Policy Act (NEPA) requirements for the proposed withdrawal extension.

From the date of publication of this notice to May 1, 1999, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM Las Cruces Field Office.

Dated: February 5, 1999.

Linda S.C. Rundell,

Field Manager, Las Cruces.

[FR Doc. 99–3346 Filed 2–10–99; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collections; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of four currently approved information collections.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, we invite the public and other Federal agencies to comment on our proposal to extend four currently approved information collection forms discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that 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 Office of Management and Budget (OMB) control number.

DATES: Submit written comments by April 12, 1999.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the information collection forms at no cost.

SUPPLEMENTARY INFORMATION:

Titles (OMB Control Numbers):

Form MMS–124, Sundry Notices and Reports on Wells (1010–0045)

Form MMS–125, Well Summary Report (1010–0046)

Form MMS–126, Well Potential Test Report and Request for Maximum Production Rate (MPR) (1010–0039)

Form MMS–128, Semiannual Well Test Report (1010–0017)

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; preserve and maintain free enterprise competition, and ensure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time. To carry out these responsibilities, we issue rules governing oil and gas and sulphur operations in the OCS. The regulations requiring the information collection forms that are the subject of this notice are 30 CFR Part 250, Subpart D, Drilling Operations; Subpart E, Well-Completion Operations; Subpart F, Well-Workover Operations; Subpart G, Abandonment of Wells; Subpart K, Production Rates; and Subpart P, Sulphur Operations.

Failure to collect this information would prevent the Director from carrying out the mandate of the OCS Lands Act. The following explains how we use the information collected and the consequences if we did not collect the information.

a. Form MMS–124. MMS District Supervisors use the information to evaluate the adequacy of the equipment, materials, and/or procedures that the lessee plans to use for drilling, production, well-completion, well-workover, and well-abandonment operations. If we did not collect this information, we could not review lessee

plans to require changes to drilling procedures or equipment to ensure that levels of safety and environmental protection are maintained. Nor could we review information concerning requests for approval or subsequent reporting of well-completion or well-workover operations to ensure that procedures and equipment are appropriate for the anticipated conditions.

b. Form MMS–125. District Supervisors use the information to ensure that they have accurate data on the wells under their jurisdiction and to ensure compliance with approved plans. It is also used to evaluate remedial action in well-equipment failure or well-control loss situations.

c. Form MMS–126. MMS Regional Supervisors use the information to determine the MPR for an oil or gas well. The form contains information concerning the conditions and results of a well potential test. This requirement carries out the conservation provisions of the OCS Lands Act. Failure to collect this information could result in waste of energy resources in the OCS by production at imprudent rates, jeopardizing the ultimate full recovery of hydrocarbons.

d. Form MMS–128. Regional Supervisors use this information to evaluate the results of well tests to find out if reservoirs are being depleted in a way that will lead to the greatest ultimate recovery of hydrocarbons. We designed the form to present current well data on a semiannual basis to allow the updating of permissible producing rates and to provide the basis for estimates of currently remaining recoverable gas reserves.

We will protect proprietary information submitted according to the Freedom of Information Act; 30 CFR 250.118, ''Data and information to be made available to the public'; and 30 CFR Part 252, ''OCS Oil and Gas Information Program.'' No items of a sensitive nature are collected. Responses are mandatory.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas or sulphur lessees.

Frequency: Forms MMS–124, MMS–125, and MMS–126, are on occasion; Form MMS–128 is semiannual.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We previously estimated the following burdens for these forms:

Form MMS–124: 9,950 responses @ 1 hr per response = 9,950 hours
Form MMS–125: 2,118 responses @ 1 hr per response = 2,118 hours
Form MMS–126: 4,043 responses @ 1¼ hr per response = 5,656 hours
Form MMS–128: 1,716 responses @ 2 hrs per response = 3,432 hours

Estimated Annual Reporting and Recordkeeping ''Cost'' Burden: We have identified no information collection cost burdens for these collections of information.

Comments: We will summarize written responses to this notice and address them in our submission for OMB approval. All comments will become a matter of public record. Based on your comments and our consultations with a representative sample of respondents, we will adjust the burden estimates as necessary in our submissions to OMB. In calculating the burden, we assume that respondents perform many of the requirements and maintain records in the normal course of their activities. We consider these usual and customary and take that into account in estimating the burden.

(1) We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping ''cost'' burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated. February 3, 1999.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 99–3397 Filed 2–10–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Interim Plan for Long-Term Operations, Klamath Project, Oregon and California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Supplemental notice of intent to prepare a draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) proposes to prepare a draft environmental impact statement (EIS) on an interim plan for long-term operations of the Klamath Project (Project), pending completion of a water rights adjudication currently underway by the State of Oregon. Several alternative operational scenarios will be developed to define project operations in relation to Reclamation's legal responsibilities and obligations within the Klamath River Basin, including the Endangered Species Act, Tribal trust resources, senior water rights, Project water users' contractual rights, wildlife refuges, and other requirements mandated by law and within the authority of the Secretary of the Interior. The proposed action was the subject of a Notice of Intent (NOI) that was previously published in the **Federal Register** (62 FR 61343, Nov. 17, 1997). This supplemental NOI is being published because considerable time has passed without significant activity regarding development of the EIS.

DATES: Public meetings will be held in March 1999 to update participants on the status of the EIS activities and to solicit any additional issues. Notice of these meetings will appear at a future date.

FOR FURTHER INFORMATION CONTACT: Ms. Bernice A. Sullivan, EIS Program Manager, Mid-Pacific Regional Office, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978–5113.

SUPPLEMENTARY INFORMATION:

Background

Construction and development of the Project was authorized pursuant to the Act of February 9, 1905, ch. 567, 33 Stat. 714, which is part of the Reclamation Act of 1902, 43 U.S.C. 372 *et seq.*, as amended and supplemented. The Project is located in Klamath County in Oregon, and Siskiyou and Modoc counties in California, occupying portions of the Klamath River and Lost River watersheds within the Klamath River Basin. Major project facilities include Link River, Clear Lake, and Gerber dams. The Project includes approximately 235,000 acres of agricultural lands, although roughly 200,000 acres of land are irrigated annually. In addition, four national wildlife refuges lie adjacent to or within Project boundaries, and receive water from or are associated with Project facilities. Pursuant to a 1956 contract with Reclamation, PacifiCorp operates the Link River Dam and several dams downstream of the Project for hydrolelectric power generation. The need for more certainty regarding project operations has been recently demonstrated by drought conditions in 1992 and 1994, listings of species under the Endangered Species Act, and the protection of Tribal trust resources pursuant to the United States' Federal trust responsibility. When completed, the interim plan for long-term operations will supersede annual operations plans and guide Project operations during the adjudication.

Public Scoping Process

Reclamation has developed a ''Summary of Klamath Project Operation Issues, January 1999,'' which documents the issues and concerns that the public has communicated to Reclamation through prior public involvement activities in the Klamath River Basin. During February 1999, Reclamation will solicit public review and comments on the summary to ensure that significant issues have not been overlooked.

Dated: February 5, 1999.

Kirk C. Rodgers,

Acting Regional Director.

[FR Doc. 99–3344 Filed 2–10–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Privacy Act of 1974, as Amended; Systems of Records

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of deletion of four systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting four systems of records managed by the Bureau of Reclamation (Reclamation). Three systems of records are deleted because the information is no longer used by Reclamation; the fourth system is deleted because it duplicates information in another system of records.

DATES: These actions will be effective on February 11, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Casey Snyder, Reclamation Privacy Act Officer, at (303) 445–2048.

SUPPLEMENTARY INFORMATION: Recent Privacy Act Compilations list the following systems of records with a prefix of ''Reclamation'' (e.g., Reclamation-25). When originally published in the **Federal Register** these systems of records were identified with an organization prefix of ''LBR'' (e.g., LBR–34). The content of the systems of records is the same; the prefixes on these systems were changed to reflect organizational changes.

The four system of records being deleted and the reason for deletion are listed below:

1. Interior/LBR–25, ''Personal Author Reports,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19102). Reclamation no longer maintains any information covered by the Privacy Act on authors writing technical reports of interest to Reclamation. Previous records were disposed of in accordance with approved Retention and Disposal Schedules.

2. Interior/LBR–34, ''Thefts Listing,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19105). Reclamation no longer maintains information in this system of records. The General Services Administration (GSA) is responsible for law enforcement on the Denver Federal Center, and any Privacy Act information collected during an investigation is maintained by GSA.

3. Interior/LBR–42, ''Recordable Contracts,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19108). The records formerly contained in this system of records are now maintained in Interior/WBR–31, ''Acreage Limitation,'' published in the **Federal Register** on March 9, 1994 (59 FR 11085).

4. Interior/LBR–46, ''Employee Trip Reports,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19109). Trip reports written by Reclamation personnel contain only technical information related to duties performed on travel; they do not contain any information covered by the Privacy Act.

Murlin Coffey,

Manager, Property and Office Services.

[FR Doc. 99–3193 Filed 2–10–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Interim Advisory Committee on Food Security; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the Interim Advisory Committee on Food Security. The meeting will be held from 1:00 p.m. to 5:00 p.m. on February 24, 1999, in the USAID Information Center, Suite M.1, Mezzanine Level, Ronald Reagan Building, located at 1300 Pennsylvania Avenue, NW., Washington, DC 20523.

As part of its agenda, the Interim Advisory Committee on Food Security will discuss implementation actions related to the Food Security Action Plan. The meeting is open to the public. Any interested person may attend the meeting, may file written statements with the Committee before or after the meeting, or present any oral statements in accordance with procedures established by the Committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting should contact Mr. George Like at the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW., Room 2.11–072, Washington, DC 20523–2110, telephone (202) 712–1436, fax (202) 216–3010 or internet [glike@usaid.gov] with your full name.

Anyone wishing to obtain additional information about the Interim Advisory Committee on Food Security should contact Mr. Tracy Atwood the Designated Federal Officer for BIFAD. Write him in care of the Agency for International Development, Ronald

Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW., Room 2.11–005, Washington, DC 20523–2110, telephone him at (202) 712–5571 or fax (202) 216–3010.

Tracy Atwood,

USAID Designated Federal Officer (Deputy Director, Office of Agriculture and Food Security, Center for Economic Growth and Agricultural Development, Bureau for Global Programs).

[FR Doc. 99–3400 Filed 2–10–99; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development, One Hundred and Twenty-Eighth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and twenty-eighth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 9:00 a.m. to 4:00 p.m. on February 25 and 26, 1999, both days, at the International Trade Center, Ronald Reagan Building, Meridian Suite, Room C, located at 1300 Pennsylvania Avenue, N.W., Washington DC, 20523.

As part of its agenda, BIFAD will discuss recent natural disasters; methods to improve soil fertility in selected areas of Africa; private-public partnerships and agribusiness opportunities in the developing world and; the Bio-Safety Protocol. The meeting is open to the public. Any interested person may attend the meeting, may file written statements with the Committee before or after the meeting, or present any oral statements in accordance with procedures established by the Committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting should contact Mr. George Like at the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, N.W., Room 2.11–072, Washington DC, 20523–2110, telephone (202) 712–1436, fax (202) 216–3010 or internet [glike@usaid.gov] with your full name.

Anyone wishing to obtain additional information about BIFAD should contact Mr. Tracy Atwood the Designated Federal Officer for BIFAD. Write him in care of the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, N.W., Room 2.11–055, Washington DC, 20523–2110, telephone him at (202) 712–5571 or fax (202) 216–3010.

Tracy Atwood,

USAID Designated Federal Officer (Deputy Director, Office of Agriculture and Food Security, Economic Growth Center, Bureau for Global Programs).

[FR Doc. 99–3399 Filed 2–10–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 10, 1998, and published in the **Federal Register** on July 9, 1998, (63 FR 37137), Chiragene, Inc., 7 Powder Horn Drive, Warren, New Jersey 07509, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
4-Methoxyamphetamine) (7411)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II

The firm plans to manufacture the listed controlled substances to supply their customers.

A registered bulk manufacturer of methylphenidate filed written comments and an objection in response to the notice of application. Review of the Administrative Procedures Act's (APA) definitions of license and licensing reveals that the granting or denial of a manufacturer's registration is a licensing action, not a rulemaking. Courts have frequently distinguished between agency licensing actions and rulemaking proceedings. See, *e.g., Gateway Transp. Co.* v. *United States,* 173 F. Supp. 822, 828 (D.C. Wis. 1959); *Underwater Exotics, Ltd.* v. *Secretary of the Interior,* 1994 U.S. Dist LEXIS 2262 (1994). Courts have interpreted agency action relating to licensing as not falling within the APA's rulemaking provisions.

The objector argues that Chiragene cannot prove its registration as a bulk manufacturer of methylphenidate is in the public interest, the Chiragene's registration is not required to produce an adequate and uninterrupted supply of methylphenidate, that there is sufficient competition with the present bulk manufacturers and that there would be a public interest impact on reported trends of over-prescribing, abuse and diversion of methylphenidate.

The arguments of the objector were considered, however, DEA has reviewed the firm's safeguards to prevent the theft and diversion of methylphenidate and found that the firm has met the regulatory requirements and public interest factors of the Controlled Substances Act (CSA).

Chiragene has been investigated by DEA to determine if the firm maintains effective controls against diversion which included, in part, inspection and testing of the firm's physical security, verification of compliance with State and local law and a review of the firm's background. The investigation has found Chiragene to be in compliance with the CSA and its implementing regulations.

Under Title 21, Code of Federal Regulations, Section 1301.33(b), DEA is not required to limit the number of manufacturers solely because a smaller number is capable of producing an adequate supply provided effective controls against diversion are maintained. DEA has determined that effective controls against diversion will be maintained by Chiragene.

After reviewing all the evidence, DEA has determined, pursuant to 21 U.S.C., Section 823(a), that it is consistent with the public interest to grant Chiragene's application to manufacture methylphenidate and the other listed controlled substances at this time. Therefore, pursuant to 21 U.S.C., Section 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office Of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: January 25, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–3403 Filed 2–10–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications To Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply to adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than (insert date ten days after publication in FR).

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 22, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 11th day of January, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 01/11/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,461	84 Mining Co (UMWA)	Eighty-Four, PA	12/22/1999	Coal Mining.
35,462A	Swaco (Comp)	Vernal, UT	12/29/1998	Drill Oil Well.
35,462	Swaco (Co.)	Casper, WY	12/29/1998	Drilling Oil Wells.
35,463	Dowell Schlumberger (Wkrs)	Sonora, TX	12/21/1998	Gas Well Services.
35,464	Trimfoot Co (Wkrs)	Farmington, MO	12/28/1998	Infants Shoes.
35,465A	Union Pacific Fuels, Inc (Comp)	All Locations, CO	12/14/1998	Crude Oil, Natural Gas and Liquids.
35,465B	Union Pacific Fuels, Inc (Comp)	All Locations, LA	12/14/1998	Crude Oil, Natural Gas and Liquids.
35,465C	Union Pacific Fuels, Inc (Comp)	All Locations, OK	12/14/1998	Crude Oil, Natural Gas and Liquids.
35,465D	Union Pacific Fuels, Inc (Comp)	All Locations, TX	12/14/1998	Crude Oil, Natural Gas and Liquids.
35,465E	Union Pacific Fuels, Inc (Comp)	All Locations, UT	12/14/1998	Crude Oil, Natural Gas and Liquids.
35,465F	Union Pacific Fuels, Inc (Comp)	All Locations, WY	12/14/1998	Crude Oil, Natural Gas and Liquids.
35,465	Union Pacific Fuels, Inc (Co.)	Fort Worth, TX	12/14/1998	Crude Oil, Natural Gas, Liquids.
35,466	American Energy Services (Wkrs)	Midland, TX	12/07/1998	Oil Services.
35,467	Pittsburgh Corning Corp (Co.)	Port Allegany, PA	12/18/1998	Glass Block—Pressed Glass.
35,468	Wilson Sporting Goods (Wkrs)	Sparta, TN	12/14/1998	Sports Uniforms.
35,469	Bliss Salem, Inc (Wkrs)	Salem, OH	12/21/1998	Steel Rolling Mill Equipment.
35,470	General Electric Co (Wkrs)	Mebane, NC	12/17/1998	Power Panel, Switchboard.
35,471	Microtek Medical, Inc (Wkrs)	Columbus, MS	12/21/1998	Hospital Supplies—(Surgical Pumps).
35,472	Footwear Mgt Co (Wkrs)	El Paso, TX	12/21/1998	Leather Boots.
35,473	Blount, Inc (Wkrs)	Prentice, WI	11/30/1998	Log Loaders.
35,474	Critique, Inc (Wkrs)	El Paso, TX	12/24/1998	Sand Blasting Jeans.
35,475	Littelfuse (Wkrs)	Watseka, IL	12/27/1998	Fuses and fuse holders.
35,476	Boise Cascade (Wkrs)	Medford, OR	12/28/1998	Plywood.
35,477	Southern Container Corp (UAW)	Dayton, NJ	12/18/1998	Printing Paper Products.
35,478	E.I. DuPont de Nemours (Co.)	Fayetteville, NC	12/28/1998	PET Polymer—Plastic Resin.
35,479	Bend Wood Products (Wkrs)	Bend, OR	12/30/1998	Re Manufactured Wood Products.
35,480	Florida Coast Paper Co (IBEW)	Port Saint Joe, FL	12/28/1998	Linerboards and Other Paper Products.
35,481	Computalog (Co.)	Houma, LA	12/21/1998	Wireline Logging.
35,482	Computalog (Co.)	Hobbs, NM	12/21/1998	Wireline Logging.
35,483	Computalog (Co.)	Fort Worth, TX	12/21/1998	Wireline Logging.
35,484	J and R Construction, Inc (Co.)	Rossevelt, UT	12/30/1998	Oil and Gas Wireline Logging.
35,485	Quebecor Printing (Wkrs)	Providence, RI	12/30/1998	Sunday Newspaper Inserts.
35,486	Key Rocky Mountain (Wkrs)	Casper, WY	12/23/1998	Oilwell Services.

[FR Doc. 99–3373 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,394]

Action West, Division of Don Shapiro Industries, El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 12, 1998, applicable to workers of Action West, Division of Don Shapiro Industries, El Paso, Texas. The notice was published in the **Federal Register** on June 22, 1998 (63 FR 33959).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce children's, men's and women's jeans and shorts. New findings show that there was a previous certification covering the same worker group, TA–W–31,352, issued on August 31, 1995. That certification expired August 31, 1997. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from March 16, 1997 to September 1, 1997, for Action West, Division of Don Shapiro Industries, El Paso, Texas.

The amended notice applicable to TA–W–34,394 is hereby issued as follows:

All workers of Action West, Division of Don Shapiro Industries, El Paso, Texas who became totally or partially separated from employment on or after September 1, 1997 through May 12, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 20th day of January, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–3383 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,454]

B.J. Services, Inc, Odessa, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on January 4, 1999, in response to a worker petition which was filed on behalf of workers at B.J Services, Inc., Odessa, Texas.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA–W–35,308). Consequently, further investigation in this case would serve no purpose; and the investigation terminated.

Signed in Washington, D.C. this 1st day of February, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–3374 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,308]

BJ Services Headquartered in Houston, TX and Operating in Midland and Snyder, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 30, 1998 in response to a worker petition which was filed on November 30, 1998 on behalf of workers at BJ Services, headquartered in Houston and operating in Midland and Snyder, Texas.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA–W–35,204). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 2nd day of February, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–3376 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,409]

BJ Services Company, USA, Houston, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 21, 1998, in response to a petition filed on the same date on behalf of workers at BJ Services Company, USA, Houston, Texas.

Currently, there is a petition investigation (TA–W–35,204) in progress for the workers at the subject firm. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 2nd of February, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–3377 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,070]

CTS of Bentonville, Bentonville, AR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 9, 1998, applicable to workers of CTS of Bentonville, Bentonville, Arkansas. The notice was published in the **Federal Register** on December 23, 1998 (63 FR 71165).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce variable resistors used in television sets. New findings show that there was previous certification, TA–W–32,195, issued on June 20, 1996, for workers of CTS Corporation, Bentonville, Arkansas who were engaged in employment related to the production of variable resistor products. That certification expired June 10, 1998. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date to

June 21, 1998, for the worker of CTS of Bentonville, Bentonville, Arkansas, engaged in employment related to the production of variable resistors.

The amended notice applicable to TA–W–35,070 is hereby issued as follows:

All workers of CTS of Bentonville, Bentonville, Arkansas who became totally or partially separated from employment on or after June 21, 1998 through December 9, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of January 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–3382 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,203 and TA–W–35,203A]

Dan River, Inc., Spindale Plant, Spindale, NC, New York, NY; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 14, 1998, applicable to workers of Dan River, Inc., Spindale Plant located in Spindale, North Carolina. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred at New York, New York location of Dan River, Inc. The New York, New York location was the sales office for Dan River's production facilities including Spindale, North Carolina. The workers were engaged in employment related to the production of textile fabrics.

The intent of the Department's certification is to include all workers of Dan River, Inc. who were adversely affected by increased imports of textile fabrics. Accordingly, the Department is amending the certification to cover the workers of Dan River, Inc., New York, New York.

The amended notice applicable to TA–W–35,203 is hereby issued as follows:

All workers of Dan River, Inc., Spindale Plant, Spindale, North Carolina (TA–W–35,203) and New York, New York (TA–W–35,203A) who became totally or partially separated from employment on or after November 5, 1997 through December 14, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of January, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–3386 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,811]

GE Lighting, Providence Base Plant, Providence, Rhode Island; Notice of Revised Determination on Reopening

On January 14, 1999, the International Union of Electronic, Electrical, Technical, Salaried, and Machine Workers, AFL–CIO, requested administrative reconsideration of the Department's Negative Determination Regarding Eligibility To Apply For Worker Adjustment Assistance for workers and former workers of the GE Lighting, Providence Base Plant, Providence, Rhode Island.

The initial investigation resulted in a negative determination issued on October 23, 1998, because imports did not contribute importantly to the worker separations. The notice was published in the **Federal Register** on December 16, 1998 (63 FR 69312).

New information submitted to the Department by the subject firm indicates that the company has shifted production to Mexico and is importing into the U.S. like or directly competitive articles which were previously produced at the subject facility.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with lamp bases produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of GE Lighting, Providence Base Plant, Providence, Rhode Island who became totally or partially separated from employment on or after July 14, 1997 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 29th day of January 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–3379 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,034]

Geneva Steel, Vineyard, UT, Including Workers of Voest-Alpine Services & Technologies Corp., Lindon, UT; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 23, 1998, applicable to all workers of Geneva Steel located in Vineyard, Utah. The notice was published in the **Federal Register** November 10, 1998 (63 FR 63087).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that employees of Voest-Alpine Services & Technologies Corp., Lindon, Utah were employed by Geneva Steel to maintain and refurbish steel casting equipment used in the production of steel products (plates, sheets, coils and pipes) at the Vineyard, Utah facility. Worker separations occurred at Voest-Alpine Services as a result of workers separations at Geneva Steel.

Based on these findings, the Department is amending the certification to include workers of Voest-Alpine Services & Technologies Corp., Lindon, Utah employed at Geneva Steel, Vineyard, Utah.

The intent of the Department's certification is to include all workers of Geneva Steel adversely affected by imports.

The amended notice applicable to TA–W–35,034 is hereby issued as follows:

All workers of Geneva Steel, Vineyard, Utah and workers of Voest-Alpine Services & Technologies Corp., Lindon, Utah engaged in employment related to maintaining and refurbishing steel casting equipment for the production of steel products at Geneva Steel, Vineland, Utah who became totally or partially separated from employment on or

after September 18, 1997 through October 23, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 25th day of January, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–3381 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,218]

Hooper Trucking Company, Odessa, Texas; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 (C) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Hooper Trucking Company, Odessa, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35–218; Hooper Trucking Company, Odessa, Texas (February 1, 1999)

Signed at Washington, DC, this 2nd day of February 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–3375 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,032; TA–W–34,032A]

TRW/BDM-Petroleum Technologies; Bartlesville, OK, BDM-Oklahoma, Inc., Bartesville, OK; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 28, 1998, applicable to workers of TRW/BDM-Petroleum Technologies located in Bartlesville, Oklahoma. The notice was published in the **Federal Register** on December 4, 1998 (63 FR 67140).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers provide oilfield services related to the exploration and production of crude oil and natural gas. New information shows that worker separations occurred at BDM-Oklahoma, Inc., Bartlesville, Oklahoma when it closed in December 1998. The workers provided technical support (i.e. research, data analysis & studies) used in oilfield services provided by TRW/BDM-Petroleum Technologies, Bartlesville, Oklahoma.

Accordingly, the Department is amending the certification to cover the workers of BDM-Oklahoma, Bartlesville, Oklahoma.

The intent of the Department's certification is to include all workers of TRW/BDM-Petroleum Technologies who were adversely affected by increased imports.

The amended notice applicable to TA–W–35,032 is hereby issued as follows:

All workers of TRW/BDM-Petroleum Technologies (TA–W–35,032) and BDM-Oklahoma, Inc., Bartlesville, Oklahoma (TA–W–35,032A) who became totally or partially separated from employment on or after September 15, 1997 through October 28, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of January 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–3378 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,357]

Voest-Alpine Service & Technologies Corp. Lindon, UT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 14, 1998 in response to a worker petition which was filed on behalf of workers at Voest-Alpine Services & Technologies Corp., Lindon, Utah.

An active certification covering the petitioning group of workers is already in effect (TA–W–35,034). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 25th day of January 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–3380 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implemention Act (P.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of P.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request is filed in writing with the Acting Director of OTAA not later than February 22, 1999.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than February 22, 1999.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, DC, this 3rd day of February, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Wilkins Industries (Co.)	Athens, GA	01/19/1999	NAFTA–2,857	Men's and women's jeanswear.
Pillsbury Company (The) (Co.)	Woodbridge, NJ	01/08/1999	NAFTA–2,858	Ice cream products.
Lanier Clothes (Wkrs)	Greenville, GA	01/07/1999	NAFTA–2,859	Pressed and inspected coats.
Mountain West Colorado Aggregate (Wkrs).	Kamiah, ID	01/21/1999	NAFTA–2,860	Landscaping materials.
Horowitz—Rae Book Manufacturing (GCIU).	Fairfield, NJ	01/18/1999	NAFTA–2,861	Books.
Morganite (Co.)	Dunn, NC	01/25/1999	NAFTA–2,862	Carbon brush final assembly.
United Technologies Automotive (Wkrs)	Brownsville, TX	01/25/1999	NAFTA–2,863	Starter motors.
Daugherty Manufacturing (Wkrs)	Knoxville, TN	01/09/1999	NAFTA–2,864	Textile t-shirts.
Ball Foster (GMP)	Millville, NJ	01/21/1999	NAFTA–2,865	Glass containers for beverages.
Crown Cork and Seal (USWA)	Omaha, NE	01/22/1999	NAFTA–2,866	Cans.
Pendleton Woolen Mills (UNITE)	Fremont, NE	01/26/1999	NAFTA–2,867	Skirts, pants, jackets and tops.
Standard Steel Specialty (USWA)	Beaver Falls, PA	01/26/1999	NAFTA–2,868	Elevator guide rails.
Stanley Tools (USWA)	Kansas City, KS	01/27/1999	NAFTA–2,869	Construction concrete tools.
Mill Rite Forms (Co.)	Albany, OR	01/22/1999	NAFTA–2,870	Animal feed.
Kinzua Resources—Frontiar (Wkrs)	Heppner, OR	01/29/1999	NAFTA–2,871	Lumber and wood chips for paper.
Corning Consumer Products (USWA)	Charleroi, PA	01/27/1999	NAFTA–2,872	Glass ware.
McKinley Fiber (Wkrs)	Albuquerque, NM	10/09/1998	NAFTA–2,873	Paper.
Anchor Drilling Fluids (Wkrs)	Tulsa, OK	01/19/1999	NAFTA–2,874	Oil drilling.
Lear Corporation (Wkrs)	Lewistown, PA	01/28/1999	NAFTA–2,875	Automotive interior trim.
Seagate Technology (Co.)	Costa Mesa, CA	01/27/1999	NAFTA–2,876	Tape repair.
Tektronix C.N.A. (Co.)	Bend, OR	01/28/1999	NAFTA–2,877	Fault locators.
Bill Kaiser (Co.)	Kansas City, MO	01/29/1999	NAFTA–2,878	Industrial sewing machine.
Scripto Tokai (Wkrs)	Fontona, CA	01/27/1999	NAFTA–2,879	Package consumer products.
Salant Corporation (Co.)	Obion, TN	01/26/1999	NAFTA–2,880	Childrens apparel.
Jasper Textiles (Co.)	Jacksonville, NC	01/29/1999	NAFTA–2,881	Knit shirts.

[FR Doc. 99–3387 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02300]

Action West, Don Shapiro Industries, El Paso, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on May 12, 1998, applicable to all workers of Action West, Division of Don Shapiro Industries, El Paso, Texas. The notice was published in the **Federal Register** on May 29, 1998 (63 FR 29431).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce children's, men's and women's jeans and shorts. New findings show that there was a previous certification covering the same worker group, NAFTA–0562, issued on August 31, 1995. That certification expired August 31, 1997. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from March 27, 1997 to September 1, 1997, for Action West, Division of Don Shapiro Industries, El Paso, Texas.

The amended notice applicable to NAFTA–02300 is hereby issued as follows:

All workers of Action West, Division of Don Shapiro Industries, El Paso, Texas who became totally or partially separated from employment on or after September 1, 1997 through May 12, 2000 are eligible to apply for NAFTA–TAA under section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 26th day of January 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–3385 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–2813]

Fleming Companies, Inc., Portland, OR; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), an investigation was initiated on December 24, 1998, in response to a worker petition which was filed on behalf of workers at Fleming Companies, Inc., Portland, Oregon (NAFTA–2813).

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 26th day of January 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–3384 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Medical Child Support Working Group

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act (FACA), notice is given of the first meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998. The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments.

DATES: The first meeting of the MCSWG will be held on Wednesday, March 3, 1999, from 3:00 p.m. to approximately 6:00 p.m.; on Thursday, March 4, 1999, from 9:00 a.m. to approximately 3:00 p.m.; and on Friday, March 5, 1999, from 9:00 a.m. to approximately 12:00 noon.

ADDRESSES: The events of the first day of the Meeting (March 3, 1999), will be held in the Snow Room, Room 5051, fifth floor, at the Wilbur Cohen Building, 300 Independence Ave., SW, Washington, D.C.; and the events of March 4 and 5, 1999, will be held in Room 800, eighth floor of the Hubert H. Humphrey Building, 200 Independence Ave., SW, Washington, D.C. All interested parties are invited to attend this three day public meeting. Seating may be limited and will be available on a first-come, first-serve basis. Persons needing special assistance, such as sign language interpretation or other special accommodation, should contact the Executive Director of the Medical Child Support Working Group, Office of Child Support Enforcement at the address listed below.

FOR FURTHER INFORMATION CONTACT: Ms. Samara Weinstein, Executive Director, Medical Child Support Working Group, Office of Child Support Enforcement, Fourth Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447 (telephone (202) 401–6953; fax (202) 401–5559; e-mail: sweinstein@acf.dhhs.gov). These are not toll-free numbers. The date, location and time for subsequent MCSWG meetings will be announced in advance in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) (FACA), notice is given of the first meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998 (P.L. 105–200).

The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments. This report will include: (1) recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under interim regulations; (2) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrearages in such obligations, and in the case of a medical support obligation, the employee's portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677); (3) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs for child support, Medicaid and the Child Health Insurance Program; (4) appropriate measures to improve the availability of alternate types of medical support that are aside from health care coverage offered through the noncustodial parent's health plan, and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payments, deductibles, or payments for services not covered under a child's existing health coverage; (5) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act ; and (6) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the MCSWG deems necessary.

The membership of the MCSWG was jointly appointed by the Secretaries of DOL and DHHS, and includes representatives of: (1) DOL; (2) DHHS; (3) State Child Support Enforcement Directors; (4) State Medicaid Directors; (5) employers, including owners of small businesses and their trade and industry representatives and certified human resource and payroll professionals; (6) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1)); (7) children potentially eligible for medical support, such as child advocacy organizations; (8) State medical child support organizations; and (9) organizations representing State child support programs.

Agenda: The agenda for this first meeting includes opening ceremonies and orientation of the members (March 3), program briefings, discussions (March 4), and business related to the operation of the MCSWG (March 5).

Public Participation: Members of the public wishing to present oral statements to the MSCWG should forward their requests to Samara Weinstein, MCSWG Executive Director, as soon as possible and at least four days before the meeting. Such request should be made by telephone, fax machine, or mail, as shown above. Time permitting, the Chairs of the MCSWG will attempt to accommodate all such requests by reserving time for presentations. The order of persons making such presentations will be assigned in the order in which the requests are received. Members of the public are encouraged to limit oral statements to five minutes, but extended written statements may be submitted for the record. Members of the public also may submit written statements for distribution to the MCSWG membership and inclusion in the public record without presenting oral statements. Such written statements should be sent to the MCSWG Executive Director, as shown above, by mail or fax at least five business days before the meeting.

Minutes of all public meetings and other documents made available to the MCSWG will be available for public inspection and copying at both the DOL and DHHS. At DOL, these documents

will be available at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 5:30 p.m. Any written comments on the minutes should be directed to Ms. Samara Weinstein, Executive Director of the Working Group, as shown above.

Signed at Washington, DC, this 5th day of February 1999.

Leslie Kramerich,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration.

[FR Doc. 99–3388 Filed 2–10–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that two meetings of the Leadership Initiatives Panel to the National Council on the Arts will be held via teleconference on February 17 and February 18, 1999. The Music section of the panel will meet from 2:00 to 2:30 p.m. on February 17 and the AccessAbility/Partnership section will meet from 3:30 to 4:30 p.m. on February 18, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5691.

Dated: February 8, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 99–3433 Filed 2–10–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL PARTNERSHIP FOR REINVENTING GOVERNMENT

BOOST FOR KIDS: Better Opportunities and Outcomes Starting Today Performance Partnerships With State and Local Government for Results for Children

Authority Citation: Non-statutory, President's Budget for FY 2000.

Background

All of our children deserve to grow up healthy, secure and able to realize their full potential. Vice President Al Gore has created a strong federal team to work with innovative local and State partners to get better results for children. This team will work to minimize administrative barriers and maximize how resources are used to get the best results for children.

The ''Boost For Kids'' Initiative will recognize the leadership of innovative States and localities that are improving the lives of their communities' children. Boost For Kids will work with them to reinvent how programs are administered to give people at the local level greater flexibility to improve the lives of all of their children. The initiative builds on meetings that Vice President Gore has had with families and communities across the country and at the ''Family Re-Union,'' an annual discussion of public policy from the perspective of families that he moderates in Nashville, Tennessee.

Announcement

We are seeking to form up to 10 performance partnerships with State and local governments that are working together to enhance positive outcomes for children, youth, and families. These partnerships will permit leading local and State partners to work together with Federal representatives to:

- Manage for results for children;
- Streamline administration;
- Address barriers at the federal, State and local levels—in ways allowable under current law—to better provide needed services and supports for children;
- Maximize the use of resources for services for children; and
- Share lessons with other communities.

What Are the Benefits to States and Communities?

This initiative will not provide additional Federal funds; it will support efforts by all levels of government to cut red tape, integrate services and use current funding more effectively. It will:

- Facilitate consolidated planning and reporting and provide greater flexibility in administering grant funds with related goals as allowed under current law;
- Recommend changes to pool administrative savings from discretionary grant programs to create local ''Boost For Kids Investment Funds''—-to turn dollars saved in administration to improving outcomes for children to the extent allowed under current law;
- Help communities use data to achieve better outcomes for children;
- Provide increased access to federal data and geographic information and assistance of federal data experts in devising strategies for collecting and analyzing data on outcomes such as child insurance coverage, immunization, housing, food security, traumatic injury rate, youth crime rate, and school readiness;
- Share lessons learned electronically and through a ''How To'' Manual on ways to use flexibility to improve outcomes for children; and
- Give national recognition to State and local partners for their results and work to improve the health, safety, living conditions, and well-being of children.

Who Can Apply To Be a Partner?

Expressions of interest can be submitted by any of the following: the head of a local collaborative that includes appropriate local government representation, the head of the local government, or a key local government agency head. For smaller jurisdictions, local governments can submit combined applications. Evidence of partnership with State government must be clear.

How Does My Community Express Interest in Boost For Kids?

Potential partners should submit a brief Expression of Interest. To minimize any burden, try to keep submissions under ten pages in length. Use existing plans and documents wherever possible.

Selection Criteria:

The Federal Steering Committee will select partners based on:

—Existence of community goals or report card for children and a commitment by the partners to use data to measure progress and manage resources to improve child well-being;

—Readiness and commitment of partners to cut red tape, integrate or better coordinate services, use current funding more effectively and achieve better results for children. Partners must include the community/local level and local and State government;

—Commitment to a long-term strategic plan and a sustained effort to improve the well-being of children, youth and families within the community;
—Potential impact of proposed partnership based on issues and proposed outcomes and time frame provided in the Expression of Interest; and
—Balance in terms of geography, demographic characteristics and areas of focus.

Federal Partners:

Boost For Kids is led by a Federal Steering Committee which includes the following Federal partners: the Departments of Education; Health and Human Services; Housing and Urban Development; and Justice; the Federal Geographic Data Committee; the Consumer Product Safety Commission, the Federal Interagency Forum on Family and Child Statistics; Food and Nutrition Services, the National Highway Traffic Safety Administration, the National Partnership for Reinventing Government, and the Office of Management and Budget.

Expressions of interest in partnerships must be received by close of business on March 12, 1999. They may be submitted by mail, fax or electronically to: Boost For Kids, National Partnership for Reinventing Government, Suite 200, 750 17th Street NW, Washington, DC 20006, (202) 632–0390 (fax), Boost4Kids@NPR.gov

For further information, please contact Pamela Johnson (*Pamela.Johnson@NPR.GOV*), (202) 694–0011 or Ann Segal (asegal@osaspe.dhhs.gov), (202) 690–7858.

Pamela R. Johnson,

Deputy Director, National Partnership for Reinventing Government.

[FR Doc. 99–3410 Filed 2–10–99; 8:45 am]

BILLING CODE 4150–05–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458; License No. NPF–47; Docket No. 50–440; License No. NPF–58]

Entergy Operations, Inc. and Firstenergy Nuclear Operating Company; Notice of Informal 10 CFR 2.206 Public Hearing

In a **Federal Register** notice published on January 21, 1999 (64 FR 3320), the U.S. Nuclear Regulator Commission (NRC) announced that it will hold an informal public hearing regarding two petitions submitted pursuant to 10 CFR 2.206 involving the River Bend Station (RBS), operated by Entergy Operations, Incorporated, (the RBS licensee), and Perry Nuclear Power Plant (PNPP), Unit 1, operated by FirstEnergy Nuclear Operating Company (the PNPP licensee). The hearing will be held on February 22, 1999. The location for the hearing will be at the NRC, room T–2B3. The NRC is located at 11545 Rockville Pike, Rockville, Maryland. The hearing will be open to public attendance and will be transcribed.

In order to assist members of the public who live in the vicinity of the River Bend and Perry facilities participate in the informal public hearing being conducted in the Washington, D.C. area, the NRC will provide video teleconferencing (VTC) services at the following facilities located in Baton Rouge, Louisiana and Cleveland, Ohio:

Center For Instructional Telecommunications, Coates Hall, Room 202, Louisiana State University, Baton Rouge, Louisiana 70803
and,
The Forum Conference and Education Center, Inc., One Cleveland Center Office Building, 1375 East 9th Street, Cleveland, Ohio 44114

The video teleconferencing facilities in both cities will be made available to the public at 12:30 p.m. EST (11:30 a.m. CST). In order to avoid a conflict with a previously-scheduled class, members of the public participating in the informal public hearing at the LSU/Baton Rouge site will need to vacate the VTC classroom at 3:45 p.m. local time (CST). The NRC will ensure that all members of the public at the Baton Rouge site who wish to make a statement will have the opportunity to provide their comments prior to 3:45 p.m. local time. The NRC will adjust the meeting structure outlined below, as required, to allow for public comment.

The structure of the hearing shall be as follows:

Monday, February 22, 1999:

1:00 p.m.—NRC opening remarks
1:15 p.m.—Petitioner's presentation
2:00 p.m.—NRC questions
2:15 p.m.—RBS licensee's presentation
2:45 p.m.—NRC questions
3:00 p.m.—PNPP licensee's presentation
3:30 p.m.—NRC questions
3:45 p.m.—Public comments
—Baton Rouge, Louisiana VTC site
—Cleveland, Ohio VTC site
—NRC Headquarters
4:30 p.m.—Licensees/Petitioner's final statements
4:45 p.m.—Meeting concludes

Note: All times are Eastern Standard Time (EST).

By letter dated September 25, 1998, the Union of Concerned Scientists (UCS or Petitioner) submitted a Petition pursuant to 10 CFR 2.206 requesting that the River Bend Station be immediately shut down and its operating license suspended or modified until the facility's design and licensing basis were updated to permit operation with failed fuel assemblies, or until all failed fuel assemblies were removed from the reactor core. The Petitioner also requested that a public hearing be held to discuss this matter in the Washington, D.C. area.

By letter dated November 9, 1998, the UCS also submitted a Petition pursuant to 10 CFR 2.206 requesting that the Perry Nuclear Power Plant be immediately shut down and its operating license suspended or modified until the facility's design and licensing basis were updated to permit operation with failed fuel assemblies, or until all failed fuel assemblies were removed from the reactor core. The Petitioner also requested a public hearing in the Washington, D.C. area.

The purpose of this informal public hearing is to obtain additional information from the Petitioner, the licensees, and the public for NRC staff use in evaluating the Petitions. Therefore, this informal public hearing will be limited to information relevant to issues raised in the two Petitions. The staff will not offer any preliminary views on its evaluation of the Petitions. The informal public hearing will be chaired by a senior NRC official who will limit presentations to the above subject.

The format of the informal public hearing will be as follows: opening remarks by the NRC regarding the general 10 CFR 2.206 process, the purpose of informal public hearing, and a brief summary of the Petitions (15 minutes); time for the Petitioner to explain the basis of the Petitions (45 minutes); time for the NRC to ask the Petitioner questions for the purposes of clarification (15 minutes); time for the licensees to address the issues raised in the petition (30 minutes for each licensee); time for the NRC to ask the licensees questions for the purposes of clarification (15 minutes each, following licensees' presentations); time for public comments relative to the Petition (45 minutes); and time for the licensees' and Petitioner's final statements (15 minutes).

Members of the public who are interested in presenting information relative to the Petitions should notify the NRC official named below, 5 working days prior to the hearing. A brief summary of the information to be presented and the time requested should be provided in order to make appropriate arrangements. Time allotted

for presentations by members of the public at all locations will be determined based upon the number of requests received and will be announced at the beginning of the hearing. The order for public presentations will be determined on a first received—first to speak basis. Written statements should be mailed to the U.S. Nuclear Regulatory Commission, Mailstop O–13H03, Attention: Robert Fretz, Washington, D.C. 20555.

Requests for the opportunity to present information can be made by contacting Robert Fretz, Project Manager, Division of Reactor Projects III/IV, at (301) 415–1324 between 7:00 a.m. to 3:30 p.m. (EST), Monday–Friday. Persons planning to attend this informal public hearing are urged to contact the above NRC representative 1 or 2 working days prior to the informal public hearing to be advised of any changes that may have occurred.

Directions to the video teleconferencing sites located in Baton Rouge and Cleveland are provided below; however, participants are urged to consult local maps and directories for more detailed information to verify exact location.

To Baton Rouge VTC site at LSU from Interstate Highways I–10 and I–12 (East and West): From I–10, take one of the two exits identified for the Louisiana State University and follow the signs to the LSU Campus. Follow the signs to the LSU Visitors' Center. Members of the public will need to pick up a parking permit at the Visitors' Center. Visitors will be allowed to park along Tower Drive or utilize meter parking provided. Additional parking information may be obtained at the Visitors' Center. The video conference will be held in Room 202, Coates Hall, which is located within the Quadrangle at LSU. To Baton Rouge VTC site at LSU from St. Francisville: From US–61 South, take the I–110 exit toward Baton Rouge and merge onto I–110 South; follow I–110 to I–10. Take one of the two exits identified for Louisiana State University and follow the directions to the Visitors' Center and Coates Hall above.

Members of the Public are advised that parking at LSU is limited and are urged to arrive at the LSU Campus early in order to obtain available parking. The public is welcome to utilize the LSU Student Union facilities for lunch prior to the start of the informal public hearing.

To Cleveland VTC from Airport: Take I–71 North to East 9th Street exit of the Innerbelt; travel North on East 9th Street to St. Clair Avenue. From I–77 North: Take the East 9th Street exit; travel North on East 9th Street to St. Clair Avenue. From I–90 Eastbound: Take the East 9th Street exit; travel North on East 9th Street to St. Clair Avenue. From I–90 Westbound: Take the East 9th Street exit; turn left onto East 9th Street to St. Clair Avenue; turn left on St. Clair Avenue for parking.

Dated at Rockville, Maryland, this 5th day of February 1999.

For the Nuclear Regulatory Commission.

John N. Hannon,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 99–3393 Filed 2–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 3.54, ''Spent Fuel Heat Generation in an Independent Spent Fuel Storage Installation,'' has been revised to present a method that is acceptable to the NRC staff for calculating heat generation rates for use as design input for an independent spent fuel storage installation. The procedures proposed in this guide, for both boiling water reactors and pressurized water reactors, are simpler and therefore are expected to be more useful to applicants and reviewers.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, OCIO, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax at (301) 415–2289. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 26th day of January 1999.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 99–3394 Filed 2–10–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

DATE OF MEETING: February 1, 1999.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 64 FR 3992, January 26, 1999.

CHANGE: At its meeting on February 1, 1999, the Board of Governors of the United States Postal Service voted unanimously to add an item to the agenda of its closed meeting held on that date:

Compensation Issues

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–3434 Filed 2–8–99; 4:56 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23681; File No. 812–11280]

The Prudential Series Fund, Inc., et al.

February 4, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (''1940 Act'') granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit shares of any current or future series of Prudential Series Fund, Inc. (''Series Fund'') and shares of any other investment company that is offered as a funding medium for insurance products (the current and future series of the Series Fund and such other investment companies are the ''Funds'') and for which The Prudential Insurance Company of America (''Prudential''), or any of its affiliates, may serve, now or in the future, as manager, investment adviser, administrator, principal underwriter or sponsor, to be sold to and held by: (1) separate accounts (''Separate Accounts'') funding variable annuity and variable life insurance contracts of both affiliated and unaffiliated life insurance companies (''Participating Insurance Companies''); and (2) certain qualified pension and retirement plans (''Plans'').

APPLICANTS: Prudential Series Fund, Inc. and The Prudential Insurance Company of America.

FILING DATE: The application was filed on August 27, 1998, and an amended and restated application was filed on November 30, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC'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 March 1, 1999, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o Shea & Gardner, 11800 Massachusetts Avenue, NW, Washington, DC 20036, Attention: Christopher E. Palmer, Esq.

FOR FURTHER INFORMATION CONTACT: Laura A. Novack, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 ((202) 942–8090).

Applicant's Representations

1. The Series Fund is a Maryland corporation registered under the 1940 Act as an open-end management investment company. The Series Fund currently consists of 15 separate investment portfolios (''Portfolios''), each of which has its own investment objective and policies. The Series Fund may issue shares of additional Portfolios, and expects to issue new classes of shares of each Portfolio in the future.

2. Prudential is an insurance company organized under the laws of New Jersey, and is registered as an investment adviser under the Investment Advisers Act of 1940. Prudential is the Series Fund's investment adviser. Prudential has entered into a service agreement with The Prudential Investment Corporation (''PIC''), its wholly-owned subsidiary, to provide such services as Prudential may require in connection with the performance of its obligations as investment adviser of the Series Fund. Prudential also has entered into a subadvisory agreement with Jennison Associates LLC (''Jennison'') which handles the day-to-day management of the Jennison Portfolio, one of the 15 Portfolios of the Series Fund.

3. The Series Fund currently sells its shares to separate accounts of Prudential, which are registered as unit investment trusts under the 1940 Act in connection with the issuance of variable contracts. The Series Fund wishes to be able to offer shares of its existing and future Portfolios to Separate Accounts of additional insurance companies, including insurance companies that are not affiliated with Prudential, to serve as the investment vehicle for various types of insurance products, which may include variable annuity and flexible premium variable life insurance contracts (''Contracts''). Prudential also wishes to offer shares of any other current or future investment company to serve as the investment vehicle for the Contracts.

4. Participating Insurance Companies will be those insurance companies that purchase Fund shares to fund Contracts. The Participating Insurance Companies will establish their own Separate Accounts and design their own Contracts. Each Contract will have certain features and probably will differ from other Contracts with respect to insurance guarantees, premium structure, charges, options, distribution method, marketing techniques, sales literature and other aspects. Each Participating Insurance Company will have the legal obligation of satisfying all requirements applicable to such insurance company under the federal securities laws.

5. The Series Fund also wishes to offer shares to the trustees (or custodians) of Plans. The Plans will be qualified pension or retirement plans described in Treas. Reg. § 1.817–5(f)(3)(iii), including Rev. Ruling 94–62, adopted pursuant to Section 817(h) of the Internal Revenue Code of 1986, as amended (''Code''). Prudential also wishes to offer shares of any current or future investment company to Plans. Fund shares sold to Plans will be held by the trustees or custodians of the Plans as required by Section 403(a) of the Employee Retirement Income Security Act (''ERISA'') or other applicable provisions of the Code. Some Plans may provide participants with the right to give voting instructions. The trustee or custodian of each Plan will have the legal obligation of satisfying all requirements applicable to such Plan under the federal securities laws. A Fund's role with respect to the Separate Accounts and the Plans will be limited to that of offering its shares to the Separate Accounts and Plans and fulfilling any conditions the Commission may impose upon granting the Order requested therein.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act exempting scheduled and flexible premium variable life insurance Separate Accounts of Participating Insurance Companies (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) and the other Applicants from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and sub-paragraph (b)(15) of Rules 6e–2 and 6e–3(T) thereunder, to the extent necessary to permit shares of the Funds to be offered and sold to, and held by: (a) variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company (''mixed funding''); (b) separate accounts of unaffiliated life insurance companies (funding both variable annuity and variable life insurance separate accounts) (''shared funding''); and (c) Plans.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a),

15(a) and 15(b) of the 1940 Act. The exemptions granted to a separate account by Rule 6e–2(b) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to variable life insurance separate accounts of the life insurer or any affiliated life insurance company.'' (emphasis added) Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity separate account of the same company or any affiliated or unaffiliated insurance company, or to trustees of a qualified plan.

3. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as ''mixed funding.'' The use of a common investment company as the underlying investment medium for variable annuity and/or variable life insurance separate accounts of unaffiliated insurance companies is referred to as ''shared funding.'' The relief granted by Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying investment company that also offers its shares to separate accounts funding variable contracts of one or more unaffiliated life insurance companies. Moreover, the relief under Rule 6e–2(b)(15) is not available if the scheduled premium variable life insurance separate account owns shares of an underlying investment company that also offers its shares to Plans.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions granted to a separate account are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares ''*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled premium variable life insurance contracts or flexible premium variable life insurance contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company.'' (emphasis added). Thus, Rule 6e–3(T) permits mixed funding, but precludes shared funding or selling shares to Plans.

5. Applicants state that current tax law permits the Funds to increase their asset base through the sale of shares to Plans. Applicants state that Section 817(h) of the Code imposes certain diversification standards on the underlying assets of the Contracts invested in the Funds. The Code provides that the Contracts will not be treated as annuity contracts or life insurance contracts for any period during which the underlying assets are not adequately diversified in accordance with regulations prescribed by the Treasury Department. The regulations provide that to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more insurance companies. Treas. Reg. § 1.817–5. The regulations do, however, contain certain exceptions to this requirement, one of which permits shares of an investment company to be held by the trustee of a Plan without adversely affecting the ability of the shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their Contracts. Treas. Reg. § 1.817–5(f)(3)(iii).

6. Applicants state that the promulgation of Rules 6e–2 and 6e–3(T) preceded the issuance of these Treasury regulations, and that the sale of shares of the same investment company to both Separate Accounts and Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

7. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as an investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a)(1) or (2).

8. Rules 6e–2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) provide partial exemptions from Section 9(a), subject to the limitations discussed above on mixed and shared funding. These rules provide that the eligibility restrictions of Section 9(a) shall not apply to persons disqualified under Section 9(a) who are officers, directors, or employees of the life insurer or its affiliates, so long as that person does not participate directly in the management or administration of the underlying investment company, and that an insurer shall be ineligible to serve as an investment adviser or principal underwriter of the underlying fund only if an affiliated person of the life insurer who is disqualified by Section 9(a) participates in the management or administration of the fund.

9. Applicants state that the partial relief granted in Rules 6e–2 and 6e–3(T) from the requirements of Section 9 of the 1940 Act, limits, in effect, the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of that section, when the life insurer serves as investment adviser to or principal underwriter for the underlying fund. Applicants state that this relief parallels the relief granted by Rules 6e–2(b)(4) and 6e–3(T)(b)(4) to the insurer in its role as depositor of the separate account. Applicants state that those rules recognize that it is not necessary to apply the provisions of Section 9(a) to the many individuals who may be involved in a typical insurance company complex, most of whom will have no involvement in matters pertaining to underlying investment companies. Applicants assert, therefore, that there is no regulatory purpose in denying the partial exemptions because of mixed and shared funding and sales to Plans because sales to Plans do not change the fact that the purposes of the 1940 Act are not advanced by applying the prohibitions of Section 9(a) to persons in a life insurance complex who have no involvement in the underlying fund.

10. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) under the 1940 Act assumes that contract owners are entitled to pass-through voting privileges with respect to investment company shares held by a separate account. However, subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations discussed above on mixed and shared funding are observed.

11. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when an insurance regulatory authority so requires, subject to certain requirements. In addition, an insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in the investment company's investment policies, principal underwriter, or investment adviser (provided that disregarding such voting instructions is

reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T)). Under the rules, voting instructions with respect to a change in investment policies may be disregarded if the insurance company makes a good-faith determination that such change would: (a) violate state law; or (b) result in investments that either would not be consistent with the investment objectives of the separate account; or would vary from the general quality and nature of investments and investment techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Voting instructions with respect to a change in an investment adviser may be disregarded if the insurance company makes a good-faith determination that either: (a) the adviser's fees would exceed the maximum rate that may be charged against the separate account's assets; or (b) the proposed adviser may be expected to employ investment techniques that vary from the general techniques used by the current adviser, or the proposed adviser may be expected to manage the investments in a manner that would be inconsistent with the investment objectives of the separate account or in a manner that would result in investments that vary from certain standards.

12. Applicants state that Rule 6e–2 recognizes that variable life insurance contracts have important elements unique to insurance contracts and are subject to extensive state regulation of insurance. Applicants maintain that in adopting Rule 6e–2, the Commission recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers or principal underwriters. Applicants also state that the Commission expressly recognized that state insurance regulators have authority to require an insurance company to draw from its general account to cover costs imposed upon the insurance company by a change approved by contract owners over the insurance company's objection. Therefore, the Commission deemed exemptions from pass-through voting requirements necessary ''to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' Applicants assert that in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts; and that therefore the corresponding provisions of Rule 6e–3(T) undoubtedly were adopted in recognition of the same factors.

13. Applicants submit that state insurance regulators have much the same authority with respect to variable annuity separate accounts as they have with respect to variable life insurance separate accounts, and that variable annuity contracts pose some of the same kinds of risks to insurers as variable life insurance contracts. Applicants submit that while the Commission staff has not been called upon to address the general issue of state insurance regulators' authority in the context of variable annuity contracts, the Commission staff apparently recommended the exclusivity requirement of Rule 6e–2 in order to reserve the widest possible latitude in regulating what was then a new and unfamiliar product.

14. Applicants further state that the offer and sale of Fund shares to Plans will not have any impact on the relief requested in this regard. As previously noted, shares of the Funds will be held by the trustees or custodians of the Plans as required by Section 403(a) of ERISA or other applicable provisions of the Code. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Plan investments with two exceptions: (a) when the Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. In any event, ERISA permits, but does not require, pass-through voting to the participants in Plans. Accordingly, Applicants submit that unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Plans since Plans are not entitled to pass-through voting privileges.

15. Applicants submit that while some Plans may provide participants with the right to give voting instructions, there is no reason to believe that participants in Plans generally, or those in a particular Plan, either as a single group or in combination with other Plans, would vote in a manner that would disadvantage Contract owners. In this regard, Applicants submit that the purchase of Fund shares by Plans that provide voting rights to participants does not present any complications not otherwise occasioned by mixed and shared funding.

16. Applicants state that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants note that where an insurer is domiciled in different states, it is possible that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Applicants submit that this possibility is no different or greater than exists where different insurers may be domiciled in different states.

17. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. Affiliated insurers may be domiciled in different states and be subject to differing state law requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among state regulatory requirements may produce. If a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its separate account's investment in the Fund.

18. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. Potential disagreement is limited by the requirement that disregarding voting instructions be reasonable and based on specified good faith determinations. However, if an insurer's decision to disregard contract

owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, such insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund. No charge or penalty will be imposed as a result of such a withdrawal. Applicants submit, however, that the likelihood that voting instructions of insurance company separate account holders will ever be disregarded or that withdrawal will occur is extremely remote, and that this possibility will be known through prospectus disclosure.

19. Applicants submit that investment by Plans in any of the Funds will similarly present no conflict. While votes cast by the Plan trustees cannot be disregarded and must be counted and given effect, if a material irreconcilable conflict involving Plans arises, the Plans may simply redeem their shares and make alternative investments.

20. Applicants submit that there is no reason why the investment policies of the Funds would or should be materially different from what these policies would or should be if the Funds funded only variable annuity contracts or variable life insurance contracts, whether flexible premium or scheduled premium contracts. Each type of insurance product is designed as a long-term investment program. Similarly, the investment objectives of Plans are long-term. Moreover, Applicants represent that each Fund will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular Participating Insurance Company insurer or type of insurance product.

21. As noted above, Section 817(h) of the Code imposes certain diversification standards on the assets underlying variable annuity contracts and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits ''qualified pension or retirement plans'' and insurance company separate accounts to share the same underlying management investment company. Therefore, Applicants assert that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, recognize any inherent conflicts of interest if Plans and variable life insurance separate accounts all invest in the same management investment company.

22. Applicants note that while there may be differences in the manner in which distributions from variable annuity contracts, variable life insurance contracts and Plans are taxed, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the Separate Account or Plan cannot net purchase payments to make the distributions, the Separate Account or Plan will redeem Fund shares at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan, and the Participating Insurance Company will make distributions in accordance with the terms of the Contract.

23. Applicants also state that it is possible to provide an equitable means of giving voting rights to Contract owners and to Plans. Each Fund will inform each shareholder, including each Separate Account and each Plan, of its respective share of ownership in the Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with the ''pass-through'' voting requirement.

24. Applicants submit that the ability of the Funds to sell their respective shares directly to qualified plan does not create a ''senior security,'' as such term is defined under Section 18(g) of the 1940 Act, with respect to any Contract owner as opposed to a participant under a Plan. Regardless of the rights and benefits of participants under the Plans or Contract owners under the Contracts, the Plans and the Separate Accounts only have rights with respect to their respective shares of the Funds. They can only redeem such shares at their net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payments of dividends.

25. Applicants state that there are no conflicts between the Contract owners of Separate Accounts and participants under the Plans with respect to the state insurance commissioners' veto powers over investment objectives. The basic premise of shareholder voting is that not all shareholders may all agree with a particular proposal. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their Separate Accounts out of one Fund and invest in another. Complex and time-consuming transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Plans can make the decision quickly and redeem their shares from a Fund and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts, or, as is the case with most Plans, even hold cash pending a suitable investment. Based on the Foregoing, Applicants represent that even should the interests of Contract owners and Plans conflict, thru conflicts can be resolved almost immediately because the trustees of the Plans can, independently, redeem shares out of the Fund.

26. Applicants state that no one investment strategy can be identified as appropriate to a particular insurance product or to a Plan. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. Applicants further state that a Fund supporting even one type of insurance product must accommodate these diverse factors in order to attract and retain purchasers. Applicants also state that permitting mixed and shared funding will provide economic support for the continuation of the Funds. In addition, Applicants assert that permitting mixed and shared funding will facilitate the establishment of additional Funds serving diverse goals.

27. Applicants assert that various factors have kept more insurance companies from offering variable annuity and variable life insurance contracts. Applicants state that these factors include the costs of organizing and operating a fund medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of name recognition by the public of certain insurers as investment experts. Applicants assert that use of the Funds as common investment mediums for variable contracts would reduce or eliminate these concerns.

28. Applicants also submit that mixed and shared funding should provide benefits to Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Participating Insurance Companies will benefit not only from the investment and administrative expertise of Prudential, PIC, and Jennison, but also from the cost efficiencies and investment flexibility afforded by a larger pool of assets. Mixed and shared funding also would permit a greater amount of assets available for investment by the Funds, thereby promoting economies of scale, by permitting increased safety through greater diversification and by making the addition of new series more feasible. Therefore, making the Funds available for mixed and shared funding will encourage more insurance companies to offer variable contracts, and this should result in increased competition with

respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants assert that the sale of Fund shares to Plans also can be expected to increase the amount of assets available for investment by the Funds and thus promote economies of scale and greater diversification.

29. Applicants assert that they do not believe that mixed and shared funding and sales to qualified Plans will have any adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Directors of each Fund (''Board'') will consist of persons who are not ''interested persons'' thereof, as defined by Section 2(a)(19) of the 1940 Act and rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any director or directors, then the operation of this condition shall be suspended: (a) for a period of 45 days, if the vacancy or vacancies may be filled by the remaining directors; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) of such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Fund for the existence of any material irreconcilable conflict between the interests of the Contract owners of all Separate Accounts and of the Plan participants investing in the Fund and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Fund are being managed; (e) a difference in voting instructions given by variable annuity Contract owners, variable life insurance Contract owners and trustees of Plans; (f) a decision by an insurer to disregard the voting instructions of Contract owners; or (g) if applicable, decision by a Plan to disregard voting instructions of Plan participants.

3. Participating Insurance Companies, Prudential (or any other investment adviser of the Fund), and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of the Fund (collectively, the ''Participants'') will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever Contract owner voting instructions are disregarded, and if pass-through voting is applicable, an obligation of each Plan to inform the Board whenever it is determined to disregard Plan participants' voting instructions. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all Participating Insurance Companies investing in the Fund under their agreements governing participation in the Fund, and Plans under their participation agreements, and such agreements shall provide that these responsibilities will be carried out with a view only to the interests of Contract owners and, if applicable, Plan participants.

4. If a majority of the Board, or a majority of its disinterested directors, determine that a material irreconcilable conflict exists with respect to a Fund, the relevant Participating Insurance Companies and Plans will, at their own expense and the extent reasonably practicable (as determined by a majority of the disinterested directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the Fund, and reinvesting such assets in a different investment medium, which may include another Fund, or submitting the question of whether such segregation should be implemented to a vote of all affected Contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.,* variable annuity or variable life insurance Contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected Contract owners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contract owners' voting instructions, and that decision represents a minority position or would preclude a majority vote, then that insurer may be required, at the Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Plan's decision to disregard Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Plan may be required, at the Fund's election, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility of taking remedial action in the event of a Board determination of material irreconcilable conflict and bearing the cost of such remedial action will be a contractual obligation of all Participating Insurance Companies and Plans under their agreements governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of Contract owners and, if applicable, Plan participants.

5. For purposes of Condition 4, a majority of the disinterested directors of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or Prudential (or any other investment adviser of a Fund) be required to establish a new funding medium for any Contract. No Participating Insurance Company shall be required by Condition 4 to establish a new funding medium for any Contract if a majority of Contract owners materially and adversely affected by the material irreconcilable conflict vote to decline such offer. No Plan shall be required by Condition 4 to establish a new funding medium for such Plan if: (a) a majority of Plan participants materially and adversely affected by the material irreconcilable conflict vote to decline such offer; or (b) pursuant to governing Plan documents and applicable law, the Plan makes such decision without Plan participant vote.

6. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to all Contract owners so long as the Commission continues to interpret the 1940 Act to require pass-through voting for Contract owners.

Accordingly, Participating Insurance Companies will vote shares of the Funds held in their separate accounts in a manner consistent with voting instructions timely received from Contract owners. In addition, each Participating Insurance Company will vote shares of the Fund held in its separate accounts for which it has not received timely voting instructions as well as shares of the Funds which the Participating Insurance Company itself owns, in the same proportion as those shares for which voting instructions from Contract owners are timely received. Participating Insurance Companies will be responsible for assuring that each of their separate accounts investing in each Fund calculates voting privileges in a manner consistent with other Participating Insurance Companies investing in that Fund. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in each Fund will be a contractual obligation of all Participating Insurance Companies under the agreements governing their participation in that Fund.

8. Each Plan will vote as required by applicable law and governing Plan documents.

9. All reports of potential or existing conflicts received by a Board, and all Board actions with regard to: (a) determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

10. Each Fund will notify all Participants in that Fund that disclosure in separate account prospectuses regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that: (a) the Fund is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for qualified pension and retirement plans; (b) because of differences of tax treatment and other considerations, the interests of various Contract owners participating in the Fund and the interests of Plans investing in the Fund may conflict; and (c) the Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken.

11. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Fund). In particular, each Fund either will provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Funds are not one of the trusts described in Section 16(c)), as well as Section 16(a) of the 1940 Act and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors and with whatever rules the Commission may promulgate with respect thereto.

12. If and to the extent that Rules 6e–2, 6e–3(T) under the 1940 Act are amended, or if Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules thereunder, with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds and/or Participating Insurance Companies, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent applicable.

13. The Participants no less than annually, shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials and data to the Board when it so reasonably requests, shall be a contractual obligation of all Participants under the agreements governing their participation in the Fund.

14. If a Plan should become a holder of 10% or more of the assets of a Fund, such Plan will execute a participation agreement with the Fund which will include the conditions set forth herein, to the extent applicable. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of any Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3320 Filed 2–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26974]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

February 5, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the applications(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 1, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarants(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After March 1, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Roanoke Gas Company, et al. (70–9391)

Roanoke Gas Company (''Roanoke Gas''), an exempt Virginia gas public utility holding company,[1] and its wholly owned nonutility subsidiary

[1] Roanoke Gas claims exemption from regulation under section 3(a) in accordance with rule 2 under the Act.

company, RGC Resources, Inc. (''Resources'') (together, ''Applicants''), both located at 519 Kimball Avenue, N.E., Roanoke, Virginia 24016, have filed an application under sections 9(a)(2) and 10 of the Act.

Roanoke Gas, itself a gas public utility company, is engaged in the retail distribution and sale of natural gas serving approximately 53,625 customers in the State of Virginia. It has one direct utility subsidiary, Bluefield Gas Company (''Bluefield''), which provides natural gas service to approximately 4,100 customers located in and around Bluefield, West Virginia. Bluefield has one gas utility subsidiary, Commonwealth Public Service Corporation (''Commonwealth''), which serves approximately 925 customers in and around Bluefield, Virginia.[2]

Resources proposes to acquire all of the outstanding shares of common stock of Roanoke Gas, Bluefield and Commonwealth. Following the consummation of the proposed transactions, Resources states that it will file under rule 2 of the Act for an exemption under section 3(a)(1) of the Act from regulation under all of the Act's provisions, except section 9(a)(2).

Under an agreement and plan of merger and reorganization to be entered into between Roanoke Gas and Resources (''Plan''), Roanoke Gas would become a subsidiary of Resources by merging with an acquisition subsidiary of Resources (''Acquisition'') and converting Acquisition's common stock into Roanoke Gas common stock. The outstanding shares of Roanoke Gas common stock would then be converted, on a share-for-share basis, into the right to receive shares of Resources common stock, $5.00 par value, on the effective date of the merger. Bluefield would transfer all of the common stock of Commonwealth to Roanoke Gas in the form of a noncash dividend. Commonwealth then will be merged into Roanoke Gas. Finally, Roanoke Gas would transfer all of the common stock of Bluefield to Resources in the form of a noncash dividend.

In addition to its utility subsidiaries, Roanoke Gas also owns Diversified Energy Company (''Diversified''), a nonutility subsidiary company that distributes propane gas and related products and markets natural gas to large industrial customers. Under the Plan, Roanoke Gas would transfer all of the common stock of Diversified to Resources in the form of a noncash dividend. After the merger and reorganization are consummated, Resources will directly own Roanoke Gas, Bluefield and Diversified.

The Plan requires the approval of the Roanoke Gas shareholders at the annual meeting of shareholders on February 8, 1999. In addition, the plan is subject to the approval of the Virginia State Corporation Commission and the Public Service Commission of West Virginia.

Applicants assert that once the Plan is implemented, Resources will be a public utility holding company entitled to an exemption under section 3(a)(1) of the Act, because Roanoke Gas will be predominantly intrastate in character and will carry on its business substantially in the state of Virginia. The Applicants claim that Roanoke Gas will be the only utility subsidiary from which Resources derives a material part of its income. In this regard, the Applicants state that for the annual period ended September 30, 1998 Bluefield provided 8.4% of Roanoke Gas' operating revenues and 4.3% of its net income.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3404 Filed 2–10–99; 8:45 am]

BILLING CODE 8010–01–M

[2] Bluefield claims exemption from regulation under section 3(a) in accordance with rule 2 under the Act.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23683; 812–11432]

Salomon Smith Barney Inc.; Notice of Application

February 5, 1999.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1) of the Act, under section 6(c) of the Act for an exemption from section 14(a) of the Act, and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicant, Salomon Smith Barney Inc. (''Salomon Smith Barney''), requests an order to amend a prior order that exempts all existing DECS Trusts and future trusts that are substantially similar and for which Salomon Smith Barney Inc. (''Salomon Brothers'') serves as principal underwriter (''Salomon-Sponsored Trusts'') from certain provisions of sections 12(d)(1), 14(a) and 17(a) of the Act (''Prior Order''),[1] which is limited by its terms to Salomon Brothers and to Salomon-Sponsored Trusts. Applicant requests an amendment to extend the relief granted in the Prior Order to Salomon Smith Barney, a successor entity resulting from the merger of Smith Barney Inc. (''Smith Barney'') and Salomon Brothers, and any DECS Trust or other substantially similar trust for which Smith Barney (''Smith Barney-Sponsored Trusts'') or Salomon Smith Barney (''SSB-Sponsored Trusts'') has served or will serve as principal underwriter.[2]

FILING DATE: The application was filed on January 28, 1998. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 1, 1999, and should be accompanied by proof of service on applicant, 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 may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Mary Kay Frech, Branch Chief, at (202) 942–0546 (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 from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. Salomon Smith Barney is a securities broker-dealer registered under

[1] *Salomon Brothers Inc.*, Investment Company Act Release Nos. 22837 (Sep. 30, 1997) (notice) and 22862 (Oct. 21, 1997) (order).

[2] Smith Barney, Salomon Smith Barney, Smith Barney-Sponsored Trusts and SSB-Sponsored Trusts have relied on the Prior Order since March 3, 1998. *See* Salomon Brothers Inc. and Smith Barney Inc. (*pub. avail.* Mar. 3, 1998).

the Securities Exchange Act of 1934. Prior to November 28, 1997, Salomon Brothers was wholly owned by Salomon Inc and Smith Barney was wholly owned by Travelers Group Inc. (''Travelers Group''), which were unaffiliated holding companies. On that date, pursuant to an agreement and plan of merger, a newly formed, wholly-owned subsidiary of Travelers Group merged with and into Salomon Inc (which owned 100% of Salomon Brothers) which became a wholly-owned subsidiary of Travelers Group and was renamed Salomon Smith Barney Holdings Inc. (''SSB Holdings''). Immediately thereafter, Smith Barney Holdings Inc., another wholly-owned subsidiary of Travelers Group and the 100% owner of Smith Barney, was merged into SSB Holdings. As a result, Salomon Brothers and Smith Barney became both wholly-owned subsidiaries of Travelers Group. Following that merger, SSB Holdings conducted the underwriting of DECS Trusts and similar trusts through Smith Barney rather than through Salomon Brothers.[3]

2. On September 1, 1998, Salomon Brothers was merged into Smith Barney, creating Salomon Smith Barney to conduct the combined operations of the previously separate entities. Salomon Smith Barney is the legal successor by merger to Salomon Brothers.

3. On October 21, 1997, the Commission issued the Prior Order, which is limited by its terms to Salomon Brothers and any Salomon-Sponsored Trusts. The Prior Order exempts (a) all Salomon-Sponsored Trusts from section 12(d)(1) of the Act to the extent necessary to permit other registered investment companies to own more than 3% of the total outstanding voting stock of any Salomon-Sponsored Trust and other investment companies having the same investment adviser, and companies controlled by such investment companies, to own more than 10% of the securities of any Salomon-Sponsored Trust, (b) all Salomon-Sponsored Trusts from section 14(a) of the Act to the extent necessary to permit the Trusts to be organized without $100,000 in net worth, and (c) all Salomon-Sponsored Trusts and Salomon Brothers from section 17(a) of the Act to the extent necessary to permit Salomon-Sponsored Trusts to purchase U.S. Government securities from Salomon Brothers at the time of a Salomon-Sponsored Trust's initial issuance of securities.

4. The request order would extend the relief granted in the Prior Order to Salomon Smith Barney and any Smith Barney-Sponsored Trusts and SSB-Sponsored Trusts.

Applicant's Condition

Salomon Smith Barney will be bound by all of the conditions of the Prior Order and Smith Barney-Sponsored Trusts and SSB-Sponsored Trusts seeking to rely on the amended order will be substantially as described in the Prior Order and will comply with all conditions therein.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3406 Filed 2–10–99; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* note 2, *supra.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23682; 812–11498]

Stephens Group, Inc. et al.; Temporary Order and Notice of Application

February 5, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for permanent order under section 9(c) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to a securities-related injunction entered in 1978, until the Commission takes final action on the application for a permanent order or, if earlier, April 5, 1999. Applicants also have requested a permanent order.

APPLICANTS: Stephens Group, Inc. (''Stephens''), Stephens Inc. (''SI''), and Jackson T. Stephens (''Mr. Stephens'').

FILING DATE: The application was filed on February 5, 1999.

HEARING OR NOTIFICATION OF 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 March 1, 1999 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. An order granting the application will be issued unless the Commission orders a hearing or extends the temporary exemption.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicants, 111 Center Street, Little Rock, AR 72201.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Mary Kay Frech, Branch Chief, at (202) 942–0564, Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. Stephens is a Arkansas corporation formed in 1933. Stephens, directly and through its subsidiaries, engages in a broad-based merchant and investment banking business. Stephens Holding Company (''Stephens Holding''), a wholly owned subsidiary of Stephens, owns SI, a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'') and an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act'').

2. Mr. Stephens served as Stephens' chief executive officer and chairman of the board of directors from 1956 until 1986. Mr. Stephens currently serves as chairman of the board of directors of Stephens and Stephens Holding. Mr. Stephens is not an officer or director of SI.[1]

3. SI has served as principal underwriter and administrator for registered investment companies (''funds'') since 1988. SI currently serves in those capacities for three sets of bank proprietary funds: Stagecoach Funds advised by Wells Fargo Bank, Masterworks Funds advised by Barclays Global Investors, and Nations Funds advised by NationsBanc Advisors, Inc., a wholly-owned subsidiary of Bank of America (collectively, ''Bank Funds''). The Bank Funds include 119 individual funds with total assets in excess of $71 billion.

4. It is anticipated that, in connection with a recent merger between Wells Fargo & Company and Norwest Corporation, certain Stagecoach Funds

[1] Mr. Stephens is a registered representative with SI and would be considered an employee and associated person of SI.

may be merged with certain funds advised by subsidiaries of Norwest Corporation. In addition, in connection with merger of BankAmerica and NationsBank, Pacific Horizon Funds, the proprietary funds of BankAmerica, may be merged with Nations Funds. The two mergers are collectively referred to in this notice as the ''Banks Funds Merger.'' SI has been proposed to serve as a principal underwriter and administrator to the merged funds.

5. In 1997, Stephens Capital Management, a division of SI, also began serving as a subadviser to Stephens Intermediate Bond Fund, a fund advised by Diversified Investment Advisors, Inc. (''Subadvised Fund''). The Subadvised Fund has approximately $21 million in assets.

6. On March 18, 1978, Stephens consented to judgment of permanent injunction issued by the U.S. District Court for the District of Columbia in a matter brought by the Commission (''1978 Injunction'').[2] The Commission alleged that Stephens and Mr. Stephens acted as part of a group of persons, within the meaning of section 13(d) of the Exchange Act, for the purpose of acquiring, holding or disposing of the common stock of Financial General Bankshares Inc., a bank holding company, and did not make the filings required by section 13(d) of the Exchange Act. In consenting to the 1978 Injunction, Stephens undertook, among other things, to implement and maintain certain procedures designed to prevent future violations of section 13(d) of the Exchange Act. SI disclosed the 1978 Injunction on both its Form ADV filed under the Advisers Act and Form BD filed under the Exchange Act.[3]

7. Applicants state that they did not seek an order under section 9(c) around the time of the 1978 Injunction because SI did not begin to engage in any fund-related activities until 1988. Applicants also state that they did not become aware of the section 9(a) violation until late November 1998, when the violation was discovered by counsel in preparation for the Bank Funds Merger.

8. Since the 1978 Injunction, Stephens has been involved in a number of securities related administrative proceedings with the Commission, state securities regulators and self-regulatory organizations. Three of these proceedings involved SI's investment advisory and fund-related activities. In 1997, SI consented to the imposition of a cease-and-desist order by the Commission that found, among other things, that SI violated the Advisers Act by failing to provide its clients with adequate disclosure concerning principle transactions in securities.[4] In 1996, SI entered into a consent order with the National Association of Securities Dealers, Inc. (''NASD'') accepting, among other things, a finding by the NASD that SI failed to exercise reasonable supervision over its representatives in connection with wholesale marketing of two closed-end funds.[5] In 1995, SI entered into an administrative settlement order with the Securities Division of the Massachusetts Secretary of State in connection with SI's failure not to sell shares of an open-end fund to 23 purchasers in Massachusetts prior to registration in Massachusetts.[6] Applicants state that none of the other administrative proceedings, all of which are listed in an exhibit to the application, involved Stephens' investment advisory or fund-related activities.

Applicants' Legal Analysis

1. Section 9(a) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as a principal underwriter or investment adviser for a registered investment company. Applicants state that, as a result of the 1978 Injunction, Stephens and Mr. Stephens may be prohibited by section 9(a) from serving as a principal underwriter or investment adviser to funds.

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the conduct of applicant has been such as not to make it against the public interest or the protection of investors to grant the application.

3. Applicants seek temporary and permanent orders under section 9(c) with respect to the 1978 Injunction to permit SI to continue to serve as principal underwriter and investment adviser to funds, including the Bank Funds and the Subadvised Fund. As noted above, applicants state that they did not seek an order under section 9(c) around the time of the 1978 Injunction because SI did not begin to engage in any fund-related activities until 1988. Applicants also state that they did not become aware of the section 9(a) violation until late November 1998, when the violation was discovered by counsel in preparation for the Bank Funds Merger.

4. SI has undertaken to develop procedures designed to prevent violations of section 9(a) by SI and its affiliated persons. Applicants also have agreed that, before any permanent relief may be granted pursuant to the application, SI's general counsel must attest that he has reviewed SI's compliance policies and procedures relating to compliance with section 9(a); that he reasonably believes that the policies and procedures have been fully implemented; and that the policies and procedures are designed reasonably to prevent violations of section 9(a) by SI and its affiliated persons.

5. Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe. Applicants assert that SI's inability to act as a principal underwriter to the Bank Funds and as a subadviser to the Subadvised Fund would result in the Funds and their shareholders facing potentially severe hardships. Applicants state that the Bank Funds would incur significant time, effort and expense to replicate the extensive selling network established by SI, and the disruption may have a significant effect on the management and expense ratios of the Bank Funds. Applicants also state that the Subadvised Fund would face similar consequences if required to change the subadviser. Applicants assert that representatives of the Bank Funds and the Subadvised Funds have expressed satisfaction with the services provided by SI and a desire that SI continue to provide the services.

6. Applicants state that the boards of directors, including the disinterested directors, of the Bank Funds and the Subadvised Funds (''Boards'') have been apprised of Stephens' section 9(a) violation. Applicants represent that before any permanent relief is granted, the Boards will consider whether retaining SI as a principal underwriter (in the case of Bank Funds) or as a subadviser (in the case of the Subadvised Fund) is in the best interests of the Funds and their shareholders. Applicants further represent that the boards of directors of the funds with which certain of the Bank Funds are

[2] *SEC* v. *BCCI, et al.* (U.S.D.Ct., D.C. March 18, 1978) (Final Judgment of Permanent Injunction and Other Equitable Relief).

[3] In 1980, Stephens and Mr. Stephens also sought and received relief from the Commission removing a bar arising from the 1978 Injunction on their ability to rely on Regulation A under the Securities Act of 1933. Letter from George A. Fitzsimmons, Secretary, SEC to Larry W. Burks (Nov. 17, 1980).

[4] Advisers Act Release No. 1666 (Sept. 16, 1997).

[5] Letter of Acceptance, Waiver and Consent No. C059600 (Oct. 14, 1996).

[6] In the Matter of Stephens, Inc., No. E–94–108 (Feb. 16, 1995) (settlement order).

expected to merge will consider the 1978 Injunction in determining whether to approve the proposed mergers.

7. Applicants assert that if SI were prohibited from providing services to the Bank Funds and the Subadvised Fund, the effect on SI's business and employees would be severe. Applicants state that SI has committed substantial resources over the past 10 years to establishing expertise in servicing funds, has developed extensive selling networks, and has over 80 employees dedicated to providing fund distribution and subadvisory services.

8. Applicants also assert that their conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a). Applicants note that over 20 years have passed since the 1978 Injunction. Applicants also note that the 1978 Injunction did not in any way involve fund-related activities. Applicants further state that since the 1978 Injunction, neither SI nor any affiliated person of SI has engaged in conduct that would result in disqualification under section 9(a) of the Act. Applicants assert that SI has implemented policies and procedures designed to improve its securities law compliance.

9. Applicants state that Mr. Stephens has at no time in the past been involved in SI's fund-related activities and will not be involved in that business in the future. Applicants also note that one of the conditions to the requested relief provides that Mr. Stephens will not be involved in SI's business of providing services to funds, and requires applicants to develop appropriate procedures.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order granting the requested relief:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

2. Before any permanent relief is granted pursuant to the application, SI's General Counsel will attest that he has reviewed SI's compliance policies and procedures relating to compliance with section 9(a) of the Act; that he reasonably believes that the policies and procedures have been fully implemented; and that the policies and procedures are designed reasonably to prevent violations of section 9(a) by SI and its affiliated persons.

3. Mr. Stephens will not be involved in SI's business of providing services to registered investment companies. Applicants will develop procedures designed reasonably to assure compliance with this condition.

Temporary Order

The Division has considered the matter and, without necessarily agreeing with all of the facts represented or all of the arguments asserted by applicants, finds, in accordance with 17 CFR 200.30–5(a)(7), that it appears that (i) the prohibitions of section 9(a), as applied to applicants, may be unduly or disproportionately severe, (ii) applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the temporary exemption, and (ii) granting the temporary exemption would protect the interests of the investment companies served by applicants by allowing time for the orderly consideration of the application for permanent relief.

Accordingly, *it is hereby ordered*, under section 9(c), that applicants are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the 1978 Injunction, subject to the conditions in the application, until the Commission takes final action on the application for a permanent order or, if earlier, April 5, 1999.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–3319 Filed 2–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Washington Real Estate Investment Trust, Shares of Beneficial Interest, $0.01 Par Value) File No. 1–6622

February 5, 1999.

Washington Real Estate Investment Trust (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security of the Company has been listed for trading on the Amex and, pursuant to a Registration Statement on Form 8–A which became effective on December 4, 1998, on the New York Stock Exchange, Inc. (''NYSE''). Trading of the Company's Security on the NYSE commenced at the opening of business on January 4, 1999, and concurrently therewith the shares were suspended from trading on the Amex.

The Company has complied with Rule 18 of the Amex by filing with the Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Trustees authorizing the withdrawal of its Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Security from listing on the Amex, the Company considered the potential of increasing its shareholder base and increasing the liquidity of its shares by listing its shares on the NYSE. The Exchange has informed the Company that it has no objection to the withdrawal of the Conmpany's Security from listing on the Amex.

The Company's application relates solely to the withdrawal from listing of the Company's Security from the Amex and shall have no effect upon the continued listing of the Security on the NYSE. By reason of Section 12(b) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission and the NYSE.

Any interested person, may on or before, February 26, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the

Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–3405 Filed 2–10–99; 8:45 am]

BILLING CODE 8010–01–M

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: ''Applications for Business Loans''.

Form No's: 4–L, 4, 4I, 4SCH–A, 4–SHORT, EIB–SBA–841–1.

Description of Respondents: Applicants for an SBA Business.

Annual Responses: 60,000.

Annual Burden: 1,187,000.

Comments: Send all comments regarding this information collection to, Sandra Johnston, Program Assistant, Office of Financial Assistance, Small Business Administration, 409 3rd Street S.W., Suite 8300, Washington, D.C. 20416. Phone No: 202–205–7528.

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 K. White,

Chief, Administrative Information Branch.

[FR Doc. 99–3321 Filed 2–10–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5041]

National Boating Safety Advisory Council; Charter Renewal

AGENCY: Coast Guard, DOT.

ACTION: Notice of charter renewal.

SUMMARY: The Secretary of Transportation has renewed the charter for the National Boating Safety Advisory Council (NBSAC) to remain in effect for a period of 2 years from December 20, 1998 until December 20, 2000. NBSAC is a federal advisory committee constituted under 5 U.S.C. App. 2. Its purpose is to provide advice and make recommendations to the Coast Guard on regulations and other major recreational boating safety matters.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Mr. Albert J. Marmo, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285. For questions on viewing the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, 202–366–9329.

Dated: February 5, 1999.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 99–3420 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5067]

Commercial Fishing Industry Vessel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) and its four Subcommittees will meet to discuss various issues relating to the safety of commercial fishing vessels. These meetings will be open to the public.

DATES: CFIVAC will meet on Monday, March 22, 1999, from 8 a.m. to 4:30 p.m. The Subcommittees on Communications, Data, Regionalization and Equipment will meet on Tuesday, March 23, 1999, from 8 a.m. to 4:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before February 22, 1999. Requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before February 22, 1999.

ADDRESSES: CFIVAC will meet in the conference room of U.S. Coast Guard Marine Safety Office Tampa, 155 Columbia Dr., Tampa, FL. The Subcommittees will meet in the same room or other offices at the same address. Send written material and requests to make oral presentations to Commander Mark A. Prescott, Commandant (G–MSO–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Mark A. Prescott, Executive Director of CFIVAC, or Lieutenant Commander Randy Clark, Assistant to the Executive Director, telephone 202–267–1181, fax 202–267–4570. For questions on viewing, or submitting material to, the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

Commerical Fishing Industry Vessel Advisory Committee (CFIVAC). The agenda includes the following:

(1) Welcome, administrative issues.
(2) Review minutes of last meeting.
(3) Opening remarks from RADM Robert North.
(4) Presentation on the regional aspects of the industry.
(5) Presentation and discussion on Coast Guard Task Force report on Fishing Vessel Casualties in 1999.
(6) Subcommittees review Task Statements.
(7) Tour of local fishing boats.

Subcommittees on Communications, Data, Regionalization and Equipment. The agenda includes the following:

(1) Subcommittees to develop priorities and goals for each Task Statement.
(2) Review and discuss the work completed by each work group.
(3) Presentation by inflatable personal flotation device manufacturers.
(4) News from Coast Guard and Industry.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral

presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than February 22, 1999. Written material for distribution at a meeting should reach the Coast Guard no later than February 22, 1999. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than February 22, 1999.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: February 4, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–3366 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–01]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions; correction.

SUMMARY: This document contains a correction to a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) published in the **Federal Register** on January 14, 1999 (64 FR 2533).

FOR FURTHER INFORMATION CONTACT: Cheri Jack, (202) 267–7271.

Correction of Publication

In petitions for exemption FR Doc. 99–857 on page 2533 in the **Federal Register** issue of January 14, 1999, make the following correction:

1. On page 2533, in column 1, in the heading, on line 3 from the top, correct ''Summary Notice No. PE–99–28'' to read ''Summary Notice No. PE–99–01''.

Issued in Washington, DC, on February 5, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–3354 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–02]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions; correction.

SUMMARY: This document contains a correction to a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) published in the **Federal Register** on January 14, 1999 (64 FR 2532).

FOR FURTHER INFORMATION CONTACT: Cheri Jack, (202) 267–7271.

Correction of Publication

In petitions for exemption FR Doc. 99–856 on page 2532 in the **Federal Register** issue of January 14, 1999, make the following correction:

1. On page 2532, in column 1, in the heading, on line 3 from the top, correct ''Summary Notice No. PE–99–29'' to read ''Summary Notice No. PE–99–02''.

Issued in Washington, DC on February 5, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–3355 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–03]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions; correction.

SUMMARY: This document contains a correction to a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) published in the **Federal Register** on January 21, 1999 (64 FR 3332).

FOR FURTHER INFORMATION CONTACT: Cheri Jack, (202) 267–7271.

Correction of Publication

In petitions for exemption FR Doc. 99–1354 on page 3332 in the **Federal Register** issue of January 21, 1999, make the following correction:

1. On page 3332, in column 1, in the heading, on line 3 from the top, correct ''Summary Notice No. PE–99–30'' to read ''Summary Notice No. PE–99–03''.

Issued in Washington, DC on February 5, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–3356 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; Certification Task Force

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given that a plenary meeting of the RTCA Certification Task Force will be held February 26, 1999, starting at 10:00 a.m., at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC.

The task force has been reviewing the ''end-to-end'' certification of CNS (Communication, Navigation, Surveillance)/Air Traffic Management (ATM) systems and, keeping safety as a first priority, developing recommendations for improving the timeliness and reducing the costs of certification. This meeting will confirm consensus for the recommendations developed by the task force.

Attendance is open to the interested public but limited to space availability. With the approval of the Designated Federal Official, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact RTCA at (202) 833–9339 (phone), (202) 833–9434 (fax), or dclarke@rtca.org (e-mail). members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 5, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–3358 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Public Meeting; Satellite-Based Navigation User Forum

AGENCY: Federal Aviation Administration, Office of System Architecture and Investment Analysis.

SUMMARY: The Federal Aviation Administration (FAA) Office of System Architecture and Investment Analysis (ASD) will hold a forum to obtain information from the aviation user community as part of the investment analysis process to determine navigation alternatives as we transition to a satellite-based navigation (SatNav) infrastructure.

DATES: The SatNav User Forum will be held on February 25, 1999, at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC., in the third-floor auditorium from 8:30 a.m. to 5:30 p.m. Time will be made available for specific follow-on meetings, as necessary, on the following day.

FOR FURTHER INFORMATION CONTACT: Ms. Millie Butler-Harris, Investment Analysis and Operations Research, ASD–400, at (202) 358–5399 and via e-mail at millie.butler-harris@faa.gov or Dr. Robert Rovinsky, the SatNav Investment Analysis Team Lead, ASD–410, at (202) 358–5227 and via e-mail at robert.rovinsky@faa.gov.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration is reviewing its plan to transition to a totally satellite-based navigation (SatNav) infrastructure. A SatNav User Forum is planned to obtain input from the aviation community as the FAA considers alternatives and develops a business case for a particular approach to navigation within the Nation's airspace.

At this meeting, the FAA will provide: an overview of the SatNav Investment Analysis Plan and Approach, an Architecture Perspective, and a Review of Candidate Alternatives. A panel discussion and breakout sessions will further explore user input and exchange of information. Additional forums will be scheduled to review the alternatives analysis (in March or April 1999) and to review the economic analysis and preliminary findings (in April or May 1999). The FAA investment analysis team will incorporate user information from these forums into the investment analysis process leading to an FAA Joint Resources Council investment decision by the end of June 1999.

The public is invited to attend the meetings as observers and/or to provide comment during the breakout sessions. Requests to attend this meeting and to obtain information should be directed to the contact persons listed above. Additional information will be posted on the internet after February 12 at www.faa.gov/asd.

Issued in Washington, DC, on February 5, 1999.

Janice L. Peters,

Federal Official.

[FR Doc. 99–3357 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC Approvals and Disapprovals. In January 1999, there were nine applications approved. Additionally, three approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Syracuse Department of Aviation, Syracuse, New York.

Application Number: 98–03–U–00–SYR.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue to be Used in this Decision: $3,322,500.

Charge Effective Date: October 1, 1995.

Estimated Charge Expiration Date: February 1, 2001.

Class of Air Carriers not Required to Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Land acquisition for parallel runway 10L/28R.

Decision Date: January 7, 1999.

For Further Information Contact: Robert Levine, New York Airports District Office, (516) 227–3807.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.

Application Number: 99–06–U–00–MDW.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue to be Used in This Decision: $149,227,344.

Charge Effective Date: August 1, 1998.

Estimated Charge Expiration Date: October 1, 2017.

Class of Air Carriers not Required to Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: Midway terminal development.

Decision Date: January 13, 1999.

For Further Information Contact: Philip Smithmeyer, Chicago Airports District Office, (847) 294–7335.

Public Agency: City of Midland, Texas.

Application Number: 99–03–C–00–MAF.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $2,250,000.

Earliest Charge Effective Date: July 1, 2016.

Estimated Charge Expiration Date: January 1, 2018.

Class of Air Carriers not Required to Collect PFC'S: Part 135 air charters who operate aircraft with seating capacity of less than 100 passengers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Midland International Airport.

Brief Description of Project Approved for Collection and use: Construct air cargo taxiway/ramp and access.

Decision Date: January 13, 1999.

For Further Information Contact: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

Public Agency: City of Riverton, Wyoming.

Application Number: 98–02–U–00–RIW.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue to be Used in this Decision: $371,485.

Charge Effective Date: October 1, 1995.

Estimated Charge Expiration Date: December 1, 2004.

Class of Air Carriers not Required to Collect PFC's: No change from previous decision.

Brief Description of Project Approved for Use: New terminal development.

Decision Date: January 13, 1999.

For Further Information Contact: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Capital Region Airport Authority, Lansing, Michigan.

Application Number: 98–03–C–00–LAN.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $3,306,343.

Earliest Charge Effective Date: June 1, 2002.

Estimated Charge Expiration Date: July 1, 2005.

Class of Air Carriers not Required to Collect PFC'S: Part 135 air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Capital City Airport.

Brief Description of Projects Approved for Collection and use:

Terminal improvements.
Terminal improvements—commuter walkways.
Upgrade landside signage.
Upgrade security access system.
Rehabilitate air carrier apron.
Rehabilitate runway 10R/28L and taxiway B.
Aircraft rescue and firefighting (ARFF) building expansion.
Aircraft replacement ARFF vehicle.
National pollutant discharge elimination system permit and mitigation.
Acquire Vector property.
Rehabilitate and extend west access road.
PFC consultant fees.

Decision Date: January 15, 1999.

For Further Information Contact: Jack Roemer, Detroit Airports District Office, (734) 487–7282.

Public Agency: Central West Virginia Regional Airport Authority, Charleston, West Virginia.

Application Number: 98–05–U–00–CRW.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue to be Used in This Decision: $269,678.

Charge Effective Date: November 1, 1998.

Estimated Charge Expiration Date: February 1, 2001.

Class of Air Carriers not Required to Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for use:

Rehabilitate runway 5/23.
Replacement of baggage handling systems.
Rehabilitation of loop road.
Rehabilitate taxiway C.

Decision Date: January 22, 1999.

For Further Information Contact: Elonza Turner, Beckley Airports Field Office, (304) 252–6216.

Public Agency: Dubuque Airport Commission, Dubuque, Iowa.

Application Number: 99–04–C–00–DBQ.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $171,391.

Earliest Charge Effective Date: April 1, 1999.

Estimated Charge Expiration Date: November 1, 2000,

Class of Air Carriers not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Acquire quick response vehicle.
Environmental assessment for runway 18/36 extension.
Land acquisition for runway 18/36 extension.
Runway 18/36 extension engineering and grading.

Decision Date: January 25, 1999.

For Further Information Contact: Lorna Sandridge, Central Region Airports Division, (816) 426–4730.

Public Agency: County of San Luis Obispo, San Luis Obispo, California.

Application Number: 99–05–C–00–SBP.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $1,229,113.

Earliest Charge Effective Date: July 1, 2012.

Estimated Charge Expiration Date: July 1, 2015.

Class of Air Carriers not Required to Collect PFC's: Unscheduled Part 135 air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at San Luis Obispo County Airport-McChesney Field.

Brief Description of Projects Approved for Collection and Use:

Land acquisition.
Master plan environmental assessment and environmental impact report.

Decision Date: January 27, 1999.

For Further Information Contact: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

Public Agency: City of Rochester, Minnesota.

Application Number: 99–02–C–00–RST.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $3,912,987.

Earliest Charge Effective Date: April 1, 1999.

Estimated Charge Expiration Date: December 1, 2009.

Class of Air Carriers Not Required To Collect PFC'S: Non scheduled Part 135 air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Rochester International Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal improvements.
Extend runway 2/10.
Acquire snow removal equipment (SRE) [high speed plow].
Acquire SRE [front end loader with a wing and snow plow].
Update storm water protection plan.
PFC administration.

Decision Date: January 29, 1999.

For Further Information Contact: Sandra E. DePottey, Minneapolis Airports District Office, (612) 713–4350.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved new PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
92–01–C–02–GJT, Grand Junction, CO	01/05/99	$1,812,000	$1,812,000	03/01/98	03/01/98
96–02–U–01–GJT, Grand Junction, CO	01/05/99	1,812,000	1,812,000	03/01/98	03/01/98
92–01–C–01–UNV, State College, PA	01/22/99	1,495,974	1,657,146	02/01/99	06/01/99

Issued in Washington, DC. on February 5, 1999.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 99–3351 Filed 2–10–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5014]

Bridgestone/Firestone, Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Bridgestone/Firestone, Inc. (Bridgestone) has determined that certain 1998 tires of various sizes and brands are not in full compliance with 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New pneumatic tires for vehicles other than passenger cars,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Bridgestone has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S6.5 of FMVSS No. 119 states that each tire shall comply with the labeling requirements of 49 CFR Part 574 ''Tire Identification and Recordkeeping,'' such as the date code. Part 574, Tire Identification and Recordkeeping, establishes: (1) Tire Identification—the methodology that tire manufacturers, retreaders, new tire brand name owners, and retread tire brand name owners must use to identify tires for use on motor vehicles; and (2) recordkeeping—the methodology that tire dealers and distributors must use to record, on registration forms, the name and address of the tire(s) purchaser, along with the proper tire identification numbers.

On December 12, 1998, Bridgestone produced approximately 1,389 tires with an incorrect date code. The affected tires were marked incorrectly with a date code of ''509,'' instead of the correct date code of ''508.'' The tires were manufactured at Bridgestone's Oklahoma City Plant.

Bridgestone supports its application for inconsequential noncompliance by stating that all of tires manufactured in the affected sizes and brands meet all of the requirements, except the correct date code, of FMVSS No. 119. Bridgestone also noted that the primary purpose of the date code is to facilitate recalls. It stated that it would include the 509 code in any future recall of tires manufactured in its Oklahoma City plant during the 50th week of 1998.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 15, 1999.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: February 5, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–3365 Filed 2–10–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33712]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's rail line from milepost 885.2 at Kern Junction to milepost 1120.7 at Stockton Tower, a distance of 235.5 miles in the State of California.[1]

The transaction is scheduled to be consummated on or shortly after February 8, 1999.

The purpose of the trackage rights is to permit UP to use the BNSF trackage when UP's trackage is out of service for scheduled maintenance.[2]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33712, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–

[1] On February 1, 1999, UP filed a petition for exemption in STB Finance Docket No. 33712 (Sub-No. 1), *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein UP requests that the Board permit the proposed overhead trackage rights arrangement described in the present proceeding to expire on March 31, 1999. That petition will be addressed by the Board in a separate decision.

[2] UP and BNSF own and operate separate lines of railroad which are essentially parallel between Kern Junction and Stockton Tower.

0001. In addition, one copy of each pleading must be served on Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: February 4, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–3265 Filed 2–10–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 4, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 15, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1626.

Form Number: IRS Forms 1065–B and Schedule K–1.

Type of Review: Extension.

Title: U.S. Return of Income for Electing Large Partnerships (Form 1065–B); and Partner's Share of Income (Loss) From an Electing Large Partnership (Schedule K–1).

Description: Code sections 771–777 allow large partnerships to elect to file a simplified return which requires fewer items to be reported to partners.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 100.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1065–B	Schedule K–1
Recordkeeping	43 hr., 46 min	9 hr., 5 min.
Learning about the law or the form	17 hr., 50 min	7 hr., 20 min.
Preparing the form	28 hr., 48 min	11 hr., 31 min.
Copying, assembling and sending the form to the IRS	2 hr., 41 min.	

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 448,637 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–3371 Filed 2–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 4, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 15, 1999 to be assured of consideration.

Customs Service (CUS)

OMB Number: 1515–0106.

Form Number: None.

Type of Review: Extension.

Title: Entry of Articles for Exportation.

Description: This information is used by Customs to substantiate that the goods imported for exhibit have been approved for entry by the Department of Commerce.

Respondents: Business or other for-profit, Individuals or households. Not-for-profit institutions, Federal Government.

Estimated Number of Respondents/Recordkeepers: 40.

Estimated Burden Hours Per Respondent/Recordkeeper: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 530 hours.

OMB Number: 1515–0209.

Form Number: None.

Type of Review: Extension.

Title: Certificate of Compliance for Turbine Fuel Withdrawals.

Description: This information is collected to ensure regulatory compliance for Turbine Fuel Withdrawals to protect revenue collections.

Respondents: Business or other for-profit, Not-for-profit institutions

Estimated Number of Respondents: 240.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 240 hours.

Clearance Officer: J. Edgar Nichols, (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–3372 Filed 2–10–99; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

International Visitor Program

ACTION: Notice—Request for proposals.

SUMMARY: The Office of International Visitors (E/V)* of the United States

Information Agency's (USIA) Bureau of Educational and Cultural Affairs announces a competition for two assistance awards, Award A (to program between 100 and 250 participants) and Award B (to program between 750 and 1,000 participants). International Visitor (IV) program participants are current or potential foreign leaders. Each award is to develop and implement IV programs over the course of fiscal year 2000 (October 1, 1999—September 30, 2000). USIA is seeking proposals from public and private nonprofit organizations that are not already in communication with USIA regarding an FY–2000 assistance award from E/V. These organizations must meet the provisions described in IRS regulation 26 CFR 1.501© to apply for these awards. *[See Project Objectives, Goals, and Implementation (POGI) for definitions of program-related terminology].

The intent of this announcement is to provide the opportunity for two organizations to develop and implement a variety of IV program models. The winning applicants will function as national program agencies (NPA)* and work closely with USIA staff, who will guide the applicants through the variety of procedural, budgetary and/or programmatic issues that arise.

An organization can only win one award. Applicants should indicate on the proposal cover sheet after the reference number if they are bidding on Award A, Award B, or both. If bidding on both, two separate budgets must be submitted with the proposal.

IV program objectives are based on U.S. foreign policy and are designed to: (1) increase mutual understanding between the people of the U.S. and the people of other countries; and (2) provide substantive professional exchange between the foreign participants and their U.S. counterparts. Participants are current or potential foreign leaders in government, politics, media, education, science, labor relations, and other key fields. They are selected by officers of U.S. embassies overseas and approved by USIA staff in Washington, DC. Since the program's earliest inception in 1940, there have been more than 140,000 distinguished participants in the program. Almost 200 program alumni have subsequently become heads of state or government in their home countries.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.''

IV programs must conform with USIA requirements and guidelines outlined in the Solicitation Package. USIA programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number E/V–99–02.

To Request a Solicitation Package, Contact: The Office of International Visitors, Community Relations Division, E/VC, Room 266, U.S. Information Agency, 301 4th St., S.W., Washington, D.C. 20547, Tel: (202) 619–5234, 1–800–827–0804; Fax: (202) 619–4655, e-mail address: rfp@usia.gov

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand: The entire Solicitation Package may be received via USIA's ''Grants Information Fax on Demand System'', which is accessed by calling 202/401–7616. Please request a ''Catalog'' of available documents and order numbers when first entering the system. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals.

Bidders' Conference: USIA will host a Bidders' Conference on Thursday, March 4, 1999, at the USIA headquarters building in Washington, D.C., 301 4th St., S.W., from 9:00 a.m. to 5:00 p.m. Substantive questions about this RFP will be addressed at the conference. Interested applicants are asked to RSVP and submit questions by mail, fax, or e-mail to: The Office of International Visitors, Community Relations Division, E/VC, Room 266, U.S. Information Agency, 301 4th St., SW, Washington, D.C. 20547, Tel: (202) 619–5234; 1–800–827–0804; Fax: (202) 619–4655, e-mail address: rfp@usia.gov

Questions must be received by close of business Friday, February 19, 1999. To request a copy of written details of the Bidders' Conference, please contact the above address.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the proposal submission should be sent to: U.S. Information Agency, Ref.: E/V–99–02, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW, Washington, DC 20547.

Deadline For Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Thursday, April 1, 1999. Faxed or e-mailed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. Assistance awards will be effective on or about October 1, 1999.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support of Diversity'' section for specific suggestions on incorporating diversity into the total proposal.

Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Issue

The year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements, including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires that all organizations use Y2K compliant systems including hardward, software, and firmware. Systems must accurately

process data and dates (calculating, comparing, and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Qualification and Guidelines

Qualifications

1. Applicants must demonstrate four years of successful programming experience.
2. Applicants must demonstrate the ability to develop and administer IV programs.
3. Applicants must have a broad knowledge of international relations and U.S. foreign policy issues.
4. Applicants must have a broad knowledge of the United States and U.S. domestic issues.
5. Applicants must have an established resource base of programming contacts and the ability to keep the base continuously updated. This resource base should include speakers, thematic specialists, or practitioners in a wide range of professional fields in both the private and public sectors.
6. Applicants must demonstrate sound financial management.
7. Applicants must have a sound management plan to carry out the volume of work outlined in the POGI. This plan should include an appropriate staffing pattern and a work plan/time frame.

Requirement for Past Performance References

Instead of Letters of Endorsement, USIA will use past performance as an indicator of an applicant's ability to successfully perform the work. Tab E of the proposal must contain between three and five references from recently completed or ongoing work performed for professional exchange programs (may include the IV program). The references must contain the information outlined below. Please note that the requirements for submission of past performance information also apply to all proposed subcontractors when the total estimated cost of the subcontract is over $100,000.

At a minimum, the applicant will provide the following information for each reference:

- Name of the referenced organization
- Project name
- Project description
- Performance period of the contract/grant
- Amount of the contract/grant
- Technical contact person and telephone number for referenced organization
- Administrative contact person and telephone number for referenced organization

USIA may contact representatives from the organizations cited in the examples to obtain information on the applicant's past performance. USIA also may obtain past performance information from sources other than those identified by the applicant.

Personnel

Applicants must include complete and current resumes of the key personnel who will be involved in the program management, design and implementation of IV programs. Each resume is limited to two pages per person.

Guidelines

IV programs must maintain a non-partisan character.

Programs and awards must conform to all USIA requirements and guidelines. Once the awards are made, USIA requires separate proposals for each group program [Single Country (SCP)*, Regional (RP)*, and Multi-Regional (MRP)*] as well as less formal proposals for Individual* and Individuals Traveling Together (ITT)* programs. At this time proposals are not required for Voluntary Visitor (VolVis)* programs. *(See POGI for program descriptions).

Each program will focus on a substantive theme. Some broad IV program themes include: (1) U.S. government systems; (2) U.S. political system; (3) U.S. foreign policy; (4) economic development; (5) education and training; (6) media; (7) information technology; and (8) U.S. social concerns.

Applicants should demonstrate the potential to develop the type of programs described below:

- Programs must contain substantive meetings that focus on foreign policy goals and program objectives and are presented by experts. Meetings, site visits, and other program activities should promote dialogue between participants and their U.S. professional counterparts. Programs must be balanced to show different sides of an issue;
- Most programs are 21 days in length and begin in Washington, DC, with an orientation and overview of the issues and a central examination of federal policies regarding these issues;
- Well-paced program itineraries usually include visits to four or five other communities. Program itineraries ideally include urban and rural communities in diverse geographical and cultural regions of the U.S., as appropriate to the program theme;
- Programs should provide opportunities for participants to experience the diversity of American society and culture. Depending on the size and theme of a large group program, the NPA can divide the participants into smaller sub-groups for simultaneous visits to different communities, with subsequent opportunities to share their experiences with the full group once it is reunited;
- Programs may provide opportunities for the participants to share a meal or similar experience (home hospitality) in the homes of Americans of diverse occupational, age, gender and ethnic groups. Some individual and group programs might include an opportunity for an overnight stay (home stay) in an American home;
- Programs should provide opportunities for participants to address student, civic and professional groups in relaxed and informal settings;
- Participants should have appropriate opportunities for site visits and hands-on experiences that are relevant to program themes. The NPA may propose ''shadowing'' experiences with U.S. professional colleagues for some programs;

Programs should also allow time for participants to reflect on their experiences and, in group programs, to share observations with program colleagues. Participants should have opportunities to visit cultural and tourist sites; and

- The NPA must make arrangements for community visits through affiliates of the NCIV. In cities where there is no such Council, the applicant organizations will arrange for coordination of local programs.

The applicants are expected to have a Washington, D.C. presence, e-mail capability, and access to Internet resources. USIA will provide close coordination and guidance throughout the duration of the awards.

SUPPLEMENTARY INFORMATION:

Visa Requirements

Participants in IV programs travel on J–1 visas arranged by USIA. Programs must comply with J–1 visa regulations. Please refer to program-specific guidelines in the Solicitation Package for further details.

Budget

Applicants are required to submit a comprehensive line-item administrative budget in accordance with the instructions in the Solicitation Package. The submission must include a

summary budget as well as a detailed budget showing all administrative costs. If an organization wishes to bid on both Awards A and B, two separate budgets must be submitted with this proposal. Proposed staffing and costs associated with staffing must be appropriate to the requirements outlined in the RFP and in the Solicitation Package.

Selected applicants will enter into close consultation on individual program budgets with the responsible E/V Program Officer. Cost sharing is encouraged.

The Agency is seeking proposals from public and private nonprofit organizations that are not already in communication with USIA regarding an FY–2000 assistance award from E/V. All applicants must have four years of experience as stated. It is incumbent on organizations to demonstrate a capacity for programming participants from all geographical regions of the world; proven fiscal management integrity; and an ability to have close consultation with USIA staff throughout program administration.

Review Process

USIA will acknowledge receipt of all proposals and review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to a panel of USIA officers for advisory review. In addition, proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Evidence of Understanding: The proposal should convey that the applicant has a good understanding of the overall goals and objectives of the IV program. It should exhibit originality, substance, precision, and be responsive to requirements stated in the RFP and the Solicitation Package.

2. Program Planning: A detailed and relevant work plan should demonstrate substantive intent and logistical capacity. The plan should adhere to the guidelines cited in the RFP.

3. Ability to Achieve Program Objectives: The proposal should clearly demonstrate how the institution will meet the goals of the IV program.

4. Support of Diversity: The proposal should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of resources, program venue and program evaluation) and program content (orientation and evaluation sessions, program meetings, resource materials and follow-up activities).

5. Institutional Capacity: The proposal should demonstrate the applicant's capability for performing the type of work required by the IV program. It should reflect the applicant's ability to design and implement, in a timely and creative manner, professional exchange programs which encompass a variety of project themes. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program goals. Finally, the proposal must demonstrate that the applicant has or can recruit adequate and well-trained staff.

6. Institution's Record/Ability: The proposal should demonstrate an institutional record of a minimum of four years of successful experience in conducting IV or other professional exchange programs which are similar in nature and magnitude to the scope of work outlined in this solicitation. Note that evidence of success includes responsible fiscal management and full compliance with reporting requirements such as those set out for Agency grants. The applicant must have a Washington, D.C. presence and demonstrate the potential for programming participants from all geographic regions of the world.

7. Cost-effectiveness: The administrative and indirect cost components of the proposal, including salaries, should be kept as low as possible.

8. Cost-sharing: Consideration will be given to proposed cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Government Reporting Requirements

In order to account better for the spending of public funds, the Government Performance and Results Act of 1993 (GPRA) requires federal agencies and departments to establish standards for measuring their performance and effectiveness. Each Executive Branch Agency and Department must develop a strategic plan describing its overall goals and objectives, annual performance plans containing quantifiable measures of its progress, and performance reports describing its success in meeting these goals and measures. USIA will be looking to our partner organizations to measure and report in three areas: (1) Program efficiency (resource costs versus outputs); (2) program effectiveness (degree to which program goals are achieved); and (3) program impact (outcomes).

For general administrative assistance awards such as this, specific program results will be worked out on an individual project basis. USIA will work closely with its partner organizations to define specific project results, coordinate the gathering of information, and evaluate the projects according to the three areas listed above. Please note that USIA advances six strategic goals (national security, economic prosperity, democracy, law enforcement, foundation of trust, and free exchange of information) and you may be asked to administer projects and measure outcomes for each. Project outcomes will be based on country or region goals as well as the Bureau of Educational and Cultural Affairs' goals to expose foreign leaders (participants) to American ideas, values, and society; increase Americans' understanding of foreign cultures and society; foster linkages between U.S. and foreign individuals and institutions; and generate cost sharing and other forms of financial leveraging for programs.

Notification

Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal USIA procedures.

Dated: February 6, 1999.

William B. Bader,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–3423 Filed 2–10–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on the Readjustment of Veterans will be held March 11 and 12, 1999. The meeting on both days will be held at the American Legion, Washington Office, 1608 K Street, NW, Washington, DC. The agenda on both days will commence at 8:30 a.m. and adjourn at 4:30 p.m. The purpose of the meeting is to review VA and other relevant services important for veterans' post-war readjustment, and to formulate and draft the Committee's annual report to Congress.

The agenda for both days will primarily focus on drafting the Committee's third annual report to Congress. For this purpose, the Committee will review the provision and coordination of programs in Veterans Health Administration (VHA) and Veterans Benefits Administration (VBA). Pertinent programs include the Readjustment Counseling Service Vet Centers, post-traumatic stress disorder (PTSD) and substance abuse programs in VA medical facilities, and compensation issues related to PTSD claims for service connection. The Committee will also review access to care issues related to high risk veteran groups such as minority, women, disabled and high combat exposed veterans.

The meeting will be open to the public. Those who plan to attend or who have questions concerning the meeting should contact Alfonso R. Batres, Ph.D., M.S.S.W., Chief, Readjustment Counseling Service, Department of Veterans Affairs, telephone number: 202–273–8867.

Dated: February 4, 1999.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99–3349 Filed 2–10–99; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 64, No. 28

Thursday, February 11, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 981231333-8333-01; I.D. 121498A]

RIN 0648-AM12

Magnuson Act Provisions; Foreign Fishing; Fisheries off West Coast States and the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures

Correction

In the correction to rule document 98–34851, appearing on 5093 in the issue of February 2, 1999, make the following corrections:

1. On page 5093, in the third column, in entry 2, in the second line ''Complex'' was misspelled.

2. On the same page , in the same column, in entry 3, in the third line ''Complex'' was misspelled.

[FR Doc. C8–34851 Filed 2-10-99; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2314]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

Correction

In notice document 99–2773 appearing on page 5805 in the issue of Friday, February 5, 1999, make the following correction:

On page 5805, in the second column, in the sixth line, ''February 3, 1999'' should read ''February 22, 1999''.

[FR Doc. C9–2773 Filed 2–10–99; 8:45 am]

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

Correction

In notice document 99–2259 appearing on page 4872 in the issue of Monday, February 1, 1999, make the following corrections:

1. On page 4872, in the second column, in the ninth line from the bottom *Agreement No.* entry ''203-011432-008'' should read ''202-011432-008''.

2. On the same page, in the third column, in the *Agreement No.* entry ''203-011482-002'' should read ''203-011463-002''.

[FR Doc. C9–2259 Filed 2–10–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Thursday
February 11, 1999

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories; National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[IL–64–2–5807; FRL–6217–2]

RIN 2060–AE77

National Emission Standards for Hazardous Air Pollutants for Source Categories; National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at secondary aluminum production facilities. Hazardous air pollutants (HAPs) emitted by the facilities that would be regulated by this proposed rule include HAP organics, inorganic HAPs (hydrogen chloride, hydrogen fluoride, and chlorine), and particulate HAP metals. Some of these pollutants, including 2,3,7,8-tetrachlorodibenzo-p-dioxin, are considered to be known or suspected carcinogens and all can cause toxic effects following sufficient exposure. Emissions of other pollutants include particulate matter and volatile organic compounds.

The standards are proposed under the authority of section 112(d) of the Clean Air Act (the Act) and are based on the Administrator's determination that secondary aluminum production plants are major sources of HAP emissions and emit several of the HAPs listed in section 112(b) of the Act from the various process operations found within the industry. The proposed NESHAP would reduce risks to public health and environment by requiring secondary aluminum production plants to meet emission standards reflecting application of the maximum available control technology (MACT). Secondary aluminum production plants that are area sources would be subject to limitations on emissions of dioxins and furans (D/F) only. Implementation of the proposed NESHAP would reduce emissions of HAPs and other pollutants by about 16,600 megagrams per year (Mg/yr) (18,300 tons per year (tpy)).

DATES: Comments. The EPA will accept comments on the proposed rule until April 12, 1999.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by March 4, 1999, a public hearing will be held on March 15, 1999 beginning at 10 a.m., at the EPA Office of Administration Auditorium, Research Triangle Park, NC. For more information, see section VII.B of the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: *Comments.* Interested parties may submit written comments (in duplicate, if possible) to Docket No. A–92–61 at the following address: Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy of the comments also be sent to the contact person listed below. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor).

A copy of today's document, technical background information, and other materials relating to this rulemaking are available for review in the docket. Copies of this information may be obtained by request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Public Hearing. If anyone contacts the EPA requesting a public hearing by the required date (see *DATES*), the public hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC. Persons interested in making oral presentations should notify Ms. Tanya Medley, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5422.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed regulation, contact Juan Santiago, Minerals and Inorganic Chemicals Group, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–1084, facsimile number (919) 541–5600, electronic mail address, ''santiago.juan@epamail.epa.gov.''

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are ''secondary aluminum production facilities'' using post-consumer scrap, aluminum scrap, ingots, foundry returns, and/or dross as the raw material and operating one or more of the following affected sources: Scrap shredders, scrap dryer/delacquering/decoating kilns, chip dryers, group 2 process furnaces (i.e., clean charge furnaces using no reactive flux), sweat furnaces, dross-only furnaces, rotary dross coolers, secondary aluminum processing units, new and reconstructed group 1 furnaces (i. e., melting, holding, fluxing, refining or alloying), and new and reconstructed in-line fluxers. The EPA identified more than 400 facilities which include one or more of these affected sources, 86 of which are estimated to be major sources. Most establishments are included in SIC 3341 (Secondary Smelting and Refining of Nonferrous Metals), although others may fall in SIC 3353 (Aluminum Sheet, Plate, and Foil), SIC 3354 (Aluminum Extruded Products), and SIC 3355 (Aluminum Rolling and Drawing NEC). Affected sources at facilities that are major sources of HAPs would be regulated under the proposed standards. In addition, emissions of dioxins and furans (D/F) from affected sources at facilities that are area sources of HAPs would also be regulated.

The proposed standards would not apply to facilities in SIC 336 (Nonferrous Foundries/Casting), such as manufacturers of aluminum die castings (SIC 3363) that use only clean aluminum and aluminum foundries (SIC 3365) that process only clean aluminum. Secondary aluminum production facilities that are collocated with primary aluminum production are regulated under the proposed standard.

Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Owners or operators of secondary aluminum production facilities in SIC 3341, 3353, 3354, 3355, or that are collocated with primary aluminum production facilities, that are major sources of HAPs, or that emit dioxins and furans and are area sources of HAPs.

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 Agency is now aware could potentially be regulated by this action. Other types of entities not listed in the table also could be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1500 of the proposed 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.

Technology Transfer Network

The proposed regulatory text also is available on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control.

The service is free, except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 BPS modem. The TTN also is accessible through the Internet at ''TELNET ttnbbs.rtpnc.epa.gov.'' If more information on the TTN is needed, call the HELP line at (919) 541–5384. The help desk is staffed from 11 a.m. to 5 p.m.; a voice menu system is available at other times.

Electronic Access and Filing Addresses

The official record for this rulemaking, as well as the public version, has been established under Docket No. A–92–61 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document.

Electronic comments can be sent directly to the EPA's Air and Radiation Docket and Information Center at: ''A-and-R-Docket@epamail.epa.gov.'' Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (A–92–61). Electronic comments may be filed online at many Federal Depository Libraries.

Outline

The information in this preamble is organized as shown below.

I. Statutory Authority
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IV. Selection of Proposed Standards
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1. Operating and Monitoring Requirements and Options for Affected Sources and Emission Units
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E. Selection of Performance Test Methods and Requirements
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V. Summary of Impacts of Proposed Standards
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A. Docket
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C. Executive Order 12866
D. Executive Order 13045
E. Enhancing the Intergovernmental Partnership Under Executive Order 12875
F. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
G. Unfunded Mandates Act
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I. Paperwork Reduction Act
J. National Technology Transfer and Advancement Act
K. Pollution Prevention Act
L. Clean Air Act

I. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7412, 7414, 7416, and 7601).

II. Introduction

A. Background

The EPA estimates that about 28,600 Mg/yr (31,500 tpy) of HAPs and other air pollutants are released from production processes in 86 major-source secondary aluminum production facilities. The HAPs in these emissions consist of several organic compounds, including 2,3,7,8-TCDD (a compound in the dioxin/furans (D/F) group); inorganic ''acid gas'' compounds such as hydrogen chloride (HCl), hydrogen fluroride (HF), and chlorine (Cl_2); and 11 nonvolatile HAP metals. NonHAP particulate matter (PM) and volatile organic compounds (VOCs) are also emitted.

The proposed standard reduces emissions of HAPs and other pollutants using a combination of emission limits and pollution prevention/work practice standards based on MACT floor controls. Depending on the type of affected source, plants affected by the standards could achieve the proposed requirements by upgrading or installing a fabric filter or a lime-injected fabric filter (i.e., a fabric filter to which lime or other alkaline reagent is continuously injected). Or, plants may be required to add a thermal incinerator (also known as an afterburner), a thermal incinerator followed by a lime-injected fabric filter, and/or apply pollution prevention techniques to limit the type of scrap charged and the type and amount of fluxing agents used. Raising the control performance of affected sources with MACT-level standards would reduce emissions of HAPs by 70 percent and other pollutants by about 42 percent from the current level, with higher reductions achieved at particular sites. Emissions of HCl would be decreased by about 74 percent.

The nationwide total capital and annualized costs of control equipment are estimated at $148 million and $68 million/yr, respectively. An additional $5.1 million per year is estimated for monitoring/implementation costs for the first 3 years following promulgation. The economic impacts of the proposed regulation are expected to be minimal with price increases and production decreases of less than one percent. The regulation is not expected to result in a significant economic impact for a substantial number of small entities. Only one of the 33 small entities is anticipated to experience significantly adverse economic impacts as a result of this regulation.

The proposed NESHAP was developed by EPA with input from industry representatives and associated groups including the Aluminum Association and STAPPA/ALAPCO (State and Territorial Air Pollution Program Administrators Association/ Association of Local Air Pollution Control Officials). The rule development process included a cooperative effort with the industry in identifying data needs; collecting additional data; planning and conducting emission tests; and meeting with these representatives to share technical information and resolve issues.

B. NESHAP for Source Categories

Section 112 of the Act requires that EPA promulgate regulations for the

control of HAP emissions from both new and existing major sources. The regulations must reflect the maximum degree of reduction in emissions of HAPs that is achievable taking into consideration the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as MACT.

The control of HAPs is achieved through the promulgation of technology-based emission standards under sections 112(d) and 112(f) and work practice standards under 112(h) for categories of sources that emit HAPs. Emission reductions may be accomplished through the application of measures, processes, methods, systems, or techniques including, but not limited to: (1) Reducing the volume of, or eliminating emissions of, such pollutants through process changes, substitution of materials, or other modifications; (2) enclosing systems or processes to eliminate emissions; (3) collecting, capturing, or treating such pollutants when released from a process, stack, storage or fugitive emissions point; (4) design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in section (h); or (5) a combination of the above. (See section 112(d)(2).)

C. Health Effects of Pollutants

The Clean Air Act was created in part to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population. (See section 101(b)(1).) Section 112(b) of the Act contains a list of HAPs believed to cause adverse health or environmental effects. Section 112(d) of the Act requires that emission standards be promulgated for all categories and subcategories of major sources of these HAPs and for many smaller ''area'' sources listed for regulation under section 112(c) in accordance with the schedules listed under section 112(c). Major sources are defined as those that emit or have the potential to emit at least 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAPs.

In the 1990 Amendments to the Clean Air Act, Congress specified that each standard for major sources must require the maximum reduction in emissions of HAPs that EPA determines is achievable considering cost, health and environmental impacts, and energy impacts. In essence, these MACT standards would ensure that all major sources of air toxic emissions achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach provides assurance to citizens that each major source of toxic air pollution will be required to effectively control its emissions. At the same time, this approach provides a ''level economic playing field,'' ensuring that facilities that employ cleaner processes and good emissions control are not disadvantaged relative to competitors with poorer controls.

Emission data, collected during development of this NESHAP, show that pollutants listed in section 112(b)(1) are emitted by secondary aluminum production processes and include organic HAPs (e.g., D/F, benzene, styrene, xylene, acrylonitrile, methylene chloride, naphthalene, and formaldehyde); inorganic HAPs (HCl, HF, and Cl_2), and HAP metals (antimony, arsenic, lead, manganese, beryllium, cadmium, chromium, cobalt, mercury, nickel, and selenium). Emissions of these pollutants would be decreased by implementation of the proposed emission limits. Some of these pollutants are either known or probable human carcinogens when inhaled, and can cause reversible and irreversible toxic effects other than cancer following sufficient exposure. These effects include respiratory and skin irritation, effects upon the eye, various systemic effects including effects upon the liver, kidney, heart and circulatory system, neurotoxic effects, and in extreme cases, death. Following is a summary of the potential health and environmental effects associated with exposures, at some level, to emitted pollutants that would be reduced by the standard.

Almost all metals appearing on the section 112(b) list of HAPs are emitted from affected sources in secondary aluminum plants. These metals can cause a range of effects including irritation of the respiratory tract; gastrointestinal effects; nervous system disorders (including loss of coordination and mental retardation); skin irritation; and reproductive and developmental disorders. Additionally, these metals accumulate in the environment and several of them accumulate in the human body, and may cause adverse health effects after exposure has ceased. Cadmium, for example, is a cumulative pollutant that can cause kidney effects after the cessation of exposure. Similarly, the onset of effects from beryllium exposure may be delayed by months to years. Many of the metal compounds also are known (arsenic, chromium (VI)) or probable (cadmium, nickel carbonyl, lead, and beryllium) human carcinogens.

Each HAP organic compound has a range of potential health effects associated with exposures above toxic thresholds. Effects generally associated with short-term inhalation exposure to these pollutants include irritation of the eyes, skin, and respiratory tract; central nervous system effects (e.g., drowsiness, dizziness, headaches, depression, nausea, abnormal electrocardiograms); and reproductive and developmental effects. Health effects associated with long-term inhalation exposure in humans to the organic compounds which will potentially be decreased by the proposed standard may include mild symptoms such as nausea, headache, weakness, insomnia, gastrointestinal effects, and burning eyes; disorders of the blood; toxicity to the immune system; reproductive disorders in women (e.g., menstrual irregularity or increased risk of spontaneous abortion); developmental effects; and injury to the liver and kidneys. In addition to non-cancer effects, some of the organic HAPs that would be controlled under this proposed NESHAP are either known or probable human carcinogens.

Hydrogen chloride is highly corrosive to the eyes, skin, and mucous membranes. Short-term inhalation of HCl by humans may cause coughing, hoarseness, inflammation and ulceration of the respiratory tract, as well as chest pain and pulmonary edema. Long-term occupational exposure of humans to HCl has been reported to cause inflammation of the stomach, skin, and lungs, and photosensitization.

Acute exposure to hydrogen fluoride will result in irritation, burns, ulcerous lesions, and necrosis of the eyes, skin, and mucous membranes. Total destruction of the eyes is possible. Other effects include nausea, vomiting, diarrhea, pneumonitis (inflammation of the lungs), and circulatory collapse. Ingestion of an estimated 1.5 grams produced sudden death without gross pathological damage. Repeated ingestion of small amounts resulted in moderately advanced hardening of the bones. Contact of skin with anhydrous liquid produces severe burns. Inhalation of anhydrous hydrogen fluoride or hydrogen fluoride mist or vapors can cause severe respiratory tract irritation that may be fatal.

The irritating properties of Cl_2 make this HAP a serious acute respiratory hazard, as well as a skin, eye, and throat irritant. Prolonged exposure to low concentrations can cause respiratory problems, tooth corrosion, inflammation

of the mucous membranes, and susceptibility to tuberculosis. Prolonged exposure at moderate concentrations can cause decreased lung capacity.

Several of the HAP whose emissions will be reduced by this rule have been found to cause serious developmental effects in animals or humans. For example, children are more sensitive than adults to the neurotoxic effects of lead, suffering neurobehavioral deficits such as loss of IQ at relatively low exposures. Chlorinated dibenzodioxins and furans are now understood to be potent developmental toxins, disrupting a wide variety of developmental events in embryos of numerous vertebrate species at exposures that are not toxic to adults. Although this rule is based on emission reduction technology rather than risk reduction per se, EPA anticipates that reductions in emissions of developmentally-toxic HAP will especially benefit children.

In addition to the HAPs, the proposed NESHAP also would reduce some of the pollutants whose emissions are controlled under the National Ambient Air Quality Standards (NAAQS) program. These pollutants include particulate matter (PM), volatile organic compounds (VOC—precursors to tropospheric ozone formation), and lead (also a HAP metal). The health effects of lead, PM, and VOC are described in EPA's Criteria Documents, which support the NAAQS. Briefly, PM emissions have been associated with aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. At elevated levels, ozone has been shown in human laboratory and community studies to be responsible for the reduction of lung function, respiratory symptoms (e.g., cough, chest pain, throat and nose irritation), increased hospital admissions for respiratory causes, and increased lung inflammation. Animal studies have shown increased susceptibility to respiratory infection and lung structure changes. Exposure to ozone also has been linked to harmful effects on agricultural crops and forests. Depending on the degree of exposure, lead can cause subtle effects on behavior and cognition (particularly in children), increased blood pressure, reproductive effects, seizures, and even death.

The EPA recognizes that the degree of adverse effects to health can range from mild to severe. The extent and degree to which the health effects may be experienced is dependent upon: (1) The ambient concentrations observed in the area, (e.g., as influenced by emission rates, meteorological conditions, and terrain), (2) the frequency of and duration of exposures, (3) characteristics of exposed individuals (e.g., genetics, age, pre-existing health conditions, and lifestyle) which vary significantly with the population, and (4) pollutant-specific characteristics (e.g., toxicity, half-life in the environment, bioaccumulation, and persistence).

D. Secondary Aluminum Industry

At least 400 facilities which include one or more secondary aluminum affected sources currently operate in 36 States. Based on industry responses to EPA's information collection request (ICR) and responses to a voluntary supplemental industry/EPA survey, the 86 facilities identified as major sources operate at least 69 scrap shredders, 5 chip dryers, 44 scrap dryers/decoating kilns/delacquering kilns, 12 sweat furnaces, 15 dross-only furnaces, 86 secondary aluminum processing units, and 26 rotary dross coolers.

III. Summary of Proposed Standards

A. Applicability

The proposed NESHAP applies to each new, existing or reconstructed scrap shredder, chip dryer, scrap dryer/delacquering kiln/decoating kiln, group 2 furnace, sweat furnace, dross-only furnace, and rotary dross cooler; each secondary aluminum processing unit (composed of all existing group 1 furnace emission units and all existing in-line fluxer emission units); and each new or reconstructed group 1 furnace and in-line fluxer located at a secondary aluminum production plant that is a major source of HAP. The proposed NESHAP also applies to each new, existing or reconstructed chip dryer, scrap dryer/delacquering kiln/decoating kiln, and sweat furnace; each secondary aluminum processing unit and each new or reconstructed group 1 furnace and in-line fluxer located at a secondary aluminum production plant that is an area source of HAP. The proposed NESHAP also applies to these secondary aluminum production affected sources if they are collocated at a primary aluminum production facility that is a major source of HAP.

As discussed further in section IV of this document, the EPA categorized process furnaces into two classes. A group 1 furnace includes any furnace that processes aluminum scrap containing paint, lubricants, coatings, or other foreign materials or within which reactive fluxing is performed, regardless of the type of scrap charged. Reactive fluxing means the use of any gas, liquid, or solid flux (including chlorine gas or magnesium chloride) that results in a HAP emission.

Group 2 (''clean charge'') furnaces process only molten aluminum, T-bar, sow, ingot, alloying elements, noncoated runaround scrap, uncoated aluminum chips dried at 343°C (650°F) or higher, and aluminum scrap dried, decoated, or delacquered at a temperature at 482°C (900°F) or higher. A group 2 furnace performs no fluxing or performs fluxing using only nonreactive, nonHAP-containing/nonHAP-generating gases such as argon and nitrogen.

B. Emission Limits and Requirements

The proposed NESHAP for secondary aluminum production applies to major sources. In addition, affected sources located at area sources of HAPs, which emit D/F are regulated for emissions of D/F. The proposed limits are summarized in Table 1.

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TABLE 1. EMISSION STANDARDS FOR NEW AND EXISTING AFFECTED SOURCES.

Affected source	Pollutant	Limit	Units
All new and existing affected sources and emission units controlled with a PM add-on control device that choose to monitor with a COM and all new and existing scrap shredders that choose to monitor with a COM or visible emissions monitoring	Opacity	10	percent
New and existing scrap shredder	PM	0.01	gr/dscf
New and existing chip dryer	THC D/F[a]	0.80 2.50	lb/ton of feed μg/Mg of feed
New and existing scrap dryer/ delacquering/ decoating kiln	PM HCl THC D/F[a]	0.08 0.80 0.06 0.25	lb/ton of feed lb/ton of feed lb/ton of feed μg/Mg of feed
Or Alternative limits if afterburner has a design residence time of at least 1 second and operates at a temperature of at least 1,400°F	PM HCl THC D/F[a]	0.30 1.50 0.20 5.0	lb/ton of feed lb/ton of feed lb/ton of feed μg/Mg of feed
New and existing sweat furnace	D/F[a]	0.80	ng/dscm @ 11% O_2
New and existing dross-only furnace	PM	0.30	lb/ton of feed
New or reconstructed in-line fluxer[b]	HCl PM	0.04 0.01	lb/ton of feed lb/ton of feed
Existing or new/ reconstructed in-line fluxer with no reactive fluxing	No limits		Work practice: no reactive fluxing
New or existing rotary dross cooler	PM	0.04	gr/dscf

Affected source	Pollutant	Limit	Units
New or existing clean furnace (Group 2)	No limits		Work Practices: Clean charge only and no reactive fluxing
New or reconstructed group 1 melter/holder furnace[b] (Processing only clean charge)	PM	0.80	lb/ton of feed
	HCl	0.40 or 90	lb/ton of feed percent reduction if equipped with add-on control device
New or reconstructed group 1 furnace[b]	PM	0.40	lb/ton of feed
	HCl	0.40 or 90	lb/ton of feed percent reduction (if equipped with add-on control device)
	D/F[a]	15.0	μg/Mg of feed
New or reconstructed group 1 furnace[b] with clean charge only	PM	0.40	lb/ton of feed
	HCl	0.40 Or 90	lb/ton of feed percent reduction (if equipped with add-on control device)
	D/F	No limit	Clean charge only

Affected source	Pollutant	Limit	Units
Secondary aluminum processing unit[a,c] (consists of all existing group 1 furnaces and in-line flux boxes at the facility)	PM[d]	$L_{t_{PM}} = \frac{\sum_{i=1}^{n} (L_{i_{PM}} \times T_i)}{\sum_{i=1}^{n} (T_i)}$	
	HCl[e]	$L_{t_{HCl}} = \frac{\sum_{i=1}^{n} (L_{i_{HCl}} \times T_i)}{\sum_{i=1}^{n} (T_i)}$	
	D/F[f]	$L_{t_{D/F}} = \frac{\sum_{i=1}^{n} (L_{i_{D/F}} \times T_i)}{\sum_{i=1}^{n} (T_i)}$	

FOOTNOTES TO TABLE 1

[a] D/F limit applies to a unit at a major or area source.

[b] These limits are also used to calculate the limits applicable to secondary aluminum processing units.

[c] Equation definitions: L_{iPM} = the PM emission limit for individual emission unit i in the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; T_i = the feed rate for individual emission unit i in the secondary aluminum processing unit; L_{tPM} = the overall PM emission limit for the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; L_{iHCl} = the HCl emission limit for individual emission unit i in the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; L_{tHCl} = the overall HCl emission limit for the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; $L_{iD/F}$ = the D/F emission limit for emission unit i [μg/Mg

(gr/ton) of feed]; $L_{tD/F}$ = the overall D/F emission limit for the secondary aluminum processing unit [μg/Mg (gr/ton) of feed]; n = the number of units in the secondary aluminum processing unit.

[d] In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the PM limit.

[e] In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the HCl limit.

[f] Clean charge furnaces cannot be included in this calculation since they are not subject to the D/F emission limit.

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PM emission limits would apply to new, reconstructed and existing scrap shredders, scrap dryer/delacquering/decoating kilns, dross-only furnaces, rotary dross coolers; secondary aluminum processing units; and new and reconstructed in-line fluxers, and group 1 furnaces at secondary aluminum production facilities that are major sources. Controlling PM emissions would also control emissions of HAP metals. A surrogate approach to emission limits is used to allow easier and less expensive measurement and monitoring requirements.

The proposed rule limits total hydrocarbon emissions (THC) from new and existing chip dryers and from new and existing scrap dryer/delacquering/decoating kilns at secondary aluminum production facilities that are major sources. THC represents emissions of HAP organics. HCl emission limits would apply to new, reconstructed and existing scrap dryer/delacquering/decoating kilns; new and reconstructed in-line fluxers and Group 1 furnaces; and secondary aluminum processing units at secondary aluminum production facilities that are major sources. HCl serves as a surrogate measure of HAP inorganics including hydrogen fluoride (HF) and chlorine (Cl_2) emissions. The proposed rule limits emissions of D/F from new, reconstructed and existing chip dryers, scrap dryer/delacquering/decoating kilns and sweat furnaces; new and reconstructed group 1 furnaces; and secondary aluminum processing units at secondary aluminum production facilities that are major or area sources. No surrogate is used for D/F emissions. A detailed explanation of the proposed limits and the rationale for their selection is given in section IV.C. of this document.

C. Operating and Monitoring Requirements

The proposed NESHAP includes operating and monitoring requirements for each affected source and emission unit within a secondary aluminum processing unit to ensure continuous compliance with the emissions standards. The proposed standard would incorporate all requirements of the NESHAP general provisions (40 CFR part 63, subpart A). The proposed operating and monitoring requirements are summarized in Table 2. A detailed explanation of the monitoring requirements and the rationale for their selection is given in section IV.D. of this document. ½**Federal Register**

TABLE 2.—SUMMARY OF PROPOSED OPERATING AND MONITORING REQUIREMENTS FOR AFFECTED SOURCES AND EMISSION UNITS

Affected source/emission unit	Monitor type/operation/process	Operating requirements	Monitoring requirements
All affected sources and emission units	Labeling	Identification, emission limits and means of compliance posted on all affected sources and emission units.	Check monthly to confirm that labels are intact and legible.
All affected sources and emission units with add-on control device.	Emission capture and collection system.	Design and install in accordance with Industrial Ventilation: A Handbook of Recommended Practice; operate in accordance with O, M & M plan.[b]	Annual inspection of all emission capture, collection, and transport systems to ensure that systems continue to operate in accordance with ACGIH standards.
All affected sources and emission units subject to production based [lb/ton of feed] emission limits[a].	Charge/feed weight	Operate a device or use an equivalent procedure to record the weight of each charge; operate in accordance with O, M, & M plan.	Record the weight of each charge; weight measurement device or other procedure accuracy of ±1 percent; calibration every 3 months.
Scrap shredder with fabric filter	Bag leak detector ..	Initiate corrective action within 1 hour of alarm and complete in accordance with O, M, & M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.	Install and operate in accordance with "Fabric Filter Bag Leak Detection Guidance" and record voltage output from bag leak detector.

TABLE 2.—SUMMARY OF PROPOSED OPERATING AND MONITORING REQUIREMENTS FOR AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/emission unit	Monitor type/operation/process	Operating requirements	Monitoring requirements
	or		
	COM	Initiate corrective action within 1-hour of a 6-minute average opacity reading of 5% or more and complete in accordance with O, M, & M plan; [b].	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR 63; calculate and record 6-minute block averages.
	or		
	VE	Initiate corrective action within 1 hour of any observed VE and complete in accordance with the O, M, & M plan.[b]	Conduct and record results of 30 minute daily test in accordance with Method 9.
Chip Dryer with afterburner	Afterburner operating temperature.	Maintain average temperature, averaged over each 3-hour period, at or above the average operating temperature during the performance test.	Continuous measurement device to meet EPA specifications; calculate and record average temperature for each 15-minute block; determine 3-hour block averages; calibrate every 3 months.
	Afterburner operation.	Operate in accordance with O, M, and M plan.[b]	Conduct annual inspection of afterburner internal parts to maintain good working order.
	Feed material	Operate using only unpainted aluminum chips.	Record identity of charge daily; certify charge materials every 6 months.
Scrap dryer/delacquering/decoating kiln with afterburner and lime injected fabric filter.	Afterburner operating temperature.	Maintain average temperature, averaged over each 3-hour period, at or above the average operating temperature during the performance test.	Continuous measurement device to meet EPA specifications; record temperatures in 15-minute block averages; calculate 3-hour block averages; calibration every 3 months.
	Afterburner operation.	Operate in accordance with O, M, & M plan.[b]	Annual inspection of afterburner internal parts; complete repairs in 10 days.
	Bag leak detector	Initiate corrective action within 1 hour of alarm and complete in accordance with the O, M, & M plan; [b] operate such that alarm does not sound more than 5% of operating time in 6-month period.	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance'' and record voltage output from bag leak detector.
	or		
	COM	Initiate corrective action within 1 hour of a 6-minute average opacity reading of 5% or more and complete in accordance with the O, M, & M plan.[b]	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR 63; calculate and record 6-minute block averages.
	Lime injection rate and schedule.	Maintain free-flowing lime in the feed hopper or silo at all times.	Inspect each feed hopper or silo every 8 hours to verify that lime is free-flowing; record results of each inspection. If blockage occurs, inspect every 4 hours for 3 days; return to 8-hour inspections if corrective action results in no further blockage during 3-day period.
		Maintain average lime injection rate (lb/hr) at or above the rate used during the successful compliance test and adhere to the same lime injection schedule used during the performance test for each 3-hour period or	Weight measurement device accuracy of ±1 percent; calibration every 3 months; record weight of lime injected for each 15-minute block period and determine 3-hour block averages or;
		Maintain average lime injection rate (lb/ton of feed) at or above the rate used during the performance test and adhere to the same lime injection schedule used during the performance test for each operating cycle or time period used in performance test or	Weight measurement device accuracy of ±1 percent; calibrate every 3 months; record weight of lime added or injected for each 15-minute block period and determine lime injection rate (lb/ton of feed) for each operating cycle or time period used in performance test or;
		Maintain feeder setting at level established at performance test.	Record feeder setting daily.

TABLE 2.—SUMMARY OF PROPOSED OPERATING AND MONITORING REQUIREMENTS FOR AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/emission unit	Monitor type/operation/process	Operating requirements	Monitoring requirements
	Fabric filter inlet temperature.	Maintain average fabric filter inlet temperature at or below the average temperature during the successful compliance test +14 °C (25 °F) for each three hour period.	Continuous measurement device to meet EPA specifications; record temperatures in 15 minute block averages; calculate 3 hour block averages; calibration every three months.
Sweat furnace with afterburner	Afterburner operating temperature.	Maintain average temperature, averaged over each 3-hour period, at or above the average operating temperature during the performance test.	Continuous measurement device to meet EPA specifications; record temperatures in 15-minute block averages; calculate 3-hour block averages; calibration every 3 months.
	Afterburner operation.	Operate in accordance with O, M, & M plan.[b]	Annual inspection of afterburner internal parts; complete repairs in 10 days.
Dross-only furnace with fabric filter	Bag leak detector	Initiate corrective action within 1 hour of alarm and complete in accordance with the O, M, & M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.	Installation and operation requirements in accordance with ''Fabric Filter Bag Leak Detection Guidance'' and record voltage output from bag leak detector.
	or		
	COM	Initiate corrective action within 1 hour of a 6-minute average opacity reading of 5% or more and complete in accordance with the O, M, & M plan.[b]	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR 63; calculate and record 6-minute block averages.
	Feed/charge material.	Operate using only dross as the feed material.	Record identity of each charge; certify charge materials every 6 months.
Rotary dross cooler with fabric filter	Bag leak detector	Initiate corrective action within 1 hour of alarm and complete in accordance with the O, M, & M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance'' and record voltage output from bag leak detector.
	or		
	COM	Initiate corrective action within 1 hour of a 6-minute average opacity reading of 5% or more and complete in accordance with the O, M, & M plan.[b]	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR 63; calculate and record 6-minute block averages.
In-line fluxer with lime injected fabric filter (including those that are part of a secondary aluminum processing unit).	Bag leak detector	Initiate corrective action within 1 hour of alarm and complete in accordance with the O, M, & M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance'' and record voltage output from bag leak detector.
	or		
	COM	Initiate corrective action within 1 hour of a 6-minute average opacity reading of 5% or more and complete in accordance with the O, M, & M plan.[b]	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR 63; calculate and record 6-minute block averages.
	Reactive flux injection rate and schedule.	Maintain the reactive flux injection rate at or below the reactive flux injection rate used during the performance test and adhere to the same flux injection schedule used during the test.	Weight measurement device accuracy of ±1 percent; calibration every 3 months; record weight and type of reactive flux added or injected for each 15-minute block period.
	Lime injection rate and schedule.	Maintain free-flowing lime in the feed hopper or silo at all times.	Inspect each feed hopper or silo every 8 hours to verify that lime is free-flowing; record results of each inspection. If blockage occurs, inspect every 4 hours for 3 days; return to 8-hour inspections if corrective action results in no further blockage during 3-day period.

TABLE 2.—SUMMARY OF PROPOSED OPERATING AND MONITORING REQUIREMENTS FOR AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/emission unit	Monitor type/operation/process	Operating requirements	Monitoring requirements
In-line fluxer with lime injected fabric filter (including those that are part of a secondary aluminum processing unit) cont'd		Maintain average lime injection rate (lb/hr) at or above the rate used during the performance test and adhere to the same lime injection schedule used during the test for each 3-hour period or.	Weight measurement device accuracy of ±1 percent; calibrate every 3 months; record weight of lime injected for each 15-minute block period and determine 3 hour block averages or;
		Maintain average lime injection rate (1b/ton of feed) at or above the rate used during the performance test and adhere to the same lime injection schedule used during the test for each operating cycle or time period used in performance test or.	Weight measurement device accuracy of ±1 percent; calibrate every 3 months; record weight of lime injected for each 15-minute block period and determine lime injection rate (lb/ton of feed) for each operating cycle or time period used in performance test or;
		Maintain feeder setting at level established at performance test.	Record feeder setting daily.
	Fabric filter inlet temperature.	Maintain average fabric filter inlet temperature at or below the average temperature during the performance test +14 °C (25°F) for each 3-hour period.	Continuous measurement device to meet EPA specifications; record temperatures in 15-minute block averages; calculate 3-hour block averages; calibrate every 3 months.
Clean (group 2) furnace	Charge materials	Use only clean charge	Record identity of all charge materials; certify every 6 months.
	Flux materials	Use no reactive flux	Record identity of all flux materials; certify every 6 months that no reactive flux was used.
Group 1 furnace with lime injected fabric filter (including those that are part of a secondary aluminum processing unit).	Bag leak detector	Initiate corrective action within 1 hour of alarm and complete in accordance with the O, M, & M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance'' and record voltage output from bag leak detector.
	or		
	COM	Initiate corrective action within 1 hour of a 6-minute average opacity reading of 5% or more and complete in accordance with the O, M, & M plan.[b]	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR 63; calculate and record 6-minute block averages.
	Lime injection rate and schedule.	Maintain free-flowing lime in the feed hopper or silo at all times.	Inspect each feed hopper or silo every 8 hours to verify that lime is free-flowing; record results of each inspection. If blockage occurs, inspect every 4 hours for 3 days; return to 8-hour inspections if corrective action results in no further blockage during 3-day period.
		Maintain average lime injection rate (lb/hr) at or above the rate used during the performance test and adhere to the same lime injection schedule used during the test for each 3-hour period or;	Weight measurement device accuracy of±1 percent; calibrate every 3 months; record weight of lime injected for each 15-minute block period and determine 3-hour block averages.
		Maintain average lime injection rate (lb/ton of feed) at or above the rate used during the performance test and adhere to the same lime injection schedule used during the test for each operating cycle or time period used in performance test or;	Weight measurement device accuracy of ±1 percent; calibrate every 3 months; record weight of lime injected for each 15-minute block period and determine lime injection rate (lb/ton of feed) for each operating cycle or time period used in performance test or;
		Maintain feeder setting at level established at performance test.	Record feeder setting daily.
	Reactive flux injection rate and schedule.	Maintain the reactive flux injection rate at or below the reactive flux injection rate used during the performance test.	Weight measurement device accuracy of ±1 percent; calibrate every 3 months; record weight and type of reactive flux added or injected for each 15-minute block period.

TABLE 2.—SUMMARY OF PROPOSED OPERATING AND MONITORING REQUIREMENTS FOR AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/emission unit	Monitor type/operation/process	Operating requirements	Monitoring requirements
	Fabric filter inlet temperature.	Maintain average fabric filter inlet temperature at or below the average temperature during the performance test +14 °C (25 °F) for each 3 hour period.	Continuous measurement device to meet EPA specifications; record temperature in 15-minute block averages; calculate 3-hour block averages; calibrate every 3 months.
	Maintain molten aluminum level.	Operate side-well furnaces such that the level of molten metal is above the top of the passage between side well and hearth during reactive flux injection.	Maintain aluminum level operating log; certify every 6 months.
	Fluxing in sidewell furnace hearth.	Add reactive flux only to the sidewell of the furnace unless the hearth is also controlled.	Maintain flux addition operating log; certify every 6 months.
Group 1 furnace without add-on controls (including those that are part of a secondary aluminum processing unit).	Reactive flux injection rate and schedule.	Maintain the reactive flux injection rate at or below the reactive flux injection rate used during the performance test and adhere to same flux injection schedule used in performance test.	Weight measurement device accuracy of ±1 percent; calibrate every 3 months; record weight and type of reactive flux added or injected for each 15-minute block period.
	Feed material (melter/holder).	.....	Record identity of each charge; certify charge materials every 6 months.
	Site-specific monitoring plan (approved by permitting agency).	Operate furnace within the range of charge materials, contaminant levels, and parameter values established in the site-specific monitoring plan.[c]	Demonstration of site-specific monitoring plan to provide data and show correlation of emissions across the range of charge and flux materials and furnace operating parameters.

[a] Chip dryers, scrap dryers/delacquering kilns/decoating kilns, dross-only furnaces, in-line fluxers (including those that are part of a secondary aluminum processing unit) and group 1 furnaces including melter holders (including those that are part of a secondary aluminum processing unit).
[b] O, M, & M plan—Operation, maintenance, and monitoring plan.
[c] Site-specific monitoring plan—Owner/operators of group 1 furnaces without control devices must develop a site-specific monitoring plan that identifies process or feed parameter-based operating requirements. This plan would be part of the O, M, & M plan. This plan and the testing to demonstrate adequacy of the monitoring plan and correlation of parameters over the range of charge materials and fluxing practices must be developed in coordination with and be approved by the permitting authority.

IV. Selection of Proposed Standards

A. Selection of Source Category

Section 112(c) of the Act directs the EPA to list each category of major and area sources, as appropriate, emitting one or more of the HAPs listed in section 112(b) of the Act. The EPA published an initial list of source categories on July 16, 1992 (57 FR 31576), and may amend the list at any time. ''Secondary Aluminum Production'' is one of the 174 categories of sources included on the revised list of source categories (63 FR 7155, February 12, 1998). This list includes major and area sources of HAPs for which the EPA intends to issue regulations between November 1992 and November 2000. The category as defined in the EPA report, ''Documentation for Developing the Initial Source Category List'' (docket item II–A–6) for the listing includes any facility engaged in the cleaning, melting, refining, alloying, and pouring of aluminum recovered from scrap, foundry returns, and dross.

The listing of the secondary aluminum production major source category was based on the Administrator's determination that some secondary aluminum production facilities would be major sources of HAPs. These facilities are known to emit HAPs, including PM metal HAP (including antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, and nickel), gaseous organic HAPs (including dioxins, furans, polycyclic organic matter, benzene and formaldehyde) and gaseous inorganic HAPs (including hydrogen chloride, hydrogen fluoride, and chlorine).

A major source must have the potential to emit 9.1 Mg/yr (10 tpy) or more of a single HAP or 23 Mg/yr (25 tpy) or more of a combination of HAPs. The EPA has estimated that there are approximately 86 major source facilities that practice one or more secondary aluminum production processes.

Section 112(c)(6) of the Act states that by November 15, 2000, EPA must list and promulgate section 112(d)(2) or (d)(4) standards (i.e., standards reflecting MACT) for categories (and subcategories) of sources emitting seven specific pollutants, including 2,3,7,8 tetrachlorodibenzofurans and 2,3,7,8 tetrachlorodibenzo-p-dioxin which are emitted by secondary aluminum production affected sources. The EPA must assure that source categories accounting for not less than 90 percent of the aggregated emissions of the enumerated pollutant are subject to MACT standards. Congress (docket item II–I–13, p. 155 to 156 (cement) singled out the HAPs enumerated in section 112(c)(6) as being of ''specific concern'' not just because of their toxicity but because of their propensity to cause substantial harm to human health and the environment via indirect exposure pathways (i.e., from the air through other media, such as water, soil, food uptake, etc.). Furthermore, these pollutants have exhibited special potential to bioaccumulate, causing pervasive environmental harm in biota (and, ultimately, human health risks).

The EPA estimates that secondary aluminum production facilities emit in aggregate approximately 0.4 lb per year of D/F (from June 20, 1997; 62 FR 33635), or 3.5 percent (from April 10, 1998; 63 FR 17849), of the total national anthropogenic emissions of D/F per year

(docket item II–J–2, docket item II–J–4). To assure that this pollutant is subject to MACT, EPA has added the secondary aluminum production area source category to the list of source categories and subcategories listed pursuant to section 112(c)(6). (See 63 FR 17838, 17849; April 10, 1998.) The EPA has done so because area and major source secondary aluminum D/F emitting processes emit this HAP at about equal rates per ton of feed, because the D/F emitted by area sources are equally toxic per amount of emissions as that emitted by major sources (i.e., the distribution of dioxin and furan isomers is the same for both area and major sources), and because this is a particularly toxic class of HAP. In addition, EPA's strategy for assuring 90 percent of these pollutants are addressed includes control of these pollutants from secondary aluminum production facility area sources through the MACT process. (See 62 FR 33635, 33636; June 20, 1997.)

The EPA notes, however, as it did in the April 10th document, that although the section 112(c)(6) listing process makes sources subject to standards under subsection (d)(2) or (d)(4), the language of section 112(c)(6) does not specify either a particular degree of emissions control or a reduction in emissions of these specific pollutants to be achieved by such regulations. Rather, the specific control requirements will result from determining the appropriate level of control under MACT (section 112(d)(2), or section 112(d)(4)), and this interpretation will be made during the section 112(d) rulemakings affecting the particular source category, not as part of the section 112(c)(6) listing process. (See 63 FR 17841; April 10, 1998.)

As noted above, EPA is interpreting section 112(c)(6) to require the EPA to establish standards under section 112(d)(2) or 112(d)(4) for all sources listed pursuant to section 112(c)(6), whether such sources are major or area sources. This interpretation reflects the express language of section 112(c)(6) that sources * * * of each such pollutant are subject to standards under subsection (d)(2) or (d)(4) and is in accord with the function of section 112(c)(6):

* * * to assure that sources emitting significant amounts of the most dangerous HAPs are subject to the rigorous MACT standard-setting process.

(See S. Rep. No. 228, 101st Cong. 1st Sess., pp. 155, 166.)

In addition, the EPA is interpreting section 112(c)(6) to require that, for sources listed under section 112(c)(6), MACT (or section 112(d)(4)) controls apply only to the section 112(c)(6) HAPs emitted by the source. Thus, in this proposed rule, secondary aluminum production area sources would be subject only to the D/F emission limitations of the MACT standards. (Since the language of section 112(c)(6) is ambiguous as to whether the entire source must comply with MACT, or just for the HAPs enumerated in section 112(c)(6), (see 61 FR 17365, n. 12), either interpretation is legally permissible.) Applying the provision to the entire source could result in applying MACT to all HAPs emitted by area sources under circumstances where control would not otherwise be warranted. The EPA specifically requests comments and data regarding the decision to include area sources of D/F in this proposed rule. The Agency seeks information and data regarding the level of emissions from area sources, the degree to which controls are in place, and the burden that would be imposed on affected sources.

B. Selection of Emission Sources and Pollutants

The secondary aluminum production source category consists of the following operations:

(1) Preprocessing of scrap aluminum, including size reduction and removal of oils, coatings, and other contaminants;

(2) Furnace operations including melting, in-furnace refining, fluxing, and tapping;

(3) Additional refining, by means of in-line fluxing; and

(4) Cooling of dross.

The following sections include descriptions of the affected sources in the secondary aluminum production source category, the origin of HAP emissions from these affected sources, and factors affecting the emissions. The affected sources for which MACT standards are being proposed include new, reconstructed and existing scrap shredders, chip dryers, scrap dryers/delacquering/decoating kilns, group 2 furnaces, sweat furnaces and dross coolers; secondary aluminum processing units (composed of all existing group 1 furnace emission units and all existing in-line fluxer emission units); and new and reconstructed group 1 furnaces and in-line fluxers. Each of these affected sources emits one or more of the HAPs listed in section 112 of the Act.

Scrap aluminum is often preprocessed prior to melting. Preprocessing steps may include shredding to reduce the size of aluminum scrap; drying of oily scrap such as machine turnings and borings; and/or heating in a scrap dryer, delacquering kiln or decoating kiln to remove coatings or other contaminants that may be present on the scrap. Heating of high iron content scrap in a sweat furnace to reclaim the aluminum content is also a preprocessing operation.

Crushing, shredding, and grinding operations are used to reduce the size of scrap aluminum. Emissions of PM and HAP metals are generated as dust from coatings and other contaminants contained in the scrap aluminum. A typical shredder with a capacity of 90,900 Mg/yr (100,000 tpy), is estimated to produce 190 Mg/yr (212 tpy) of PM, before controls (See docket item II–B–16, impacts memo). PM emitted from shredders contains HAP metals.

A chip dryer is used to evaporate oil and/or moisture from uncoated aluminum chips and borings. Chip dryers typically operate at temperatures ranging between 150°C to 400°C (300°F to 750°F). An uncontrolled chip dryer with a typical capacity of 36,400 Mg/yr (40,000 tons/yr), is estimated to emit 2.4 g TEQ/yr (.0053 lb/yr) of D/F, and 385 Mg/yr (424 tpy) of THC (of which some fraction is organic HAP) (See docket item II–B–16, impacts memo).

Painted and/or coated materials are processed in a scrap dryer/delacquering kiln/decoating kiln to remove coatings and other contaminants that may be present in the scrap prior to melting. Coatings, oils, grease, and lubricants represent up to 20 percent of the total weight of these materials. Organic HAPs, D/F, and inorganic HAPs including particulate metal HAP are emitted during the drying/delacquering/decoating process.

Used beverage containers (UBC) comprise a major portion of the recycled aluminum scrap used as feedstock by the industry. In scrap drying/delacquering/decoating operations, UBC and other post-consumer, coated products (e.g., aluminum siding) are heated to an exit temperature of up to 540°C (1,000°F) to volatilize and remove various organic contaminants such as paints, oils, lacquers, rubber, and plastic laminates prior to melting. An uncontrolled scrap dryer/delacquering kiln/decoating kiln with a typical capacity of 45,500 Mg/yr (50,000 tpy) is estimated to emit 43.3 Mg/yr (47.7 tpy) PM (of which some fraction is particulate metal HAP), 76.0 Mg/yr (83.6 tpy) HCl, 68 Mg/yr (75 tpy) THC (of which some fraction is organic HAP), and 3.5 g TEQ/yr (0.0077 lb TEQ/yr) of D/F (See docket item II–B–16, impacts memo).

A sweat furnace is typically used to reclaim (or ''sweat'') the aluminum from scrap with high levels of iron. These furnaces operate in batch mode at a

temperature that is high enough to melt the aluminum but not high enough to melt the iron. The aluminum melts and flows out of the furnace while the iron remains in the furnace in solid form. The molten aluminum can be cast into sows, ingots, or T-bars that are used as feedstock for aluminum melting and refining furnaces. Alternately, molten aluminum can be fed directly to a melting or refining furnace. An uncontrolled sweat furnace, with a typical capacity of 4,500 Mg/yr (5,000 tpy) is estimated to emit 0.071 g TEQ/yr (0.00016 lb TEQ/yr) of D/F (See docket item II–B–16, impacts memo).

Process (i. e. melting, holding or refining) furnaces are refractory-lined metal vessels heated by an oil or gas burner to achieve a metal temperature of about 760°C (1,400°F). The melting process begins with the charging of scrap into the furnace. A gaseous (typically, chlorine) or salt flux may be added to remove impurities and reduce aluminum oxidation. Once molten, the chemistry of the bath is adjusted by adding selected scrap or alloying agents, such as silicon. Salt and other fluxes contain chloride and fluoride compounds that may be released when introduced to the bath. HCl may also be released when chlorine-containing contaminants (such as polyvinyl chloride coatings) present in some types of scrap are introduced to the bath. Argon and nitrogen fluxes are not reactive and do not produce HAPs. In a sidewell melting furnace, fluxing is performed in the sidewell and fluxing emissions from the sidewell are controlled. In this type of furnace, fluxing is not typically done in the hearth and hearth emissions (which include products of combustion from the oil and gas fired furnaces) are typically uncontrolled.

Process furnaces may process contaminated scrap which can result in HAP emissions. In addition, fluxing agents may contain HAPs, some fraction of which is emitted from the furnace. Process furnaces are large sources of HAP emissions in the secondary aluminum industry. An uncontrolled melting furnace with a typical capacity of 18,100 Mg/year (20,000 tpy) which processes contaminated scrap and uses reactive fluxes is estimated to emit 177 Mg/yr (195 tpy) of PM (of which approximately 0.80 Mg/yr [0.88 tpy] is particulate metal HAP), 29.7 Mg/yr (32.6 tpy) of HCl, and 8 g TEQ/yr (0.018 lb TEQ/yr) D/F (See docket item II–B–16, impacts memo).

As described in section IV.C.1 of this document, process furnaces have been divided into group 1 (unrestricted scrap content, unrestricted fluxing) and group 2 (clean charge, no reactive flux). Existing group 1 furnaces are emission units within the secondary aluminum processing unit affected source.

Dross-only furnaces are furnaces dedicated to reclamation of aluminum from drosses formed during the melting/holding/alloying operations carried out in other furnaces. Exposure to the atmosphere causes the molten aluminum to oxidize, and the flotation of the impurities to the surface along with any salt flux creates ''dross''. Prior to tapping, the dross is periodically skimmed from the surface of the aluminum bath, and cooled. Dross-only furnaces are typically rotary barrel furnaces (also known as salt furnaces). A dross only furnace without controls with a typical capacity of 18,200 Mg/yr (20,000 tpy) is estimated to emit 113 Mg/yr (125 tpy) of PM (of which some fraction is particulate metal HAP (See docket item II-B–16, impacts memo).

Rotary dross coolers are devices used to cool dross in a rotating, water-cooled drum. A rotary dross cooler without controls with a typical capacity of 9,090 Mg/yr (10,000 tpy) is expected to emit 15.4 Mg/yr (17.0 tpy) of PM (of which some fraction is particulate metal HAP) (See docket item II-B–16, impacts memo, docket item II-B–15, Peters Risk Memo 3/27/97).

In-line fluxers are devices used for aluminum refining, including degassing, outside the furnace. The process involves the injection of chlorine, argon, nitrogen or other gases to achieve the desired metal purity. Argon and nitrogen are not reactive and do not produce HAPs. In-line fluxers are found primarily at facilities that manufacture very high quality aluminum or in facilities with no other means of degassing. An in-line fluxer operating without emission controls, of typical capacity of 45,500 Mg/yr (50,000 tpy) is estimated to emit 60.8 Mg/yr (66.8 tpy) of HCl and 1.9 Mg/yr (2.1 tpy) of PM (see docket item II-B–16, impacts memo). Existing in-line fluxers are emission units within the secondary aluminum processing unit affected source.

Given that these processes release significant quantities of HAPs and the availability of emission control systems, the EPA selected to develop and propose NESHAP for the following emission sources: New, reconstructed and existing scrap shredders, chip dryers, scrap dryer/delacquering/decoating kilns, sweat furnaces, dross-only furnaces, rotary dross coolers, and group 2 (clean charge, no reactive flux) furnaces; new and reconstructed group 1 furnaces and in-line fluxers; and secondary aluminum processing units (composed of existing group 1 furnaces and in-line fluxers).

The proposed standards would limit emissions of metal HAPs, organic HAPs (including D/F), and HCl from secondary aluminum production facilities. (Pollutant health effects were discussed in section II.C. of this document). As described above, these HAPs are emitted in significant quantities from secondary aluminum production sources.

C. Selection of Proposed Standards for Existing and New Sources

1. Background

After the EPA has identified the specific source categories or subcategories of major sources to regulate under section 112, MACT standards must be set for each category or subcategory. Section 112 establishes a minimum baseline or ''floor'' for standards. For new sources, the standards for a source category or subcategory cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. (See section 112(d)(3).) The standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources for categories and subcategories with 30 or more sources, or the average or median of the best-performing five sources for categories or subcategories with fewer than 30 sources.

After the floor has been determined for a new or existing source in a source category or subcategory, the Administrator must set MACT standards that are no less stringent than the floor. Such standards must then be met by all sources within the category or subcategory. In establishing the standards, the EPA may distinguish among classes, types, and sizes of sources within a category or subcategory. (See section 112(d)(1).)

The next step in establishing MACT standards is to investigate regulatory alternatives. With MACT standards, only alternatives at least as stringent as the floor may be selected. Information about the industry is analyzed to develop model plants for projecting national impacts, including HAP emission reduction levels and cost, energy, and secondary impacts. Regulatory alternatives (which may be different levels of emissions control, equal to or more stringent than the floor levels) are then evaluated to select the regulatory alternative that best reflects the appropriate MACT level. The

selected alternative may be more stringent than the MACT floor, but the control level selected must be technologically achievable. The regulatory alternatives and emission limits selected for new and existing sources may be different because of different MACT floors.

The Agency may consider going beyond the floor to require more stringent controls. Here, the EPA considers the achievable emission reductions of HAPs (and possibly other pollutants that are co-controlled) and the cost impacts.

Subcategorization within a source category may be considered when there is enough evidence to demonstrate clearly that there are significant differences among the subcategories. The criteria to consider include process operations (including differences between batch and continuous operations), emission characteristics, control device applicability, safety, and opportunities for pollution prevention.

The EPA examined the processes, the process operations, and other factors to determine if separate classes of units, operations, or other criteria have an effect on air emissions from emission sources, or the controllability of those emissions. Based on differences in emissions, the type of materials processed and the fluxing practices employed, the EPA has distinguished two specific classes of melting, holding, and refining furnaces. Because HAP emission potential is strongly influenced by the contaminants present in the materials that are melted and the type and amount of flux added, these furnaces would be subject to separate standards under the proposed rule.

The classes of process furnaces which are characterized by the types of scrap charged to the furnace and the operations carried out in the furnace are: (1) Group 1 (all process furnaces except group 2) furnaces and (2) group 2 (''clean charge/no reactive flux'') furnaces.

Dross-only furnaces and sweat furnaces are distinctly different from the other types because they each specialize in recovering aluminum from a particular type of raw material. As the name implies, ''dross-only'' furnaces charge only dross collected from other furnace operations. Sweat furnaces recover aluminum from materials with a high iron (or other ferrous material) content. Both of these furnaces are unique in their method of operation and are treated as separate sources in development of the proposed NESHAP.

2. Selection of MACT Floor Technology

In establishing these proposed emission standards, the technology representative of the MACT floor level of control was determined for each affected source. Add-on control technologies were considered as well as work practices and pollution prevention techniques. Data related to operating procedures and emissions for secondary aluminum plants were obtained through a combination of site visits, an ICR, an EPA/industry voluntary follow-up questionnaire, and emissions tests.

Emission tests were conducted at 12 facilities to measure uncontrolled and controlled emissions from selected production processes and to evaluate the effectiveness of the technology representative of the MACT floor level of control. Sites for these tests were selected jointly by the EPA and industry as operating technology representative of the MACT floor level of control. Funding for tests was provided by the EPA, The Aluminum Association, and individual facilities. The EPA also met frequently with industry representatives to discuss the test program and available data, and to identify and resolve issues. In addition to the data from the emission testing program, the Agency also used emissions data from the ICR database (docket item II–D–105, ICR database). Data from all these sources were considered in the selection of emission limits for individual emission points at secondary aluminum plants. Additional details on the emission test data can be found in the docket. (See Docket Item II–B–17. Memorandum. M. Wright, Research Triangle Institute, to J. Santiago, EPA:MICG. Summary of Emissions Data. 1998.)

One important aspect of the more effective control technologies is the system that captures and collects the HAPs generated by each of the processes. Well-designed hoods and their proper placement, adequate air flows or ventilation rates, and adequately sized ductwork and fans, in well-maintained systems are representative of the MACT floor technology control systems. These well-designed capture and collection systems can be achieved by following the design standards in the American Conference of Governmental Industrial Hygienists (ACGIH) ''Industrial Ventilation: A Manual of Recommended Practice.'' The standards described in Chapters 3 and 5 of this manual are incorporated by reference in the rule as a requirement applicable to affected sources equipped with add-on control devices.

Scrap shredders. Based on information provided in the ICR responses, the EPA identified 69 shredding and crushing operations at 51 facilities. Emissions test measurements show that shredders and crushers are sources of PM (containing particulate metal HAP). Fabric filters are used to control emissions at 49 of the 69 shredders and crushers in the industry. The best performing 12 percent of the existing 69 scrap shredders and crushers are equipped with a fabric filter for controlling PM and HAP metals. Therefore, the floor level of control for existing sources is determined by the average/median of the best performing 8 sources within the category. This median level of control is represented by a well designed and operated pulse-jet fabric filter using fiberglass bags with an air to cloth ratio of about 6.0.

This same level of control is also the MACT floor for new sources since it is also the level of control achieved by the best controlled source.

Chip dryers. The EPA identified five chip dryers based on information provided in the ICR responses. Emissions test measurements show that these sources emit THC (containing organic HAP) and D/F. Four of these five dryers are equipped with an afterburner. The MACT floor, for categories of less than 30 sources is determined by the median of the five best controlled sources in the category. The best performing 4 of the existing 5 chip dryers are equipped with an afterburner for organics (i.e., THC and D/F) control. Therefore, the floor level of control for existing sources is determined by the median of the best performing 5 sources within the category. This median level of control is represented by a well designed and operated afterburner with a minimum of 1-second residence time and operated at a temperature of 1,200°F.

The same level of control which represents the existing source MACT is also the MACT floor for new sources since it is also the level of control achieved by the best controlled source.

Scrap dryers/delacquering kilns/decoating kilns. Based on information provided in the ICR responses, the EPA identified 46 scrap dryers, delacquering kilns, and decoating kilns. Emissions test measurements show that these sources emit PM (containing particulate metal HAP), HCl, THC (containing organic HAP) and D/F.

Afterburners followed by a lime injected fabric filter system are used to control emissions at 13 of the 46 scrap dryers/delacquering kilns/decoating kilns in the industry. The best performing 12 percent of the existing 46 scrap dryers/delacquering kilns/decoating kilns are equipped with an

afterburner for organics (i.e., THC and D/F) control and a lime injected fabric filter for controlling HCl, D/F, PM and HAP metals. Therefore, the floor level of control for existing sources is determined by the average/median of the best performing 6 sources within the category. This median level of control is represented by a well designed and operated afterburner with a minimum of 1-second residence time and operated at a temperature of 1400°F followed by a pulse-jet fabric filter using fiberglass bags with an air to cloth ratio of about 4.0 and continuous lime injection.

The existing source MACT is also the MACT floor for new sources since it is also the level of control achieved by the best controlled source.

Sweat furnaces. Based on data provided in the ICR responses, the EPA identified 12 sweat furnaces in the industry. These sources reclaim aluminum from scrap containing high levels of iron by heating the scrap to a temperature above the melting point of aluminum but below that of iron. Emissions test measurements show that these sources emit THC and D/F. Six of the 12 sweat furnaces are equipped with afterburners to control THC and D/F. The MACT floor, for categories of less than 30 sources is determined by the median of the five best controlled sources in the category. Therefore, afterburners represent the MACT floor level of control for existing sweat furnaces. An afterburner representative of this median level of control is designed for a minimum of 1-second residence time and operated at a temperature of 1600°F.

The existing source MACT is also the MACT floor for new sources since it is also the level of control achieved by the best controlled source.

Group 1 furnaces. Existing group 1 furnaces are emission units within a secondary aluminum processing unit affected source. Each new and reconstructed group 1 furnaces is a separate affected source. The EPA identified 528 Group 1 furnaces based on information provided in the ICR responses. Approximately one-half of these furnaces operate with no add-on air pollution control devices. Emissions test measurements show that these sources emit PM (containing particulate metal HAP), HCl, and D/F. The add-on controls used on group 1 furnaces include fabric filters, lime coated fabric filters, lime injected fabric filters, cyclones, incinerators and wet scrubbers.

Other furnaces in group 1 limit emissions through the use of work practices, design practices, and pollution prevention approaches. These techniques include, but are not limited to, charging only clean scrap to the furnaces and design and work practice approaches for fluxing, limiting oil and coatings content of furnace charges through the use of scrap purchasing specifications and scrap inspection, fluxing only in holding furnaces, fluxing in in-line fluxers, and limiting the use of reactive fluxes. Work practices and pollution prevention approaches may also be combined with add-on controls to achieve HAP reductions.

Lime injected fabric filter systems are used to control emissions at 68 of the 528 group 1 furnaces in the industry. The best performing 12 percent of the existing 528 group 1 furnaces are equipped with a lime injected fabric filter for controlling HCl, PM and HAP metals, and for controlling D/F from those furnaces which process scrap containing oil and coatings. Therefore, the floor level of control achievable by existing emission units is determined by the average/median of the best performing 63 sources within the category. This median level of control is represented by a well designed and operated pulse jet fabric filter with an air to cloth ratio of about 6.5 and continuous lime injection.

The level of control achievable by existing emission units represents the MACT floor for new sources since it is also the level of control achieved by the best controlled source.

Group 2 furnaces. Based on the ICR data, the EPA estimates that about 75 group 2 furnaces are currently in operation. None of the furnaces in group 2 are equipped with add-on air pollution control devices. Emissions from these furnaces are typically controlled by work practices that require charging only clean charge materials, coupled with fluxing operations using only non-reactive agents (i.e. fluxes which do not contain or produce HAPs). Since emissions from these units are at very low levels and considering the cost of emissions testing, the application of emission measurement methodology and setting specific emissions limits for this particular class of source is not practicable due to economic limitations. Thus, work practice procedures under section 112(h) of the Act (limitations on type of charge and type of flux used) constitute the MACT floor level of control for existing Group 2 furnaces as well as MACT for new group 2 furnaces.

Dross-only furnaces. Based on the information reported in the ICR, the EPA identified 15 dross-only furnaces. Emissions test measurements show that these sources emit PM (containing particulate metal HAP). All dross-only furnaces are equipped with control systems that include a fabric filter, some of which have lime injection systems. The MACT floor, for categories of less than 30 sources is determined by the median of the five best controlled sources in the category. The ICR data show that the control technology in place at the five best-controlled sources is a lime injected fabric filter. Therefore, lime injected fabric filters represent the MACT floor level of control for existing dross-only furnaces. The technology at the median level of control is represented by a well designed and operated fabric filter with polyester bags at an air to cloth ratio of 6.5 to 1 with continuous lime injection.

The existing source MACT floor is also the MACT floor for new sources since it is also the level of control achieved by the best controlled source.

Rotary dross coolers. The EPA identified 26 rotary dross coolers based on the information provided in the ICR responses. Emissions test measurements show that these sources emit PM (containing particulate metal HAP). All 26 rotary coolers are equipped with fabric filters. The MACT floor, for categories of less than 30 sources is determined by the median of the five best controlled sources in the category. Therefore, fabric filters represent the MACT floor level of control for existing rotary dross coolers. A fabric filter representative of the median of the best 5 controlled sources is a well designed and operated pulse-jet fabric filter system using polyester bags with an air to cloth ratio of 3.0.

The existing source MACT floor is also the MACT floor for new sources since it is also the level of control achieved by the best controlled source.

In-line fluxers. Existing in-line fluxers are emission units within a secondary aluminum processing unit affected source. Each new and reconstructed in-line fluxer is a separate affected source. The EPA identified a total of 120 in-line fluxers (also referred to as degassing boxes) from the information reported in the ICR responses. Emissions test measurements show that in-line fluxers are sources of low concentrations of PM (containing particulate metal HAP) and HCl. Eleven in-line fluxers are controlled by fabric filters and 7 of these have lime (or other alkaline reagent) injection systems. The average of the best performing 12 percent of the existing 120 in-line fluxers is represented by a lime injected fabric filter for controlling HCl, PM and HAP metals. The level of control achievable by existing emission units is represented by a well designed and operated pulse-jet fabric filter using

fiberglass bags with an air to cloth ratio of about 7.0 and continuous lime injection.

The level of control achievable by existing emission units represents the MACT floor for new sources since it is also the level of control achieved by the best controlled emission unit.

Secondary aluminum processing units. A secondary aluminum processing unit consists of all of the existing group 1 furnace emission units and all of the existing in-line fluxer emission units at a secondary aluminum production facility. The MACT floor level of control is determined by applying the level of control achievable to each emission unit within the affected source. As described in the paragraphs in this section of the document which address the determination of the MACT floor for group 1 furnaces and in-line fluxers, this is represented by the level of control achieved by a lime injected fabric filter of appropriate design, coupled with continuous lime injection. Each new or reconstructed group 1 furnace or in-line fluxer is a separate affected source subject to the MACT floor emission limitations as described in the paragraphs in this section of the document which address the determination of the MACT floor for group 1 furnaces and in-line fluxers.

3. Consideration of Beyond-the-Floor Technologies

The EPA investigated beyond-the-floor controls for each pollutant and affected source regulated by the proposed rule. For each of the cases evaluated, the Agency did not identify cost-effective emission control technologies that would accomplish additional emission reductions to a level below that achieved by the MACT floor technology. Therefore, the Agency is proposing emission limits at the MACT floor level of control.

4. Selection of Emission Limits

The EPA and industry conducted comprehensive emission tests at 12 facilities to characterize uncontrolled and controlled emissions from the various processes and to evaluate the effectiveness of existing control devices and work practice and pollution prevention approaches. Sites with add-on control technologies selected for emission testing represented the use of technology identified by the EPA as the MACT floor technology. Other sites were tested where work practice and pollution prevention approaches were used to achieve HAP emission reductions. Data from these sites showed that work practices and pollution prevention approaches could achieve HAP emission levels similar to those achieved with add-on MACT floor technologies. Therefore, the EPA is proposing a combination of work practice/pollution prevention based standards and MACT floor control technology based numerical emission limits for control of HAP from affected sources subject to the proposed rule.

The EPA is, in most cases, proposing emission limits in a mass per unit (e.g., kg/Mg or lb/ton) of feed format. This format provides several advantages. For example, for process units that release emissions from more than one stack and where multiple similar affected sources are controlled by a common control device, total emission rates can be determined by measuring emissions for a particular pollutant from each stack or discharge point, e.g. lbs/hr, adding those, and dividing by the sum of all affected source feed rates, e.g. tons/hr. In addition, this format is tied to production and the emission limits are unaffected by dilution. In specific cases, concentration based numerical emission limits, or minimum percentage reduction standards are appropriate; the format of these standards is explained in the discussion of these emission standards.

All limits on particulate metal HAP emissions are expressed in terms of a surrogate pollutant, PM. The use of the surrogate PM emissions limit will require the installation and operation of the appropriate MACT floor technology for metal HAPs control from new and existing sources. Use of PM as a surrogate for metal HAPs also has the advantage of simplifying and reducing the cost of performance testing and monitoring.

Except for D/F which merits special consideration due to high toxicity, all emission standards for gaseous organic HAPs are expressed in terms of a surrogate pollutant, THC. The use of a surrogate THC emissions limit for gaseous organic HAPs will require facilities to install and operate the appropriate MACT floor technology for gaseous organic HAPs from new and existing sources.

All limits on D/F emissions are expressed in units of toxic equivalent (TEQ). Toxic equivalent refers to the international method of expressing toxicity equivalents for dioxins and furans as defined in the EPA report, ''Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-dioxins and -dibenzofurans (CDDs and CDFs) and 1989 Update'' (docket item II–A–1).

In addition to the emission limits discussed below, the EPA is also proposing a 10 percent opacity limit applicable to affected sources with fabric filter control devices that choose to monitor with a COM and affected scrap shredders that choose to monitor with a COM or by visible emissions monitoring. During the course of many emission tests conducted at secondary aluminum facilities, the EPA has determined that the exhaust gases from properly designed, operated, and maintained fabric filters have essentially zero opacity. An opacity of 10 percent or greater following a successful performance test on a fabric filter controlled affected source is a clear indication that the control device is not functioning properly.

Scrap shredders. The proposed PM limit for scrap shredders and crushers of 23 mg/dscm, (0.010 gr/dscf) is based on test results from four facilities equipped with well designed and operated fabric filters representative of the MACT floor technology for new and existing sources where PM measured emissions ranged from 0.0002 gr/dscf to 0.0069 gr/dscf. The EPA took into consideration the wide variation in controlled emissions for the four MACT floor fabric filter systems in selection of the emission limits of 23 mg/dscm (0.010 gr/dscf). Such a range in performance represents the typical variations associated with the process and with application of the floor technology. The proposed PM emission limit represents a level that can be achieved by all scrap shredders and crushers using the MACT floor technology. The supporting emissions data are presented in Figure 1 and Table 3 below.

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Shredder Operations - Emissions Data

PM (gr/dscf)

Plant	High	Low	Average
Plant 24	0.0033	0.0016	0.0022
Plant 25	0.0077	0.0063	0.0069
Plant 26	0.0003	0.0001	0.0002
Plant 27	0.0011	0.0006	0.0008

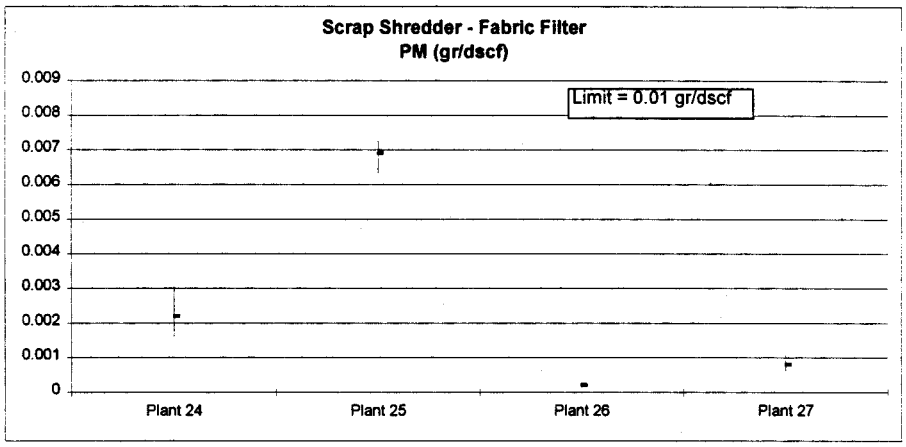

Figure 1. Scrap Shredder Emission Test Data

BILLING CODE 6560–50–C

TABLE 3.—SUMMARY OF SCRAP SHREDDERS AND CRUSHERS PARTICULATE EMISSIONS TEST DATA

Plant	Control device	Average PM emissions	
		PM (gr/dscf)	PM (mg/dscm)
24	Fabric Filter	0.0022	5.0
25	Fabric Filter	0.0069	15.8
26	Fabric Filter	0.0002	0.46
27	Fabric Filter	0.0008	1.8

For this affected source, a concentration format is appropriate because PM concentration is easily and reliably measured from these sources and PM concentration reflects fabric filter performance, the technology representative of MACT for new and existing sources.

The EPA is also proposing a 10 percent opacity limit applicable to fabric filters applied to scrap shredder waste gas streams if the owner or operator chooses to monitor either with a COM or by visible emissions monitoring. As noted above, the EPA has determined that the presence of a 10 percent or greater opacity discharge from a fabric filter following a successful performance test is a clear indication that the device is not functioning properly.

Chip dryers. One chip dryer with a well designed and operated afterburner representative of the MACT floor was tested. The controlled THC emissions from tests at this facility averaged 0.21 kg/Mg (0.42 lb/ton) of feed and the D/F emissions averaged 1.3 μ/Mg D/F TEQ (1.7×10^{-5} gr/ton) of feed. The data are shown in Figure 2 below.

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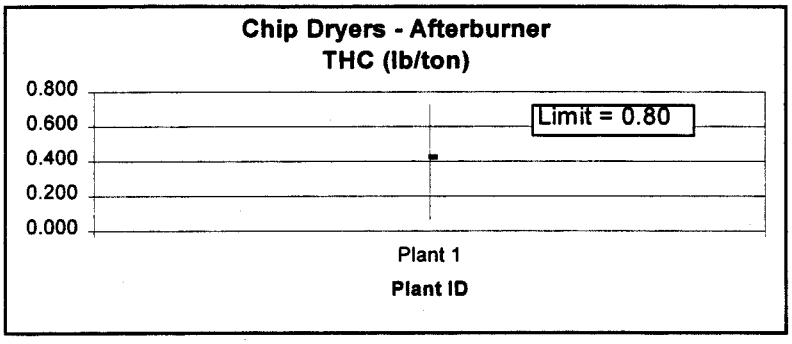
Chip Drying Operations - Emissions Data

THC (lb/ton)

Plant	High	Low	Average
Plant 1	0.730	0.062	0.424



D/F (µg/Mg)

Plant	High	Low	Average
Plant 1	2.293	0.745	1.330

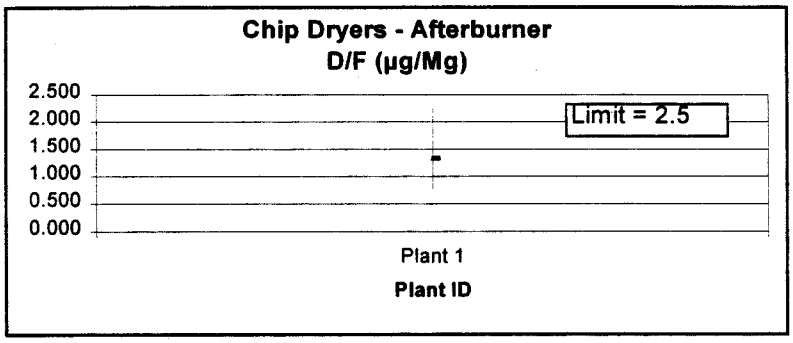


Figure 2. Chip Dryer Emissions Data

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Based on these data the EPA is proposing a THC limit of 0.40 kg/Mg (0.80 lb/ton) of feed and a D/F (TEQ) limit of 2.5 ''μg/Mg (3.5×10^{-5} gr/ton) of feed.

Scrap dryers/delacquering kilns/decoating kilns.

The same process equipment can function as a scrap dryer, a delacquering kiln, or a decoating kiln. Equipment of an identical design is capable of performing different functions by changing the operating temperature and charge make-up. In addition, the control technology representative of MACT for new and existing sources is the same for kilns operating as scrap dryers and kilns operating as delacquering/decoating kilns. The EPA/industry task group spent considerable effort trying to define scrap dryers and delacquering/decoating kilns such that separate emission standards could be set for each. Despite this substantive effort, the task group was unable to develop consistent, unambiguous definitions which would permit the establishment of different classes of scrap dryers, delacquering kilns, or decoating kilns. In recognition of the different operating modes applicable to these affected sources such as operating temperatures, charge make-up, difference in uncontrolled emission levels; to provide operational flexibility; and to ensure that the technology representative of the MACT floor for new and existing sources is installed and properly operated at these sources, the EPA is proposing two alternate sets of emission standards.

One set of emission standards is based on emissions data obtained from a kiln operating as a delacquering/decoating kiln with an operating temperature about 1,000 °F and processing only coated materials, such as painted siding and used beverage containers, and operating a well designed afterburner/lime injected fabric filter system representative of MACT for new and existing sources. This set of standards for PM, HCl, THC, and D/F is summarized in Table 4.

TABLE 4. SUMMARY OF EMISSION LIMITS FOR SCRAP DRYERS, DELACQUERING KILNS, AND DECOATING KILNS OPERATING AS DELACQUERING KILNS

Process	PM (lb/ton of feed)	HCl (lb/ton of feed)	THC (lb/ton of feed)	D/F (μg/Mg of feed)
Scrap Dryer, Delacquering Kiln, Decoating Kiln	0.080	0.80	0.060	0.25

The other set of emission standards is based on the emissions data obtained from a kiln that had an operating temperature of about 700°F and was processing scrap with oils, coatings, paints, insulation, etc. The control technology in use was an afterburner/lime injected fabric filter system representative of MACT for new and existing sources. That set of standards and control device design and operating requirements is summarized in Table 5.

TABLE 5.—SUMMARY OF ALTERNATE EMISSION LIMITS AND CONTROL EQUIPMENT REQUIREMENTS FOR SCRAP DRYERS, DELACQUERING KILNS, AND DECOATING KILNS OPERATING AS SCRAP DRYERS

Process	PM (lb/ton of feed)	HCl (lb/ton of feed)	THC (lb/ton of feed)	D/F (μg/Mg of feed)	Afterburner design and operating requirements	
					Temperature (°F)	Residence time[a] (seconds)
Scrap Dryer, Delacquering Kiln, Decoating Kiln	0.30	1.50	0.20	5.0	1,400	1.0

[a] Afterburner design residence time.

The first set of proposed emission limits for scrap dryers, delacquering kilns, decoating kilns in Table 4 is supported by the delacquering emissions data summarized in Table 6 and Figure 3. Under this set of standards an operator is required to meet a more stringent set of emission limits, but the afterburner design parameters are not requirements.

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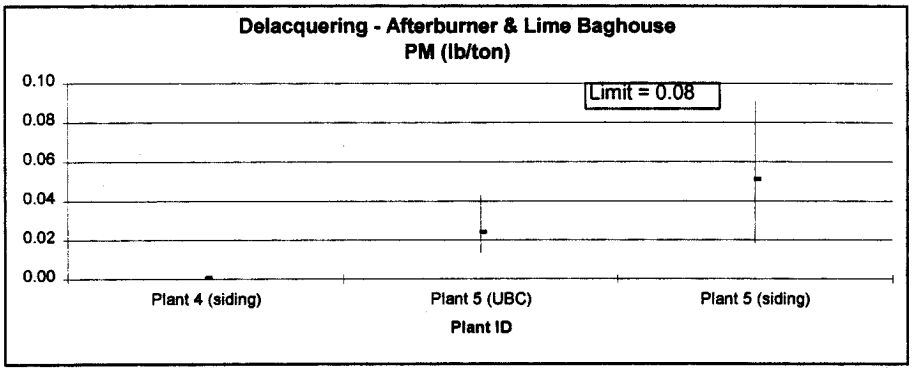
Delacquering Operations - Emissions Data

Particulate Matter (lb/ton)

Plant	High	Low	Average
Plant 4 (siding)	0.00069	0.00048	0.00057
Plant 5 (UBC)	0.04300	0.01300	0.02400
Plant 5 (siding)	0.09100	0.01800	0.05100



HCl (lb/ton

Plant	High	Low	Average
Plant 4 (siding) (91%)	1.045	0.075	0.544

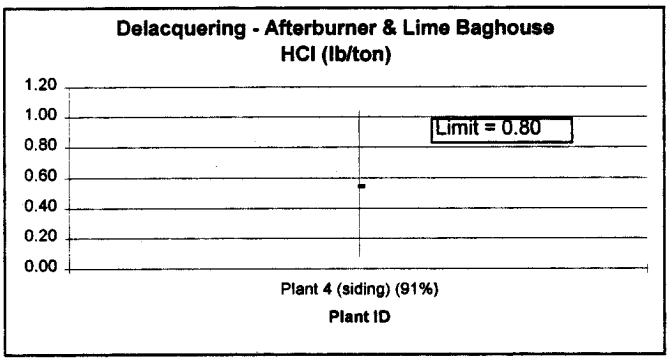
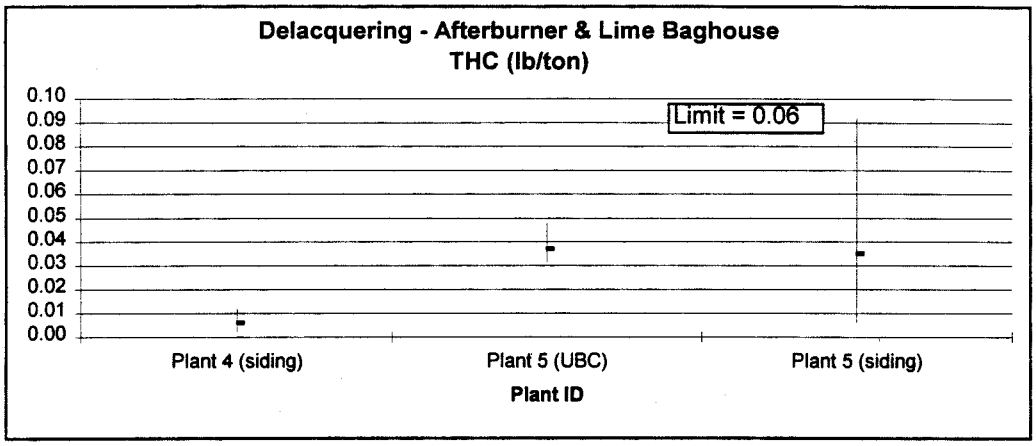


Figure 3. Scrap Delacquering Emissions Data

THC (lb/ton)

Plant	High	Low	Average
Plant 4 (siding)	0.01200	0.00200	0.00600
Plant 5 (UBC)	0.04800	0.03100	0.03700
Plant 5 (siding)	0.09200	0.00600	0.03500



D/F (µg/Mg)

Plant	High	Low	Average
Plant 4 (UBC)	0.14440	0.11685	0.13007

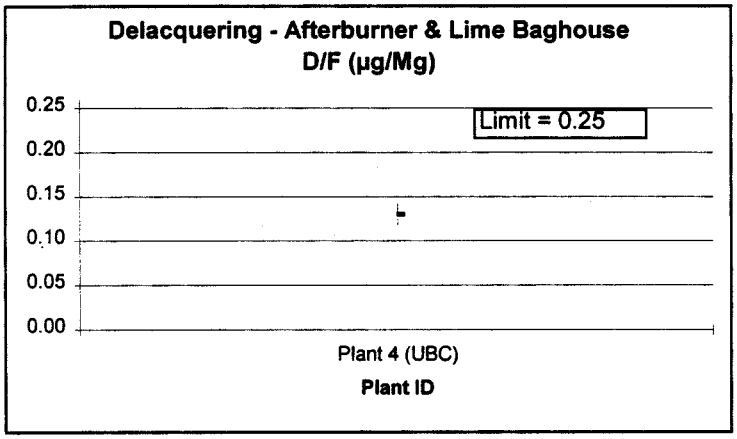


Figure 3 (continued). Scrap Delacquering Emissions Data

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TABLE 6.—SUMMARY OF SCRAP DRYER, DELACQUERING KILN, DECOATING KILN EMISSIONS DATA WITH MACT CONTROLS

Plant ID	PM (lb/ton of feed)	HCl (lb/ton of feed)	THC (lb/ton of feed)	D/F (µg/Mg of feed)
2—Scrap Dryer	0.167	0.827	.....	.....
3—Scrap Dryer	0.214	1.26	[a] 0.072	[a] 2.66
4—Delacquering	[b] 0.00057	[b] 0.544	[b] 0.006	[b] 0.118
5—Delacquering	[c] 0.024	.....	[c] 0.037	.....
	[d] 0.051	.....	[d] 0.035	.....

[a] Calculated by applying the afterburner efficiency to the uncontrolled fugitive emissions escaping from the kiln product discharge point. These emissions are supposed to be captured and controlled by the afterburner but problems during testing allowed emissions to escape from the kiln end where material leaves the process.
[b] Emissions test of kiln processing used beverage containers for D/F test and painted siding for all other tests.
[c] Emissions test of kiln processing used beverage containers.
[d] Emissions test of kiln processing painted siding.

Because of the lower level of uncontrolled emissions generated when a kiln is operated as a delacquering kiln (i.e., operating temperature of about 1,000°F and processing used beverage containers and painted siding only), an operator could conceivably operate a kiln primarily as a delacquering/decoating kiln but add a small amount of materials, such as oils or insulation, and classify it as a scrap dryer. In this case the operator could thereby operate with less than the MACT floor control equipment 1400°F and 1 second residence time afterburner design, while only reducing emissions to the level of the less stringent alternate emission limits. To preclude this, the EPA is specifying minimum afterburner design and operating requirements of 1 second residence time and 1400°F, MACT floor technology, for those operators electing to process material with oils, coatings, and insulation, in addition to used beverage containers and painted siding, thus operating the equipment as a scrap dryer rather than a delacquering/decoating kiln. The EPA is proposing the second, or alternate, set of emission standards based on data obtained from a kiln being operated as a scrap dryer. These alternate limits are combined with control device design and operating requirements to ensure that control technology representative of MACT is used when an operator chooses to comply with the higher, or less stringent, emission limits associated with a scrap dryer processing scrap with oils, coatings, paints, etc.

As noted above, the emissions data supporting the second or alternate emission limits were obtained from a kiln operating as a scrap dryer at a temperature of about 700°F. These data are summarized in Table 6 and shown in Figure 4. The control technology in use was an afterburner/lime injected fabric filter system representative of MACT for new and existing sources.

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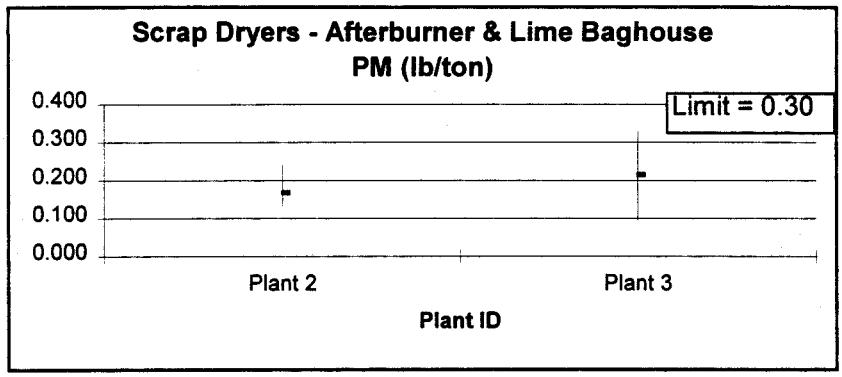
Scrap Drying Operations - Emissions Data

Particulate Matter (lb/ton)

Plant	High	Low	Average
Plant 2	0.240	0.130	0.167
Plant 3	0.370	0.093	0.214



HCl (lb/ton)

Plant	High	Low	Average
Plant 2	1.130	0.420	0.827
Plant 3	1.600	0.680	1.260

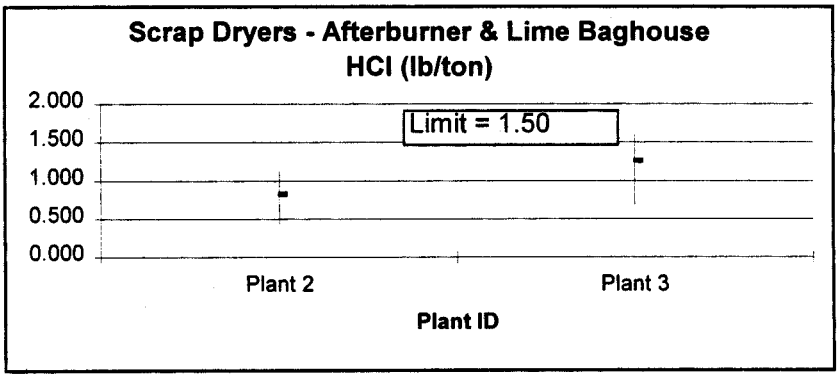
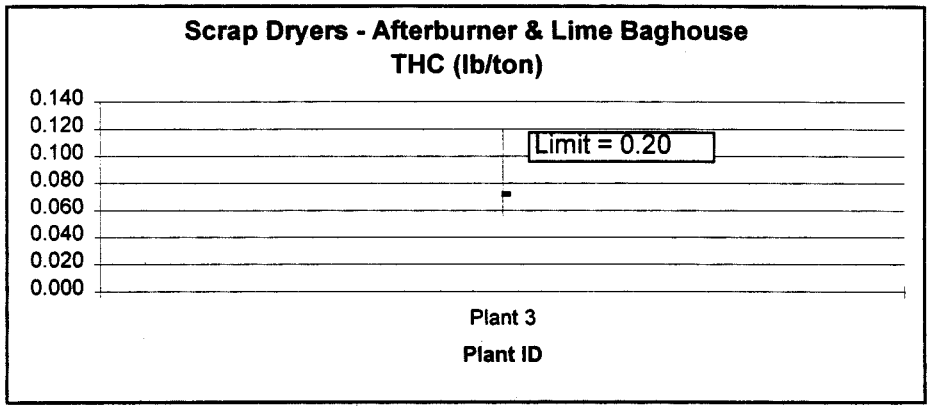


Figure 4. Scrap Dryer Emissions Data

Scrap Drying Operations - Emissions Data

THC (lb/ton)

Plant	High	Low	Average
Plant 3	0.120	0.055	0.072



D/F (µg/Mg)

Plant	High	Low	Average
Plant 3	4.48	1.27	2.69

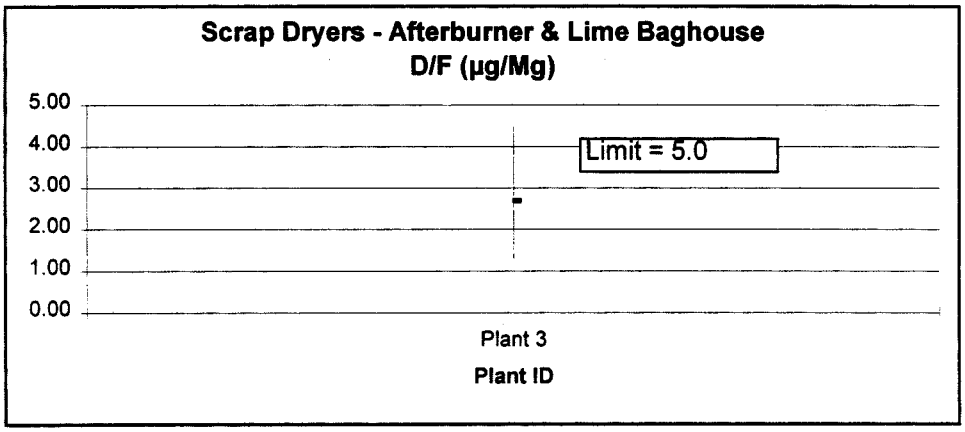


Figure 4 (continued). Scrap Dryer Emissions Data

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The EPA is also proposing a 10 percent opacity limit applicable to fabric filters applied to scrap dryer, and delacquering and decoating kiln waste gas streams if a COM is chosen as the monitoring option. As noted above, the EPA has determined that the presence of a 10 percent or greater opacity discharge from a fabric filter following a successful performance test is a clear indication that the device is not functioning properly.

Sweat furnaces. EPA tested one sweat furnace equipped with a well designed and operated afterburner representative of MACT for new and existing sources.

Controlled D/F emissions averaged 0.35 ng/dscm (1.5×10^{-10} gr/dscf) and are shown in Figure 5. Based on these data, the EPA is proposing a D/F limit for sweat furnaces of 0.80 ng/dscm D/F TEQ (3.5×10^{-10} gr/dscf) corrected to an 11 percent oxygen basis.

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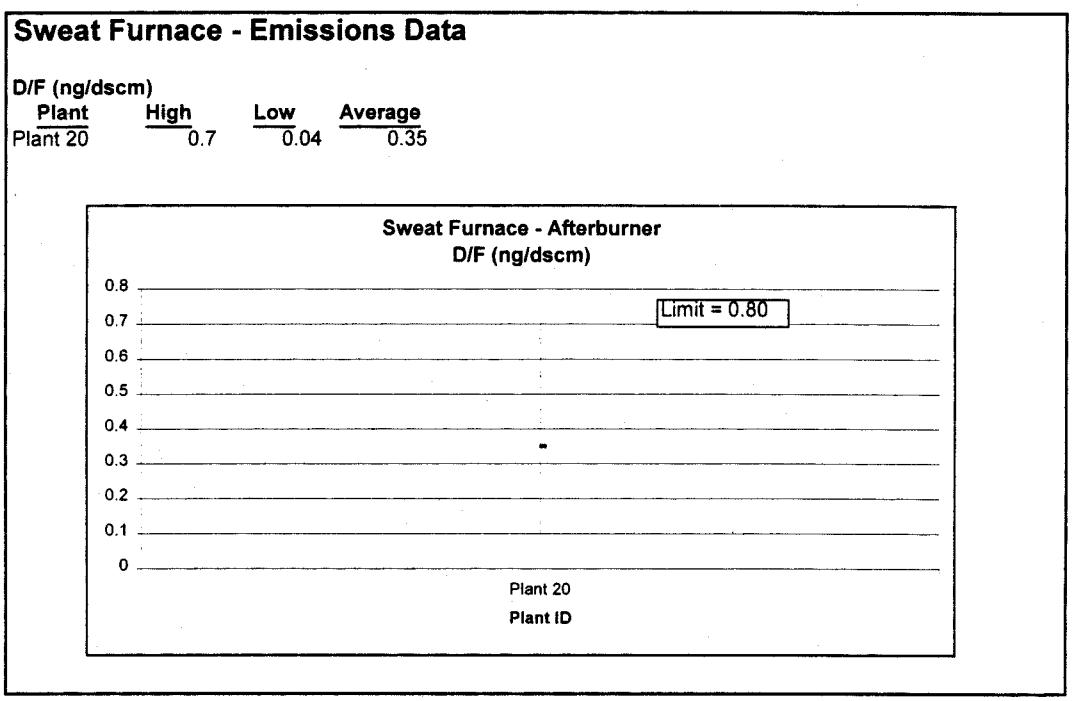

Figure 5. Sweat Furnace Emission Data

BILLING CODE 6560–50–C

A concentration limit, as opposed to a production based limit, is proposed for this source because materials charged to these furnaces are typically introduced in a random fashion without being weighed. Consequently, determining an emission rate per unit of feed is not a practical option as a format for the emission limit.

Dross-only furnaces. The EPA/industry tested one dross only furnace equipped with a well designed and operated fabric filter representative of the MACT floor for new and existing sources. The PM emissions from tests at this facility averaged 0.104 kg/Mg of feed (0.207 lb/ton). Based on these data as shown in Figure 6, the EPA is proposing a PM limit of 0.15 kg/Mg of feed (0.30 lb/ton).

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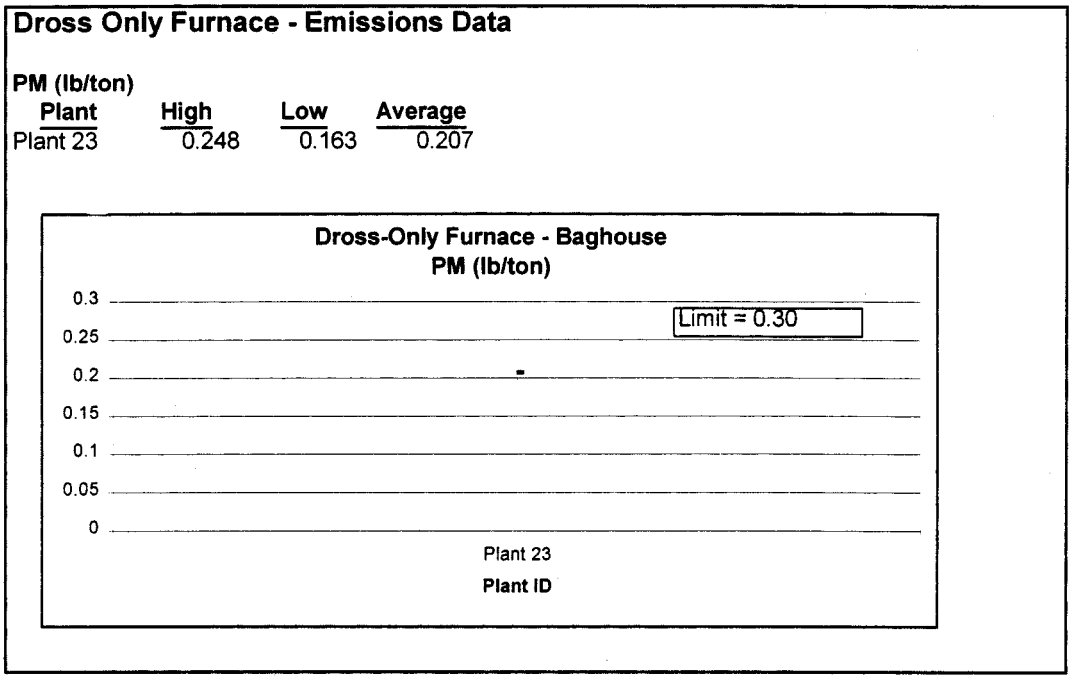

Figure 6. Dross-only Furnace Emissions Data

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The EPA is also proposing a 10 percent opacity limit applicable to fabric filters applied to dross-only furnace waste gas streams if a COM is chosen as the monitoring option. As noted above, the EPA has determined that the presence of a 10 percent or greater opacity discharge from a fabric filter following a successful performance test is a clear indication that the device is not functioning properly.

Rotary dross coolers. The EPA/industry tested two rotary dross coolers equipped with a well designed and operated fabric filter representative of the MACT floor technology for new and existing sources. The PM emissions from tests at these facilities averaged 2.29 and 75.5 mg/dscm (0.001 and 0.033 gr/dscf), respectively. These data are summarized in Table 7 and Figure 7.

TABLE 7.—SUMMARY OF ROTARY DROSS COOLER EMISSION DATA

Plant	PM (mg/dscm)	PM (gr/dscf)
21	2.29	0.001
22	[a] 75.5	[a] 0.033

[a] Plant 22 is equipped with a lime-injected fabric filter.

BILLING CODE 6560–50–P

Dross Cooling - Emissions Data

PM (gr/dscf)

Plant	High	Low	Average
Plant 21 (Baghouse)	0.001	0.001	0.001
Plant 22 (Lime Baghouse)	0.041	0.023	0.033

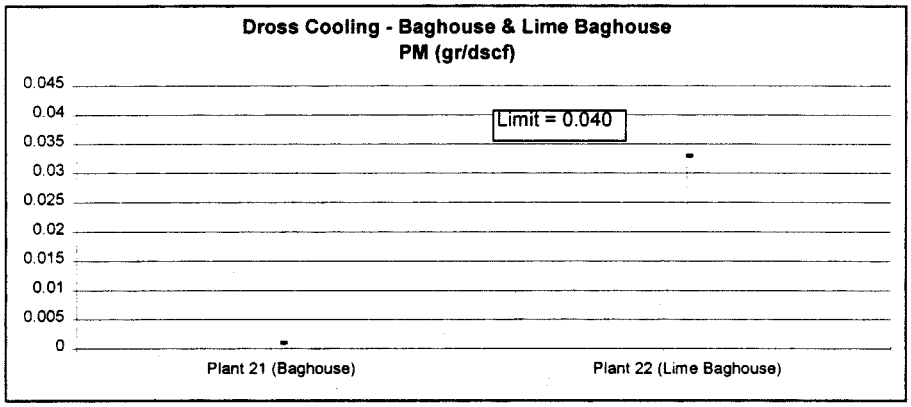


Figure 7. Dross Cooling Emissions Data

BILLING CODE 6560–50–C

Based on these data the EPA is proposing a PM limit of 92 mg/dscm (0.040 gr/dscf). The proposed PM emission limit represents a level that can be achieved by all rotary dross coolers using the floor technology for new and existing sources.

The EPA is also proposing a 10 percent opacity limit applicable to fabric filters applied to rotary dross cooler waste gas streams if a COM is chosen as the monitoring option. As noted above, the EPA has determined that the presence of a 10 percent or greater opacity discharge from a fabric filter following a successful performance test is a clear indication that the device is not functioning properly.

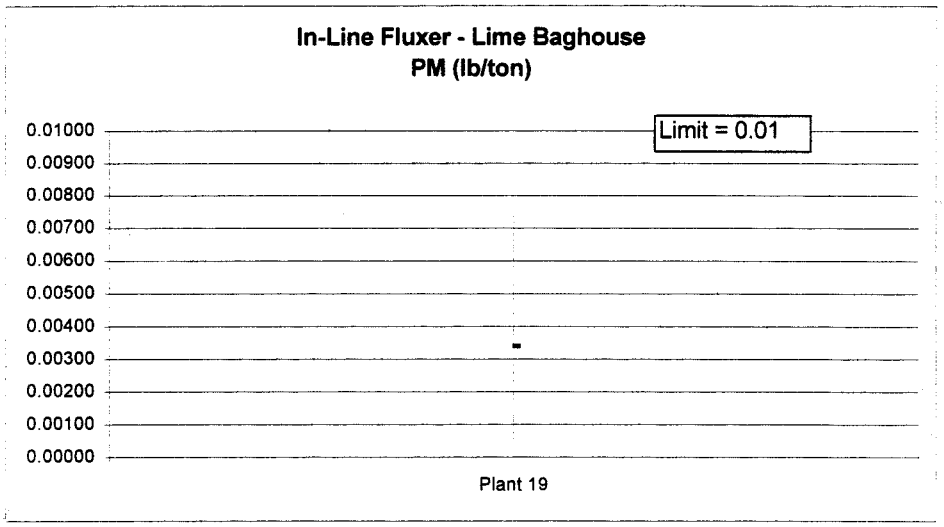
In-line fluxers. The EPA/industry tested one in-line fluxer equipped with a well designed and operated fabric filter with continuous lime injection representative of the control which is achievable for these emission units. Additional performance test data from the same in-line fluxer was also available (see docket item II–B–19, historical data memo). The PM emissions from tests performed at this facility averaged 0.00170 kg/Mg (0.00340 lb/ton) of feed and are shown in Figure 8. Based on these data the EPA is proposing a PM limit of 0.005 kg/Mg (0.01 lb/ton) of feed for new and reconstructed in-line fluxers. The HCl emissions from tests at this facility averaged 0.0072 kg/Mg (0.014 lb/ton) of feed and are also shown in Figure 8. Based on these data the EPA is proposing an HCl limit of 0.02 kg/Mg (0.040 lb/ton) of feed for new and reconstructed in-line fluxers.

BILLING CODE 6560–50–P

In-Line Fluxer - Emissions Data

PM (lb/ton)

Plant	High	Low	Average
Plant 19	0.00750	0.00034	0.00340



HCl (lb/ton)

Plant	High	Low	Average
Plant 19	0.0286	0.0022	0.0143

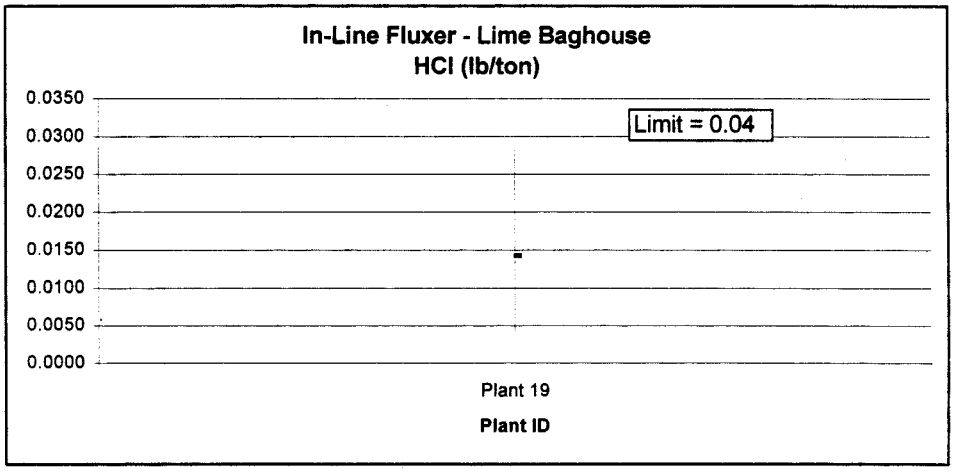


Figure 8. In-line Fluxer Emissions Data

BILLING CODE 6560–50–C

The EPA is also proposing a 10 percent opacity limit applicable to fabric filters applied to in-line fluxer waste gas streams if a COM is chosen as the monitoring option. As noted above, the EPA has determined that the presence of a 10 percent or greater opacity discharge from a fabric filter following a successful performance test is a clear indication that the device is not functioning properly.

Furnace Operations The EPA spent considerable effort analyzing ICR data and emissions data to evaluate the need for different classes for the remaining furnace types and configurations. Operating practices, control practices, work practices, pollution prevention efforts, furnace charge materials, flux rates and methods, and emissions vary widely within the industry. All of these factors entered into the consideration of different classes (Ref. ICR database, emission data summaries). In addition, there were many meetings and discussions with the industry to discuss and evaluate a multitude of options and issues associated with each factor. At one time, as many as five potential classes were under consideration and discussion. As analyses of the potential classes progressed, many issues were raised regarding definitions of the classes, process operating practices, and control approaches. Further, as potential emissions limits for these classes were discussed, it became evident to the EPA that these furnaces could be compressed into two classes. Therefore, based on evaluation of these options, the EPA is proposing two classes for process furnace operations:

- Group 2 furnaces—clean charge materials with no reactive fluxing.
- Group 1 furnaces—furnaces charging different gradations of clean materials with reactive fluxing to dirty materials with various fluxing amounts/techniques.

Group 2 furnaces. For group 2 furnaces the EPA is proposing work practice/pollution prevention practices under section 112(h) of the Act. Section 112(h) of the Act provides for the establishment of work practice standards where it is not feasible to prescribe or enforce an emission standard.

The MACT floor for new and existing sources for this group of furnaces consists of work practices/pollution prevention practices including charging and melting only ''clean'' charge materials, as defined in the proposed regulation (molten aluminum, T-bar, sow, ingot, alloying elements, uncoated aluminum chips, aluminum scrap dried/delacquered/decoated, and noncoated runaround scrap), and no reactive fluxing. Compliance with the standard would be demonstrated by labeling of the furnace as group 2, and record keeping of charge and flux materials along with certification every six months that only clean charges were used and that no reactive flux was used in the furnace. The Administrator has determined it is not feasible to prescribe an emission standard for this class of furnaces because the application of measurement methodology is not practicable due to economic limitations.

Group 1 furnaces. Group 1 furnaces consist of all process (melting, holding, refining) furnaces that do not meet the requirements for a group 2 furnace. These include combinations of:

(1) Dirty furnace charge materials and fluxing with or without reactive fluxes, and

(2) Clean furnace charge materials (work practices) with use of reactive fluxing.

The achievable emissions limitation for group 1 furnace emission units and the standard for new and reconstructed group 1 furnaces is based on furnaces in which dirty charge materials and unlimited fluxing are used, and that are equipped with the MACT floor control technology, a fabric filter with a continuous lime injection system. The proposed limits for new and reconstructed group 1 furnaces are shown in Table 8. The basis and rationale for these limits are provided in the emission test data graphs and discussion below.

TABLE 8.—SUMMARY OF GROUP 1 FURNACE EMISSION LIMITS FOR NEW AND RECONSTRUCTED SOURCES (EXCEPT MELTER/HOLDERS PROCESSING CLEAN CHARGE)

Process	PM (lb/ton)	D/F (μg TEQ/Mg)	HCl[a]	
			(lb/ton)	Removal (%)
Group 1 Furnaces	0.40	15	0.40	90

[a] Facilities with add-on control devices will choose which requirement to comply with.

To meet the emission limits based on MACT floor technology, not all new and reconstructed group 1 furnaces will have to be equipped with lime injected fabric filter systems. Work practices, pollution prevention practices, process design changes, charging clean or almost clean materials, and reduced use of reactive fluxes while controlling the reactive flux injection rate are some control approaches that may be applied to some group 1 furnace installations with varying add-on control approaches such that the resulting HCl and other HAP emissions are below the emission limits being proposed.

To determine the emissions limitations achievable by group 1 furnace emission units and to establish the emission limits for new and reconstructed group 1 furnaces, the EPA and industry tested furnaces in 6 facilities (Plants 6 through 11) with the MACT floor technology applied. The emissions data are presented in Figures 9, 10, and 11 below. The furnace emissions data with control status labeled as ''lime baghouse'' were equipped with the MACT floor technology.

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Group 1 Furnace - Summary Data

PM (lb/ton)

Plant	Control Status	Furnace ID	High	Low	Average
Plant 6	Lime Baghouse	1	0.210	0.130	0.165
Plant 7	Lime Baghouse	2	0.042	0.015	0.029
Plant 8	Lime Baghouse	3	0.055	0.016	0.035
Plant 9	Lime Baghouse	4	0.316	0.246	0.277
Plant 11	Lime Baghouse	5	0.236	0.008	0.075
Plant 12 #1	Work Practice - Semi Clean Charge	6	0.159	0.074	0.115
Plant 12 #2	Work Practice - Semi Clean Charge	7	0.665	0.132	0.352
Plant 12 #3	Work Practice - Semi Clean Charge	8	0.282	0.138	0.229
Plant 12 #4	Work Practice - Semi Clean Charge	9	0.131	0.076	0.105
Plant 13	Work Practice - Clean Charge	10	0.031	0.024	0.027
	Work Practice - Clean Charge	11	0.090	0.040	0.063
	Work Practice - Clean Charge	12	0.170	0.080	0.133
Plant 14	Work Practice - Clean Charge	13	0.128	0.037	0.072
	Work Practice - Clean Charge	14	0.149	0.091	0.120
Plant 15	Work Practice - Clean Charge	15	0.023	0.022	0.022
	Work Practice - Clean Charge	16	0.126	0.112	0.119
	Work Practice - Clean Charge	17	0.224	0.096	0.151
Plant 16	Work Practice - Clean Charge	18	0.225	0.108	0.163
	Work Practice - Clean Charge	19	0.052	0.014	0.032
	Work Practice - Clean Charge	20	0.043	0.006	0.019
Plant 17	Work Practice - Clean Charge	21	0.386	0.204	0.268
	Work Practice - Clean Charge	22	0.391	0.086	0.244
	Work Practice - Clean Charge	23	0.541	0.214	0.342
	Work Practice - Clean Charge	24	0.516	0.181	0.372

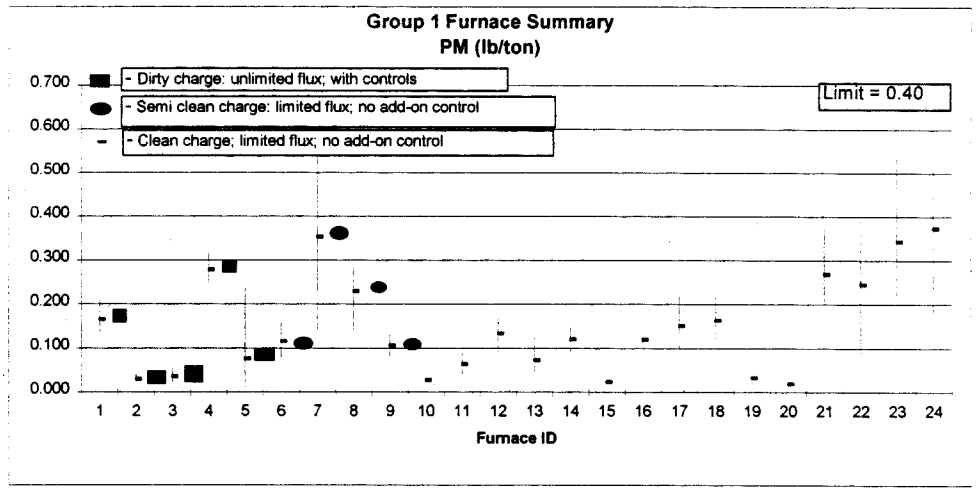


Figure 9. Group 1 Furnace Emission Data - PM

Group 1 Furnace - Summary Data

HCl (lb/ton)

Plant	Control Status	Furnace ID	High	Low	Average
Plant 7	Lime Baghouse	1	0.860	0.012	0.357
Plant 9	Lime Baghouse	2	1.042	0.000	0.347
Plant 10	Lime Baghouse	3	0.160	0.021	0.070
Plant 11	Lime Baghouse	4	0.050	0.018	0.029
Plant 12 #1	Work Practice - Semi-clean charge	5	0.217	0.016	0.084
Plant 12 #2	Work Practice - Semi-clean charge	6	0.073	0.033	0.049
Plant 12 #3	Work Practice - Semi-clean charge	7	0.545	0.039	0.263
Plant 12 #4	Work Practice - Semi-clean charge	8	0.107	0.087	0.094
Plant 13	Work Practice - Clean charge	9	0.012	0.007	0.009
	Work Practice - Clean charge	10	0.065	0.039	0.053
	Work Practice - Clean charge	11	0.100	0.010	0.067
Plant 14	Work Practice - Clean charge	12	0.0030	0.0000	0.0020
	Work Practice - Clean charge	13	0.1220	0.0380	0.0770
	Work Practice - Clean charge	14	0.2630	0.1530	0.2380
Plant 15	Work Practice - Clean charge	15	0.0036	0.0018	0.0027
	Work Practice - Clean charge	16	0.0646	0.0236	0.0430
	Work Practice - Clean charge	17	0.2530	0.1870	0.2170
Plant 16	Work Practice - Clean charge	18	0.0030	0.0020	0.0023
Plant 17	Work Practice - Clean charge	19	0.0023	0.0007	0.0013
	Work Practice - Clean charge	20	0.1107	0.0157	0.0745
	Work Practice - Clean charge	21	0.3158	0.1287	0.2078
	Work Practice - Clean charge	22	0.3902	0.2979	0.3555
	Work Practice - Clean charge	23	0.2900	0.1300	0.2400

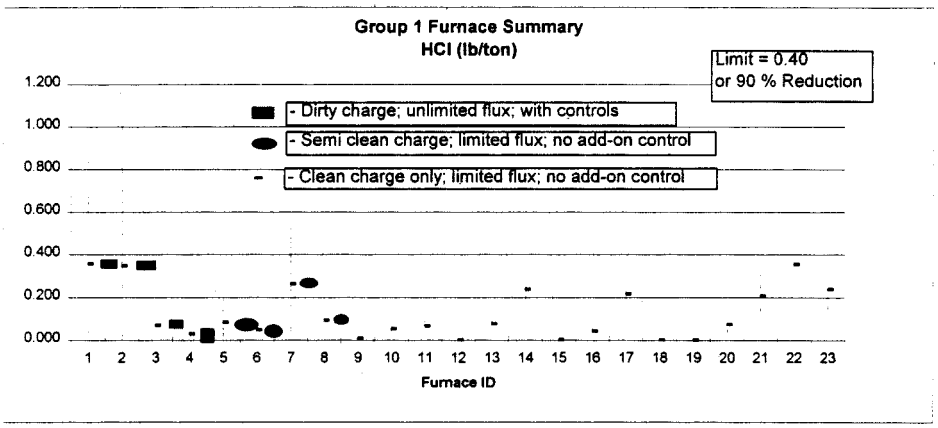
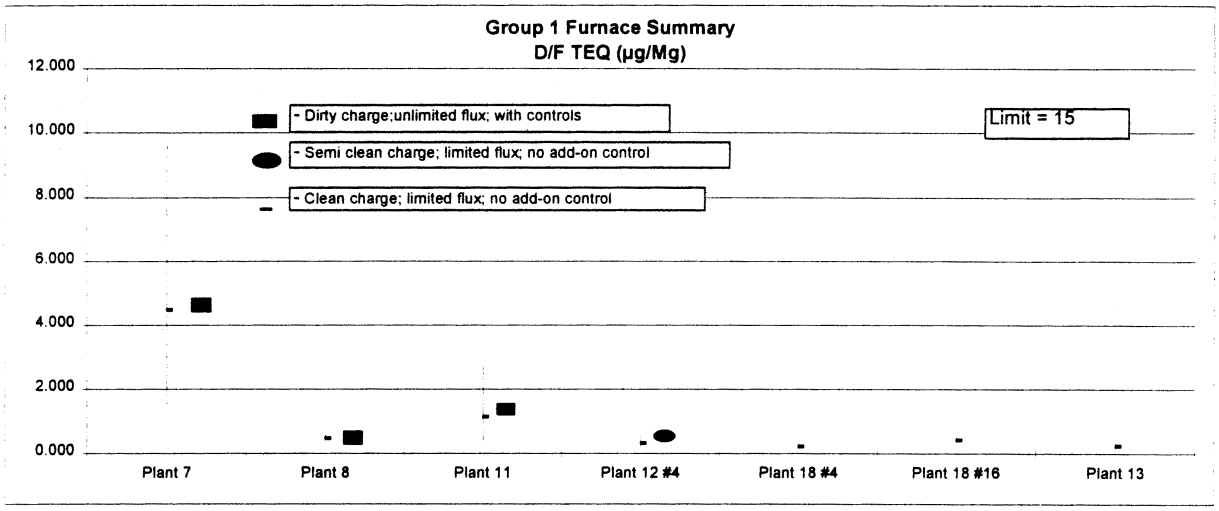


Figure 10. Group 1 Furnace Emission Data - HCl

Group 1 Furnace - Summary Data

D/F TEQ (µg/Mg)

Plant	Control Status	High	Low	Average
Plant 7	Lime Baghouse	9.600	1.430	4.480
Plant 8	Lime Baghouse	0.584	0.320	0.457
Plant 11	Lime Baghouse	2.750	0.370	1.140
Plant 12 #4	Work Practice - Semi-clean charge	0.631	0.083	0.306
Plant 18 #4	Work Practice - Clean charge	0.491	0.029	0.212
Plant 18 #16	Work Practice - Clean charge	0.560	0.281	0.414
Plant 13	Work Practice - Clean charge	0.585	0.049	0.236



Note: An emission rate of 15 µg/Mg is equivalent to a D/F concentration ranging from 0.9 to 15.5 ng/dscm for the seven series of tests.

Figure 11. Group 1 Furnace Emission Data - D/F TEQ

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In addition, the EPA and industry tested group 1 furnaces that had no add-on control technologies, but used work practices/pollution prevention practices such as process design changes that allowed reduced levels of reactive fluxing, as well as selective scrap charging (but not ''clean charge''), to achieve lower levels of HAP emissions. Both melting and holding furnaces were included in these tests. These results are also shown in Figures 9, 10, and 11. These furnace data are labeled with control status as ''work practice.''

All of the data in Figures 9, 10, 11 were considered in determining the achievable emissions limitations for group 1 furnace emission units and in establishing the proposed emission limits for new and reconstructed individual Group 1 furnaces that are listed in Table 8 above. Some of the variations in the work practice/pollution prevention emissions are due to different design of process, work practice, and pollution prevention alternatives, and the fact that these emissions will vary with the differing grades of aluminum produced.

Average PM emission levels from group 1 furnaces equipped with MACT floor add-on air pollution control devices varied from a low of 0.029 to a high of 0.28 lb/ton of feed. Average HCl emission levels from furnaces equipped with MACT floor add-on air pollution control devices varied from a low of 0.07 to a high of 0.36 lb/ton of feed. The equivalent ranges of emissions for the work practice/pollution prevention practice furnaces were 0.019 to 0.37 lb/ton and 0.001 to 0.36 lb/ton of PM and HCl, respectively.

The three test results for average D/F emissions from group 1 furnaces equipped with MACT floor add-on air pollution control devices ranged from a low value of 0.46 to a high value of 4.5 µg D/F TEQ/Mg of feed. For the four work practice/pollution prevention practice furnaces, the range was 0.21 to 0.41 µg D/F TEQ/Mg.

To provide another perspective on the achievable D/F emission limitation, the 15 µg/Mg of feed emission limit (proposed for new and reconstructed group 1 furnaces) expressed on a concentration basis for the furnaces tested would be about 0.9 to 15.5 ng D/F TEQ/dscm depending on the quantity of waste gas flow from the furnace.

The proposed standards for new and reconstructed group 1 furnaces shown in Table 8 provide the option of achieving a 90 percent emission reduction in HCl discharged from the furnace in lieu of meeting an emission limit of 0.40 lb/ton. The EPA considered that group 1 furnaces can be used to process a wide variety of scrap types (i.e., clean, with insulation, oils, coated, painted, etc.) and perform various fluxing operations with multiple agents including HAP producing and non-HAP producing fluxes (i.e., salts, chlorine gas, nitrogen/chlorine bi-gas, etc.) to produce a wide range of aluminum alloys. Because of the potential differences in charge make-up, fluxing, work practices, and final aluminum properties, there is potential for variability in HCl, organic HAPs, particulate metal HAPs, and D/F emitted by the group 1 furnaces. In recognition of the different operating modes applicable to these emission units and affected sources and to promote the most cost-effective and economical approach to MACT controls while achieving the MACT add-on air pollution control device equivalent reductions, the EPA is proposing a dual HCl emission standard for new and reconstructed group 1 furnaces. Both a numerical emission limit and an alternate percent reduction requirement are being proposed. Some furnaces process scrap that contains relatively large amounts of chloride compounds. This factor in combination with high fluxing rates necessary to refine some aluminum can yield control device inlet HCl quantities in excess of 4 lbs/ton of feed. In these circumstances the floor technology may not be able to meet the limit of 0.40 lb/ton, but can comply with the 90 percent removal requirement which is representative of what the MACT floor technology is capable of achieving. Test results from Plants 7, 9, and 10, shown in Figure 10, indicated that HCl efficiencies in excess of 90 percent removal were achieved. The range of variation in measured efficiencies was significant at two facilities with some test results below 90 percent. In these tests the lime usage rates were not adequately controlled to achieve consistent HCl removal, hence a wide variation in HCl removals resulted.

The level of removal achievable became an issue with the industry and to resolve this issue the EPA tested another group 1 furnace in Plant 11 with a lime injected fabric filter. During these tests the lime injection rate was controlled to consistently achieve greater than 90 percent removal of HCl. Individual test results for this furnace are shown in Table 9. These and other data demonstrate that fabric filters operated with continuous lime injection into the gas stream upstream of the fabric filter inlet are capable of consistently achieving at least 90 percent removal.

TABLE 9.—PLANT 11 HC1 INDIVIDUAL TEST RESULTS

Test No.	Inlet lb/ton	Outlet lb/ton	Percent removal
1	2.64	.018	99.3
2	2.66	0.020	99.2
3	1.31	0.050	96.2
4	2.10	0.028	98.7

New and reconstructed group 1 furnaces processing clean charge materials only, that perform both melting and holding functions including reactive fluxing within the same unit (i.e., melter/holder), and that do not transfer molten aluminum to or from another furnace would be subject to alternate standards. These units perform the operations normally carried out in two or more separate furnaces within the confines of one furnace. Emission data obtained from tests on a melter/holder furnace are shown in Figure 12.

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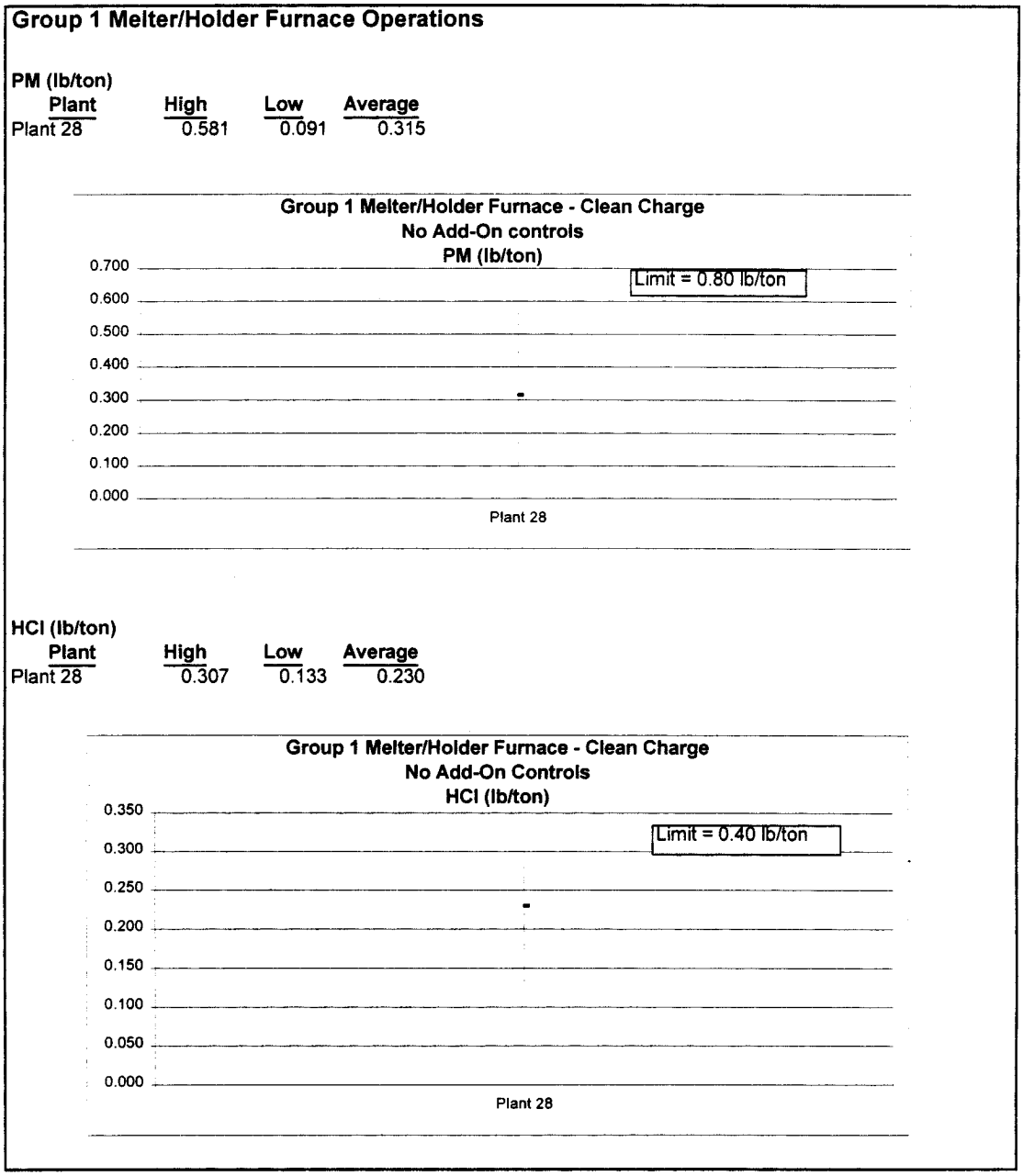

Figure 12. Group 1 Furnace Melter/Holder Emissions Data

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Emission limits are proposed for PM and HCl emissions from new and reconstructed group 1 melter/holders. Those limits are shown in Table 10. The PM standard for new and reconstructed group 1 melter/holder furnaces processing only clean charge materials is 0.40 kg/Mg (0.80 lb/ton) of charge and the alternate HCl standard is 0.20 kg/Mg (0.40 lb/ton) of charge.

TABLE 10.—SUMMARY OF NEW AND RECONSTRUCTED GROUP 1 MELTER/HOLDER EMISSION LIMITS

Process	PM (lb/ton)	D/F[b] (μg TEQ/Mg)	HCl (lb/ton)
Group 1 Melter/Holder Furnaces[a]	0.80	.....	0.40 or 90 percent removal.

[a] Performing both melting and holding functions in the same furnace and processing only clean charge materials.
[b] No dioxin limit because this furnace uses clean charge.

Operators of group 1 side-well furnaces would be permitted to conduct reactive fluxing operations in the furnace side-well only. If reactive fluxing operations are conducted in the furnace hearth, those emissions must be captured and ducted to a control device. In this event total furnace emissions (hearth plus side-well) would be subject to the new and reconstructed group 1 furnace emission limits.

In addition to the above standards, the EPA is also proposing a 10 percent opacity limit applicable to the waste gas discharge from any fabric filter applied to a group 1 furnace if a COM is chosen as the monitoring option. As noted above, the EPA has determined that the presence of a 10 percent or greater opacity discharge from a fabric filter following a successful performance test is a clear indication that the device is not functioning properly.

Secondary aluminum processing units. Available data from existing group 1 furnace emission units and existing in-line fluxers were analyzed to determine the emissions limitations which could be realized through the application of add-on control devices and pollution prevention/work practices. These data have been presented in the paragraphs in this section of this document relating to group 1 furnaces and in-line fluxers. A secondary aluminum processing unit is composed of all of the existing group 1 furnace emission units and all of the existing in-line fluxer emission units at a secondary aluminum production facility. Emission standards for this affected source have been proposed, based on throughput weighted processing of material in emission units controlled to achievable emission limitations. Limits for PM, HCl and D/F have been proposed on a production basis. (Operators of group 1 furnaces with very high potential HCl emissions may choose to calculate the HCl limit for any or all individual group 1 furnace emission units on the basis of achieving a 90 percent reduction in potential HCl emissions.) Based on the emissions achievable by individual emission units, the following standards are proposed:

$$L_{t_{PM}} = \frac{\sum_{i=1}^{n}\left(L_{i_{PM}} \times T_i\right)}{\sum_{i=1}^{n}\left(T_i\right)}$$

$$L_{t_{HCl}} = \frac{\sum_{i=1}^{n}\left(L_{i_{HCl}} \times T_i\right)}{\sum_{i=1}^{n}\left(T_i\right)}$$

$$L_{t_{D/F}} = \frac{\sum_{i=1}^{n}\left(L_{i_{D/F}} \times T_i\right)}{\sum_{i=1}^{n}\left(T_i\right)}$$

Where:

L_{iPM}=the PM emission limit for individual emission unit i in the secondary aluminum processing unit kg/Mg (lb/ton) of feed]

T_i=the feed rate for individual emission unit i in the secondary aluminum processing unit

L_{tPM}=the overall PM emission limit for the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]

L_{iHCl}=the HCl emission limit for individual emission unit i in the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]. Operators may choose to calculate this limit on the basis of 90 percent reduction in potential HCl emissions.

L_{tHCl}=the overall HCl emission limit for the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]

$L_{iD/F}$=the D/F emission limit for individual emission unit i [μg/Mg (gr/ton) of feed]

$L_{tD/F}$=the overall D/F emission limit for the secondary aluminum processing unit [μg/Mg (gr/ton) of feed], and

n=the number of units in the secondary aluminum processing unit.

The emissions limits L_{iPM}, L_{iHCl}, and $L_{iD/F}$ to be used in calculating the proposed standards for secondary aluminum processing units are those proposed for individual new and reconstructed in-line fluxers and group 1 furnaces. Production in clean charge group 1 furnaces can not be included in calculating the overall D/F emission limit, because it is assumed that these furnaces are capable of operation with no D/F emissions, and because these emission units are not subject to D/F limits. In-line fluxers that operate using no reactive flux materials cannot be included in the calculations of the overall PM and HCl emission limits since they are not subject to emission limits for PM and HCl.

In addition to the above standards, the EPA is also proposing a 10 percent opacity limit applicable to the waste gas discharged from any fabric filter applied to a furnace process train if a COM is chosen as the monitoring option. As noted above, the EPA has determined that the presence of a 10 percent or greater opacity discharge from a fabric filter following a successful performance test is a clear indication that the device is not functioning properly.

D. Selection of Operating and Monitoring Requirements

The EPA identified and analyzed the hierarchy of monitoring options available for this source category. The array of monitoring options includes the direct measurement of HAP or HAP surrogates by a CEM or COM, periodic performance tests, continuous monitoring of process or control device operating parameters that are related to emissions of HAP, and recordkeeping and certification requirements. Each option that was relevant to a process or add-on control device was evaluated relative to its technical feasibility and cost.

A CEM provides a direct measurement of emissions of HAP or HAP surrogates. CEMs are commercially available for HCl and THC. PM CEMs are also available, however, the technical feasibility of these devices for monitoring affected sources and emission units in this source category has not yet been demonstrated, and the estimated capital cost of PM monitoring systems is $213,000 with annual costs of $66,000 (see docket item II–B–24, enhanced monitoring options memo). These costs are significantly higher than those of other available options.

Continuous opacity monitoring systems (COMs) do not provide a direct measurement of PM emissions but do provide continuous indication of fabric filter performance. These devices are presently in use on affected sources and emission units within this source category. Bag leak detection systems also provide a continuous indication of fabric filter performance and are less expensive to install and operate than COMs.

Periodic performance tests by established EPA test methods are required by the proposed rule. These tests provide important information about HAP emissions. The expense of conducting performance tests (see docket item II–B–24, enhanced monitoring options memo) limits their usefulness as a means of ensuring continuous compliance with an emission standard.

Another option for compliance assurance is monitoring control device operating parameters coupled with repeat emission tests prior to permit renewal (i.e., every 5 years). Control

device operating parameters can be monitored to ensure continued good operation and maintenance. Test data and operating experience have shown that maintaining operating parameters within a specified range of values (those established based on existing data or performance tests) can be used to ensure that the control device is operating properly and is well maintained. Operating parameters and defined work practices consistent with pollution prevention can also be used to maintain emissions within limits.

In selecting monitoring requirements to ensure continuous compliance with the proposed emission standards, the EPA has considered technical feasibility and cost for all applicable options for each combination of pollutant, affected source and control technique. In some cases, where several monitoring options are technically feasible and equally reliable, and where the operator has already installed a particular type of monitor, the proposed rule allows the owner or operator to select a monitoring technique such that a presently installed, appropriate monitor may continue to be used.

Finally, the proposed rule recognizes that the owner or operator may, through performance testing under varying conditions, be able to devise and demonstrate the feasibility of certain monitoring parameters and procedures. The proposed rule provides a procedure by which site-specific monitoring plans for certain affected sources and emission units can be submitted with appropriate documentation for consideration by the permitting authority. A site-specific monitoring plan, when approved, would provide alternate monitoring procedures and parameter levels for secondary aluminum processing units, emission units and combinations of emission units. Performance testing requirements, discussed in section IV. E. of this preamble, are proposed to ensure that each affected source is capable of meeting the applicable emission standards for HAP or HAP surrogates. Operating requirements are proposed to ensure that affected sources continuously meet these emission standards. Monitoring requirements are proposed to ensure that each owner or operator can demonstrate that the operating requirements have been met.

1. Operating and Monitoring Requirements and Options for Affected Sources and Emission Units

Owners or operators of affected sources would be required to submit an O, M, & M plan as part of their applications for a part 70 or part 71 permit. The plan would include procedures for the proper operation and maintenance of affected sources and control devices used to comply with the emission limits as well as the corrective actions to be taken when control devices or process parameters deviate from allowable levels established during performance testing. The plan would also identify the procedures for proper operation and maintenance of monitoring devices including periodic calibration and verification of accuracy.

Operating requirements. The proposed rule provides specific operating requirements for each affected source, and for emission units within a secondary aluminum processing unit, which are necessary to ensure that the conditions during initial and periodic performance tests are not changed between performance tests in such a way as to increase emissions beyond the proposed standards. Owners or operators of affected sources are required to operate the affected source and controls within established parameter ranges. In addition, the proposed operating requirements incorporate the applicable provisions of the site-specific O, M, & M plan. These plans include specific corrective actions to be taken to maintain emissions within acceptable levels.

Operating requirements are also proposed which specify work practices for group 2 ''clean charge'' furnaces; require labeling of all affected sources and emission units to facilitate compliance assurance; specify capture system design and operating parameters for all affected sources and emission units with add-on control devices; restrict operation and fluxing practices conducted in group 1 sidewell furnaces; and establish a means by which site-specific operating plans for group 1 furnaces without add-on control devices can be developed and approved.

Monitoring requirements. The EPA is proposing monitoring procedures for each emission limitation proposed under the rule. The EPA is not requiring the use of CEMs. PM CEMs have not been demonstrated for use with affected sources and emission units in this source category. PM CEMs, as well as HCl CEMs and THC CEMs, are substantially more expensive than other effective monitoring methods (see docket item II–B–24, enhanced monitoring options memo).

(a) Scrap Shredder. The proposed monitoring alternatives for scrap shredders are COMs, bag leak detectors or daily visual emissions testing by EPA Method 9 of appendix A to 40 CFR part 60. Continuous opacity monitoring systems (COMs) provide a continuous indication of fabric filter performance. These devices are presently in use on affected sources within this source category. Bag leak detection systems also provide a continuous indication of fabric filter performance and are less expensive to install and operate than COMs. Requirements for COMs and bag leak detectors are discussed in section IV.D.2 of this document, *Operating and Monitoring Requirements and Options for Affected Sources and Emission Units Equipped with Fabric Filters or Lime Injected Fabric Filters.*

Under the visible emission monitoring option, a certified observer would perform daily visible emissions observations (five 6-minute readings in a 30-minute period) for each fabric filter according to the requirements of Method 9 of appendix A to 40 CFR part 60 and the general provisions in subpart A of 40 CFR part 63. If any visible emissions were observed, the owner or operator would be required to initiate corrective actions in accordance with the O, M, & M plan within 1-hour to correct the cause of the emissions. Visual emissions monitoring by Method 9 is an appropriate monitoring option for scrap shredders because these affected sources are intermittently operated and Method 9 can be used to determine opacity during periods of operation.

(b) Chip Dryer. Monitoring requirements for chip dryers under the proposed NESHAP include feed/charge weight monitoring as discussed in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Feed/Charge Weight,* afterburner temperature monitoring as discussed in section V.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Afterburner Operating Temperature.* The identity (i.e. uncoated, unpainted aluminum chips) of each batch of material charged must be recorded to ensure compliance with the requirement to process only uncoated, unpainted aluminum chips.

(c) Scrap Dryer/delacquering kiln/decoating kiln.

Monitoring requirements for scrap dryers/delacquering kilns/decoating kilns under the proposed NESHAP include feed/charge weight monitoring as discussed in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Feed/Charge Weight,* afterburner temperature monitoring as discussed in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Afterburner Operating Temperature,* and fabric filter

monitoring as discussed in section IV.D.2 of this document, *Operating and Monitoring Requirements and Options for Process Units Equipped with Fabric Filters or Lime-injected Fabric Filters.*

(d) Clean Charge (Group 2) Furnace. Monitoring requirements for clean charge (group 2) furnaces under the proposed NESHAP are charge makeup and flux identity recordkeeping, and periodic certification that only clean charge has been processed and that no reactive flux has been used. No numerical emission limits are proposed for clean charge furnaces as discussed in section D.2. of this document, *Selection of MACT Floor Technologies: Group 2 furnaces.* Recordkeeping and certification requirements are necessary to ensure that the affected sources are operating as clean charge (group 2) furnaces.

(e) Sweat Furnace. The monitoring requirement for sweat furnaces under the proposed NESHAP is afterburner temperature monitoring as discussed in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Afterburner Operating Temperature.*

(f) Dross-only Furnace. Monitoring requirements for dross-only furnaces under the proposed NESHAP include feed/charge recordkeeping as described in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Feed/Charge Weight,* and fabric filter monitoring, (bag leak detection systems or COMs) as discussed in section IV.D.2 of this document, *Operating and Monitoring Requirements and Options for Process Units Equipped with Fabric Filters and Lime-injected Fabric Filters.*

(g) In-line Fluxer. Monitoring requirements for in-line fluxers under the proposed NESHAP include feed/charge weight monitoring as discussed in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Feed/Charge Weight,* monitoring of chlorine injection rate as described in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Total reactive chlorine flux injection rate and schedule,* and, for in-line fluxers equipped with add-on control devices, fabric filter monitoring as discussed in section IV.D.2 of this document, *Operating and Monitoring Requirements and Options for Process Units Equipped with Fabric Filters and Lime-injected Fabric Filters.*

(h) Rotary Dross Cooler. Monitoring requirements for rotary dross coolers are to comply with one of two monitoring options to demonstrate continuous compliance with the PM standard. These options (bag leak detection systems or COMs), and the applicable monitoring requirements, are discussed in section IV.D.2 of this document, *Operating and Monitoring Requirements and Options for Process Units Equipped with Fabric Filters and Lime-injected Fabric Filters.*

(i) Group 1 Furnace With Add-on Controls. Monitoring requirements for group 1 furnaces with add-on controls under the proposed NESHAP include feed/charge weight monitoring as discussed in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Feed/Charge Weight,* monitoring of chlorine injection rate as described in section IV.D.3 of this document, *Other Monitoring Systems and Procedures: Total reactive chlorine flux injection rate and schedule,* and fabric filter monitoring as discussed in section IV.D.2 of this document, *Operating and Monitoring Requirements and Options for Process Units Equipped with Fabric Filters and Lime-injected Fabric Filters.*

(j) Group 1 Furnace Without Add-on Controls and Using Pollution Prevention/Work Practices (Processing Only Clean Charge). Monitoring requirements for group 1 furnaces without add-on controls (processing only clean charge) and employing pollution prevention/work practices to limit emissions under the proposed NESHAP include feed/charge weight monitoring as discussed in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Feed/Charge Weight,* monitoring of chlorine injection rate as described in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Total reactive chlorine flux injection rate and schedule* and a semi-annual certification that only clean charge had been processed.

(k) Group 1 Furnace Without Add-on Controls Using Pollution Prevention/Work Practices Processing Scrap Other Than Clean Charge. Proposed monitoring requirements for group 1 furnaces not equipped add-on controls using pollution prevention/work practices and processing scrap other than clean charge include feed/charge weight monitoring as discussed in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Feed/Charge Weight* and monitoring of chlorine injection rate as described in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Total reactive chlorine flux injection rate and schedule.*

Operators of these furnaces would be required to develop a site-specific monitoring plan acceptable to the permitting authority. The plan would include additional parameters to be monitored, based on supporting information provided by the operator and developed in coordination with the permitting authority, which demonstrates the correlation between these parameters and the actual emissions from these furnaces.

If the site-specific monitoring plan includes scrap sampling as a means of monitoring, the scrap sampling program must, at a minimum, include the elements described in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Scrap inspection program.* If the site-specific monitoring plan includes the use of CEMs, the operator must install, operate and maintain the CEMs as described in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Continuous emission monitoring systems.* If the site-specific monitoring plan includes limitations on the chlorine injection rate, the operator must monitor reactive flux injection as described in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Total reactive chlorine flux injection rate and schedule.* The specific parameters monitored under a site-specific monitoring plan must be proposed by the owner or operator along with supporting documentation and approved by the permitting authority.

(l) Secondary Aluminum Processing Units. All of the existing group 1 furnaces and all of the existing in-line fluxers within a facility make up the secondary aluminum processing unit. Each group 1 furnace emission unit within the secondary emission processing unit would be subject to the same operating and monitoring requirements as proposed for group 1 furnaces. Each in-line fluxer emission unit within the secondary emission processing unit would be subject to the same operating and monitoring requirements as proposed for in-line fluxers.

Operators of secondary aluminum processing units would be required to determine throughput weighted emissions of PM, HCl and D/F for each 24 hour period. Compliance with the overall emission limits would be determined daily, on the basis of a rolling average of the daily throughput weighted emissions determined for the three most recent 24 hour periods. The

daily emissions determination, coupled with the three day (24 hour) rolling average for compliance determination, are being proposed in recognition of the overlapping operating cycles of the equipment within the secondary aluminum emissions unit. The three day (24 hour) rolling average will have the effect of damping out spikes in calculated emissions which might occur when emission units are charged just before or just after the beginning of a 24 hour determination period, and will accommodate different furnace cycles.

2. Operating and Monitoring Requirements and Options for Affected Sources and Emission Units Equipped With a Fabric Filter and Subject to PM Limits

Operating requirements. The proposed rule provides specific operating requirements for fabric filters and lime-injected fabric filters which are necessary to ensure that the conditions during initial and periodic performance tests are not changed between performance tests in such a way as to increase emissions beyond the proposed standards. Owners or operators of affected sources and emission units controlled by these devices are required to operate bag leak detectors or COMs (in the case of scrap shredders, visible emissions testing may be conducted as an alternative).

If a bag leak detection system is used, the owner or operator must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time would be counted. If corrective action is required, each alarm shall be counted as a minimum of one hour. The proposed standard requires that the owner or operator initiate corrective action within 1-hour of an alarm. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time would be counted as the actual amount of time taken by the owner or operator to initiate corrective action. If a COM is used, the owner or operator must initiate corrective action within 1-hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the O, M, & M plan.

Additional operating requirements are proposed to ensure that lime injection is maintained at performance test levels and schedules, and (for scrap dryers/delacquering kilns/decoating kilns, group 1 furnaces and in-line fluxers) that inlet gas temperatures do not exceed performance test levels. In addition, the proposed operating requirements incorporate the applicable provisions of the site-specific O, M, & M plan. These plans include specific corrective actions to be taken to maintain emissions within acceptable levels.

(a) *PM Monitoring Alternatives.* The owner or operator of a scrap dryer/delacquering kiln/decoating kiln, group 1 furnace (including melter/holder), dross-only furnace, rotary dross cooler or in-line fluxer equipped with a fabric filter or a lime-conditioned fabric filter would have two monitoring options. These options are installation and operation of a COM in accordance with PS–1 of appendix B to part 60 of this chapter, or installation and operation of a bag leak detection system.

Operators of scrap shredders may conduct visual emissions observations as an alternative to the use of bag leak detection systems or COMs. Requirements for the use of visual emission monitoring are described in section IV.D.1 of this document, *Operating and Monitoring Requirements for Affected Sources: Scrap Shredder.*

If a bag leak detection system is the selected monitoring alternative, it must be installed and operated according to ''Fabric Filter Bag Leak Detection Guidance,'' EPA–454/R–98–015, September 1997. This document is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

The bag leak detection system also must meet equipment specifications included in the rule. These include: (1) Manufacturer certification that the system is capable of detecting PM emissions at concentrations of 10 mg per actual cubic meter (0.0044 grains per actual cubic foot) or less; and (2) inclusion of a sensor to provide output of relative emissions, a device to continuously record the sensor output voltage, and an audible alarm that sounds when an increase in relative PM emissions above the setpoint is detected. Following initial adjustment of the system, the owner or operator may not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time except as described in the O, M, & M plan.

If a COM system is the selected monitoring alternative, the proposed standard requires installation and operation of a COM for each exhaust stack. The monitor would be required to meet all specifications in PS–1 in appendix B of 40 CFR part 60. The operational requirements in the NESHAP general provisions in 40 CFR part 63, subpart A would also apply. The calculation of 6-minute block averages of opacity readings is a monitoring requirement.

(b) *D/F and HCl Monitoring (Fabric Filter Inlet Gas Temperature).* The owner or operator of a scrap dryer/delacquering/decoating kiln, group 1 furnace or in-line fluxer equipped with a lime-injected fabric filter would be required to install and operate a continuous temperature measurement device consistent with the requirements for continuous monitoring systems in the general provisions to this part (40 CFR part 63, subpart A).

The temperature monitoring system would be required to record the temperature at the inlet to the fabric filter in 15 minute block averages and to calculate and record the average temperature for each 3-hour block period. The recorder response range would be required to include zero and 1.5 times the established operating parameter. Calibration drift would be required to be less than 2 percent of 1.5 times the established operating parameter. The relative accuracy would be required to be no greater than 20 percent. The reference method would be required to be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system, or an alternate reference subject to the approval of the Administrator.

(c) *D/F and HCl Monitoring (Lime Injection Rate).* Where lime-injected fabric filters are used to control emissions from scrap dryers/delacquering kilns/decoating kilns, in-line fluxers, and group 1 furnaces the proposed rule includes monitoring requirements for lime injection. Owners or operators would be required to inspect each feed hopper or silo every 8 hours to verify that lime is free-flowing and record the results of each inspection. If a blockage is found, the inspection frequency would increase to every 4 hours for the next 3 days. The owner or operator would be permitted to return to an 8-hour inspection interval if corrective action taken to remedy the cause of the blockage results in no additional blockage during the 3-day period.

Additional monitoring requirements would depend on which operating requirement alternative was chosen. Operators choosing to maintain the feeder setting at performance test levels would be required to record the feeder setting daily. Operators choosing to maintain the time rate (lb/hr) of lime injection would be required to install and operate a weight measurement device and determine and record the

weight of lime added for each 15 minute block period. The weight measurement device would be required to have an accuracy of 1 percent and be calibrated once every 3 months. The operator would be required to use these data to calculate the lime injection rate for each 3-hour block period of operation.

Operators choosing to maintain the throughput based rate of lime addition (lb/ton of feed) would be required to install and operate a weight measurement device and determine and record the weight of lime added for each 15 minute block period. The operator would be required to use these data to calculate the weight of lime injected per ton of charge for each operating cycle or time period used in the performance test. The weight measurement device would be required to have an accuracy of ± 1 percent and be calibrated once every 3 months. The monitoring requirements described in section IV.D.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Feed/Charge Weight* would also apply.

3. Other Operating and Monitoring Requirements and Procedures

Operating requirements. The proposed rule includes operating requirements to ensure that capture equipment is properly designed and operated, to require that affected sources and emission units are clearly labeled, and to ensure that operating parameters do not change between performance tests in such a way as to allow emissions to exceed the levels measured under performance test conditions.

(a) *Capture Equipment Design.* As a monitoring requirement, to ensure continuous compliance with the applicable emission limits or standards, the operator would be required to inspect each capture, collection, and transport system annually to ensure that it is continuing to operate in accordance with ACGIH standards, and to record the results of each inspection.

(b) *Labeling.* As a monitoring requirement, operators would be required to inspect the labels monthly and verify that they are intact and legible, and to maintain records of this inspection.

(c) *Feed/Charge Weight.* All affected sources with throughput based emission limits (lb/ton, μg/Mg) are required to record the weight of each charge within ±1 percent, and to calibrate any weighing devices once every 3 months. This requirement is necessary to ensure operation within the emission limits and compliance with lime addition and flux injection parameters established during the performance test.

(d) *Afterburner Operating Temperature.* The owner or operator of an afterburner would be required to install and operate a continuous temperature measurement device consistent with the requirements for continuous monitoring systems in the general provisions to this part (40 CFR part 63, subpart A).

The temperature monitoring system would be required to record the afterburner temperature in 15 minute block averages and to calculate and record the average temperature for each 3-hour block period. The recorder response range would be required to include zero and 1.5 times the established operating parameter. Calibration drift would be required to be less than 2 percent of 1.5 times the established operating parameter. The relative accuracy would be required to be no greater than 20 percent. The reference method would be required to be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system, or an alternate reference subject to the approval of the Administrator.

The owner or operator would be required to further monitor afterburner performance by conducting an inspection of the afterburner at least once per year. All necessary repairs to the afterburner would have to be completed in accordance with the O, M, & M plan.

(e) *Total Reactive Chlorine Flux Injection Rate and Schedule.* To monitor the flux injection rate, the operator would be required to install and operate a device to continuously measure the weight of reactive flux injected or added to the affected source. The device would determine and record the weight in 15-minute block averages over the same operating cycle or time period used in the performance test. The accuracy of the device would be ±1 percent of the weight being measured and the operator would verify the calibration every 3 months.

The owner or operator would use the weight measurement to calculate and record the reactive flux injection rate using the same procedures as in the performance test. If a gaseous or liquid reactive flux other than chlorine is used, the proposed rule requires the owner or operator to record the type of flux and weight of each addition. The owner or operator also would record this information for each addition of solid reactive chloride flux. Using the same procedures as in the performance test, the owner or operator would calculate and record the total reactive chlorine flux injection rate for each operating cycle or time period used in the performance test.

(f) *Continuous Emission Monitoring Systems.* The proposed rule does not require the use of continuous emission monitors (CEMs). Operators may develop, submit and obtain approval for site-specific monitoring plans which may include the use of CEMs. The site-specific O,M,&M plan must include operating and monitoring requirements satisfactory to the permitting authority to ensure continuous compliance with the proposed standard.

If an HCl or THC continuous emission monitoring system is used, a monitor must be installed and operated for each exhaust stack. An HCl continuous emission monitoring system must be installed to meet PS 13 in appendix B to 40 CFR part 60. Performance Specification 13, ''Specifications and Test Procedures for Hydrochloric Acid Continuous Monitoring Systems in Stationary Sources'' was proposed April 19, 1996 (61 FR 17509). A THC continuous emission monitoring system must be installed to meet PS 8A in appendix B to 40 CFR part 60. Performance Specification 8A, ''Specifications and Test Procedures for Total Hydrocarbon Continuous Monitoring Systems in Hazardous Waste-burning Stationary Sources'' was proposed April 19, 1996 (61 FR 17358). The proposed standard requires that HCl and THC continuous emission monitoring systems meet all applicable requirements in the NESHAP general provisions in 40 CFR part 63, subpart A and the quality control requirements of appendix F to 40 CFR part 60.

If a PM CEM is used it must meet all applicable performance specifications, general provision requirements in 40 CFR part 63, subpart A, quality control requirements of appendix F to 40 CFR part 60, and in addition the use of the PM CEM must be validated in accordance with Method 301 of appendix A to 40 CFR part 63.

(g) *Scrap inspection Program.* If a site-specific monitoring plan includes the use of a scrap inspection plan the program must include operating and monitoring requirements satisfactory to the permitting authority to ensure continuous compliance with the proposed standard. The procedures and minimum requirements for scrap inspection programs are described in § 63.1509(o) of the proposed standard. The following elements must be included in a scrap inspection plan, at minimum:

(1) A proven method for collecting representative samples and measuring the oil and coatings content of scrap samples;

(2) A scrap inspector training program;

(3) An established correlation between visual inspection and physical measurement of oil and coatings content of scrap samples;

(4) Periodic physical measurements of oil and coatings content of randomly-selected scrap samples and comparison with visual inspection results;

(5) A system for assuring only acceptable scrap is charged to an affected group 1 furnace; and

(6) Recordkeeping requirements to document conformance with plan requirements.

(h) *Scrap Contamination Level Determination and Certification by Calculation.* Operators of group 1 furnaces dedicated to processing a distinct type of charge composed of scrap with a uniform composition (such as rejected product from a manufacturing process for which the owner or operator can document the coating to scrap ratio) may develop, submit and obtain approval of a site-specific O,M,&M plan that includes provisions for scrap contamination level determination and certification by calculation. Under such a plan, the operator would characterize the contaminant level of the scrap prior to a performance test. Following a performance test the operator would limit the charge to the furnace to scrap of the same composition used in the performance test (through charge selection or blending of coated scrap with clean charge). The site-specific O,M,&M plan would be required to include operating and monitoring requirements to ensure that no scrap with a contaminant level higher than that used in the successful performance test was charged.

E. Selection of Performance Test Methods and Requirements

1. Rationale for Performance Test Methods, Procedures and Surrogates

As a chemical class, THC contains a wide variety of organic compounds including HAPs and non-HAPs such as VOC. Both HAPs and non-HAP VOCs are destroyed by incineration. THC can be measured by Method 25A, ''Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer'' (40 CFR part 60, appendix A). This method applies to the measurement of total gaseous organic concentrations of vapors. The concentration is expressed in terms of propane (or other appropriate organic calibration gas) or in terms of carbon. Consequently, the Agency proposes to regulate emissions of organic HAPs using THC as a surrogate measure for the proposed emission limits. Because of the high potency of D/F at very low levels, separate measurements are needed and no surrogate is proposed for D/F emissions.

Method 23, ''Determination of Poly-Chlorinated Dibenzo-p-Dioxins and Polychlorinated Dibenzofurans from Stationary Sources'' (40 CFR part 60, appendix A), would be used to measure emissions of (D/F). The procedures and factors in the EPA report, ''Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 update (EPA–625/3–89–016, NTIS No. PB 90–145756) would be used to convert measured D/F emissions to TEQ units.

Emissions of HCl would be measured using EPA Method 26A, ''Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources-Isokinetic Method'' (40 CFR part 60, appendix A). Emissions of PM exiting the fabric filter or lime-injected fabric filter would be measured using EPA Method 5, ''Determination of Particulate Emissions from Stationary Sources'' in 40 CFR part 60, appendix A.

Visible emission observations by a certified observer were made during numerous emission tests using Method 9, ''Visual Determination of the Opacity of Emissions from Stationary Sources'' in 40 CFR part 60, appendix A. Thus, Method 9 is specified as an option for demonstrating continuous compliance with the PM emission standards for scrap shredders in the proposed rule. Scrap shredders are intermittently operated and Method 9 can be used to determine opacity during periods of operation. Method 9 is not included as an option for demonstrating continuous compliance with the PM emission standards for other affected sources, which are in continuous operation under normal conditions.

2. General Requirements

Following approval of a site-specific test plan (in accordance with § 63.7 of subpart A of this part), the proposed NESHAP requires an initial performance test for most affected sources and emission units to demonstrate compliance with applicable emission limitation(s). Performance tests (where required) would be conducted every 5 years to demonstrate continued compliance. The tests would be conducted according to the requirements in the NESHAP general provisions in 40 CFR part 63, subpart A, except as specified in the rule.

The owner or operator of an existing affected source would be provided 3 years from the effective date of the final rule to demonstrate compliance. A new or reconstructed source would be required to demonstrate compliance within 180 days following startup.

All monitoring devices are to be installed and calibrated prior to the initial performance test (or prior to the compliance date in the rule if a performance test is not conducted). The owner or operator would also be required to post a label on each affected source as to its proper classification (e.g., scrap shredder, chip dryer, scrap dryer/delacquering kiln/decoating kiln, dross cooler, in-line fluxer, sweat furnace, dross-only furnace, or group 1 or 2 furnace). The label would also include the applicable emission limit, operational standard, and control method (work practice or control device), the parameters to be monitored and the compliant value or range of each parameter. Emission units within secondary aluminum processing units would also be subject to labeling requirements which include the measured emission rate of all pollutants for which an emission limitation applies. New and reconstructed group 1 furnaces and in-line fluxers and emission units which are part of furnace process trains would be labeled to specify the other affected sources and/or emission units which make up the furnace process train. The visible marking of the furnaces is intended to enable management, workers, and enforcement personnel to easily identify the applicable work practice requirements, emission limitations and monitoring requirements. The owner or operator may change the initial furnace classification subject to approval by the applicable regulatory authority.

Each performance test would consist of three separate runs. For emission sources operating in a batch mode, each test run would be conducted over a minimum of one operating cycle of the process unit. In some cases, a longer sampling time may be required by the permitting authority upon review of the performance test plan. For sources that operate continuously, each test run would be conducted for the time period specified in the approved performance test plan. The emission (expressed in the units of the standard) for each test run would be determined. The arithmetic average of the emissions determined for the three test runs would be used to determine compliance.

The proposed standard allows the owner or operator to use historical data to establish operating parameters in addition to the results of a performance

test provided that the full emission test reports are submitted, the test methods required by the rule have been used, all required parameters have been monitored, the process operation has been documented, and the owner or operator certifies that no changes have been made to the process or emission control equipment since the time of the report.

Where multiple affected sources and/or emission units are exhausted through a common control device, and if the emission limit for all such units is in units of kg/Mg (lbs/ton) of feed, compliance may be demonstrated if measured emissions do not exceed the combined emission limit for all units that exhaust through the stack. Performance tests conducted on control devices used to control multiple affected sources and/or emission units would be conducted at the maximum processing rate typical of normal operation of the affected sources and/or emission units. The performance test run period would span one complete operating cycle of all cocontrolled affected sources and/or emission units. Where the exhausts from multiple emission units within a secondary aluminum processing unit, that are not equipped with add-on air pollution control devices, are discharged through a common stack similar performance test period requirements are proposed.

3. Performance Tests Requirements and Options for Affected Sources and Emission Units

Scrap shredder. A PM performance test is required for each scrap shredder. The test would be conducted while the unit operates at the maximum processing rate typical of normal operation for the unit. During the test, the owner or operator would comply with the performance test requirements associated with either the COM or the bag leak detector monitoring option selected for a unit equipped with a fabric filter or a lime-injected fabric filter. These requirements are described in section IV.D.2 of this document, *Operating and Monitoring Requirements and Options for Affected Sources and Emission Units Equipped with Fabric Filters and Lime-injected Fabric Filters.* As an alternative, the owner or operator of a scrap shredder could choose to monitor visible emissions.

An owner or operator electing to monitor visible emissions would perform a Method 9 test of the same duration as, and simultaneously with, the Method 5 performance test and determine the average opacity for each fabric filter exhaust stack. The Method 9 performance test would be conducted by a certified observer according to the requirements of Method 9 and the NESHAP general provisions in subpart A of 40 CFR part 63. This test would be conducted simultaneously with any required initial or periodic Method 5 performance test.

Chip dryer. The owner or operator would conduct a performance test to demonstrate compliance with the THC and D/F emission limits for each chip dryer while the unit processes only unpainted/uncoated aluminum chips at the maximum production rate typical for the unit during normal operation. During the test, the owner or operator would measure the weight of feed to the chip dryer during each test run and determine the arithmetic average of the recorded measurements. Using the monitoring devices and procedures required by the proposed rule, the owner or operator would measure and record the afterburner operating temperature during each of the Method 23 test runs and determine the average of the recorded measurements for each test run. The arithmetic average of the three average test run temperatures would then be determined.

Scrap dryer/decoating kiln/delacquering kiln. The owner or operator of a scrap dryer/decoating kiln/delacquering kiln would conduct a performance test to demonstrate compliance with the THC, D/F, HCl, and PM emission limits while the affected source processes scrap containing the highest level of contaminants within the normal operating range. During the test, the owner or operator would determine and record the weight of feed to the unit for each test run and determine the arithmetic average of the recorded measurements. Using the monitoring devices and procedures required by the proposed rule, the owner or operator would measure and record the afterburner operating temperature, the injection rate of lime or other equivalent alkaline reagent, and the inlet temperature of the lime-injected fabric filter for each test run and determine the arithmetic average of each parameter of the recorded measurements, for each test run. The arithmetic average of the three values for each parameter would then be determined. The owner or operator also would comply with the performance test requirements associated with the monitoring option selected for a unit equipped with a fabric filter or a lime-injected fabric filter. These requirements are described in section IV.D.2 of this document, *Operating and Monitoring Requirements and Options for Affected Sources and Emission Units Equipped with Fabric Filters and Lime-injected Fabric Filters.*

Group 1 furnace. The proposed standard requires the owner or operator to conduct a performance test to demonstrate compliance with the PM emission limits and either the HCl emission limit or the HCl percent reduction requirement for each group 1 furnace. Owners or operators, except for those that process only clean charge materials would also be required to conduct a performance test to demonstrate compliance with the D/F emission limit. The test would be conducted while the unit operates at the maximum production rate, while charging scrap with the highest contaminant level within the range of normal operation for the furnace, and while performing all reactive fluxing operations at the maximum rate. During the performance test, the owner or operator would record the type of scrap charged and the amount of feed to the furnace for each test run. Using the required monitoring device (or procedure), the owner or operator also would measure and record the flux injection rate and determine the arithmetic average of the recorded measurements for each test run. The arithmetic average of the three averages would then be determined.

In addition, owners or operators of group 1 furnaces equipped with add-on control devices would be required to measure and record the injection rate and schedule of lime or other equivalent alkaline reagent for each test run and determine the average injection rate for each run. The arithmetic average of the three averages would then be determined. Owners or operators choosing to demonstrate compliance with the percent HCl removal standard would also be required to simultaneously measure the HCl present in the group 1 furnace exit at a point before lime or other alkaline reagent is introduced and determine the HCl percentage reduction achieved by the lime-injected fabric filter.

If an add-on control device is used, the owner or operator also would be required to comply with the performance test requirements associated with the monitoring option selected for a unit equipped with a fabric filter or a lime-injected fabric filter. These requirements are described in section IV.D.2 of this document, *Operating and Monitoring Requirements and Options for Affected Sources and Emission Units Equipped with Fabric Filters and Lime-injected Fabric Filters.*

If an add-on control device is not used, owners or operators would be required to monitor and record

additional parameters in accordance with the site-specific O, M, & M plan developed in conjunction with and approved by the permitting authority.

Sweat furnace. A D/F performance test for each sweat furnace would be conducted while the furnace operates at the maximum production rate typical of normal operation for the furnace. During the test, the owner or operator would use the required monitoring device and procedure to measure and record the afterburner operating temperature for every 15-minute period of each test run and determine the arithmetic average of the recorded measurements for each test run. The average of the three averages would then be determined.

Dross-only furnace. A PM performance test would be conducted for each furnace using dross as the sole feedstock. During the test, the owner or operator would record the type of feed charged and the amount (weight) of the dross charged for each test run and determine the arithmetic average of the three weights. The owner or operator also would be required to comply with the performance test requirements applicable to a unit equipped with a fabric filter or a lime-injected fabric filter. These requirements are discussed in section IV.D.2 of this document, *Operating and Monitoring Requirements and Options for Affected Sources and Units Equipped with Fabric Filters and Lime-injected Fabric Filters.*

In-line fluxer. The proposed rule requires an HCl performance test to be conducted while the in-line fluxer operates at the maximum production rate and while performing all reactive fluxing operations at the maximum rate typical of normal operation for the unit. During the performance test, the owner or operator would record the molten aluminum throughput. During the test, the owner or operator would use the required monitoring device and procedure to calculate and record the reactive flux injection rate for each test run. In addition, the owner or operator would be required to determine the arithmetic average of the three averages for throughput and flux injection rate. The owner or operator would also comply with the performance test requirements associated with the monitoring option selected for a unit equipped with a fabric filter or a lime-injected fabric filter. These requirements are described in section IV.D.2 of this document, *Operating and Monitoring Requirements and Options for Affected Sources and Emission Units Equipped with Fabric Filters and Lime-injected Fabric Filters.*

Rotary dross cooler. A PM performance test would be conducted for each rotary dross cooler while operating at the maximum production rate typical of normal operation of the unit. During the performance test, the owner or operator would comply with the performance test requirements associated with the monitoring option selected for a unit equipped with a fabric filter or a lime-injected fabric filter. These requirements are described in section IV.D.2 of this document, *Operating and Monitoring Requirements and Options for Affected Sources and Emission Units Equipped with Fabric Filters and Lime-injected Fabric Filters.*

F. Notification, Recordkeeping and Reporting Requirements

The proposed standard would incorporate all requirements of the NESHAP general provisions (40 CFR part 63, subpart A) except as specified in the proposed standard. The COM requirements in the general provisions would apply if the owner or operator elects as a monitoring option, to install and operate a COM to measure and record opacity from the exhaust stacks of a fabric filter or a lime-injected fabric filter.

The general provisions (40 CFR part 63, subpart A) include requirements for notifications of applicability; intention to construct or reconstruct a major source, the date construction or reconstruction commenced, the anticipated date of startup and the actual date of startup; special compliance obligations for new sources; date of performance test (including opacity and visible emissions observations, if applicable); notification a COM will be used to comply with an opacity standard, if applicable; notifications for sources with continuous monitoring systems (CMS), as provided in § 63.9(g) of this chapter; and initial and annual notification of compliance status.

In addition to the information required by the NESHAP general provisions (40 CFR part 63, subpart A), the notification of compliance status must include for each affected source: the approved site-specific test plan and a complete performance test report, performance evaluation test results for each CMS (including a COM or CEM), unit labels (e.g., process type or furnace classification), and compliant operating parameter value or range with supporting documentation. If applicable, owner or operator also must include design information and supporting documentation demonstrating compliance with requirements (if applicable) for capture/collection systems, bag leak detection systems, and the 1-second residence time requirement for afterburners used to control emissions from a scrap dryer/delacquering/decoating kiln subject to alternative emission standards. All facilities would be required to submit the operation, maintenance, and monitoring plan and startup, shutdown, and malfunction plan. The notification of compliance status also would include (if applicable), the approved site-specific monitoring plan for each group 1 furnace with no add-on air pollution control device; or other site-specific monitoring plan. The notification of compliance status must be signed by the responsible official who must certify its accuracy. Provisions also are included in the proposed standard to eliminate duplicative submissions.

The startup, shutdown, and malfunction plan would be prepared according to the requirements in § 63.6(e) of the NESHAP general provisions. This plan would specify the procedures to be followed to minimize emissions during a startup, shutdown, or malfunction and a program of corrective action for malfunctioning process and air pollution control equipment. The proposed standard requires that the plan also include procedures to determine and record the cause of the malfunction and the time the malfunction began and ended. A semiannual report to EPA is required when a reportable event occurs and the steps in the plan were not followed.

The O, M, & M plan for each affected source, emission unit and control system would be submitted to the permitting authority as part of the initial notification of compliance status. Each plan would include the applicable operating requirements for each affected source and emission unit; process and control device parameters to be monitored, along with established operating levels or ranges; a monitoring schedule with monitoring procedures; procedures for the proper operation and maintenance of each affected source and emission unit, add-on air pollution control device, and monitoring device or system; maintenance schedule; and corrective action procedures to be taken in the event of an excursion or exceedance (including procedures to determine the cause of the excursion or exceedance, the time the excursion began and ended, and for recording the actions taken to correct the cause of the excursion or exceedance). The plan also must document the work practices and pollution prevention measures used to achieve compliance with the applicable emission limits for a group 1 furnace not equipped with an add-on air pollution control device.

Examples of procedures that might be used to determine the cause of an excursion from an operating parameter level or range for an afterburner include inspecting burner assemblies and pilot sensing devices for proper operation and cleaning; adjusting primary and secondary chamber combustion air; inspecting dampers, fans, blowers, and motors for proper operation; and shutdown procedures. Examples of procedures that might be used for bag leak detection systems include inspecting the fabric filter for air leaks, torn or broken filter elements, or any other defect that may cause an increase in emissions; sealing off defective filter bags or filter media, or otherwise repairing the control device; replacing defective bags or filter media or otherwise repairing the control device; sealing off a defective compartment in the fabric filter; and shutting down the process producing the emissions.

The owner or operator of a group 1 furnace not equipped with add-on air pollution control devices would be required to submit a site-specific monitoring plan that addresses monitoring and compliance requirements for PM, HCl, and D/F emissions. The plan would be developed in consultation with the applicable permitting authority and submitted for review as part of the O, M, & M plan. The provisions of the plan must ensure continuing compliance with applicable emission limits and demonstrate, based on documented test results, the relationship between emissions of PM, HCl, and D/F and the proposed monitoring parameters for each pollutant. The plan must include provisions for complying with applicable operating and monitoring requirements (unit labeling and measurements of feed/charge and flux weight). If a CEM or COM is used, provisions must be included to comply with installation, operation, maintenance, and quality assurance requirements of the NESHAP general provisions (40 CFR part 63, subpart A). If a scrap inspection program for monitoring the scrap contaminant level of furnace charge materials is included, the site-specific monitoring plan must include provisions for the demonstration and implementation of the program to meet the requirements in the proposed standard. These requirements are discussed in section IV.E.3 of this document, *Other Operating Requirements, Monitoring Systems and Procedures: Scrap inspection program*.

The owner or operator would submit a semiannual excess emissions/progress report, which would include each excursion from compliant operating parameters or measured emissions exceeding an applicable limit or standard; inconsistencies between actions taken during a startup, shutdown or malfunction and the procedures in the startup, shutdown and malfunction plan; failure to initiate corrective action within 1-hour for a bag leak detection alarm, a 6-minute average exceeding 5 percent opacity or an observation of visible emissions from a scrap shredder; an excursion of a compliant process or operating parameter value or range; or any event where an affected source was not operated according to the requirements of the rule. If no excess emissions occurred in the reporting period, the owner or operator would be required to submit a report stating that no excess emissions had occurred. The owner or operator also would submit the results of any performance test conducted during the reporting period and semi-annual certifications attesting to compliance with restrictions on feedstock and other operating conditions applicable to each chip dryer, dross-only furnace, sidewell group 1 furnace with add-on air pollution control devices, group 1 melter/holder without add-on air pollution control devices, and group 2 furnace.

In addition to the recordkeeping requirements in 40 CFR 63.10 of the NESHAP general provisions, the owner or operator would be required to maintain records of information needed to determine compliance. Additional recordkeeping requirements are given in Table 11.

The NESHAP general provisions require that all records be maintained for at least 5 years from the date of each record. The owner or operator must retain the records onsite for at least 2 years but may retain the records offsite for the remaining 3 years. The files may be retained on microfilm, microfiche, on computer disks, or on magnetic tape. Reports may be made on paper or on a labeled computer disk using commonly available and compatible computer software.

TABLE 11.—RECORDKEEPING REQUIREMENTS

Affected source/emission unit/control device/monitoring system	Requirement
Bag leak detection systems	Number of total operating hours for the affected source/emission unit during each 6-month reporting period, time of each alarm, time corrective action was initiated and completed, and description of cause of alarm and corrective action taken.
COM	Opacity data, times when 6-minute average exceeds 5 percent, time of exceedance, time corrective action was initiated and completed, and description of cause of emissions and corrective action taken.
Scrap shredders monitored by visible emissions observations.	Visible emission data, times when any visible emissions occurred during daily test, time of excursion, time corrective action was initiated and completed, and description of cause of emissions and corrective action taken.
Affected sources/Emission units subject to throughput based emission limits.	Records of feed or charge weight measurements for each operating cycle or time period used in performance test.
Lime injected fabric filters subject to temperature limits.	Inlet temperature data, times when 3-hour block average exceeds operating parameter value by 25°F, description of cause of excursion and corrective action taken.
Lime injected fabric filters	Lime blockage inspection records and either: (1) daily inspections of feeder settings and any deviation from established setting with cause of deviation and corrective action taken or (2) 3-hr block average lime weight, injection rate (lb/hr) and schedule with supporting calculations, times when 3-hour block average rate or schedule falls below established value, description of cause of excursion and corrective action taken or (3) lime weight for operating cycle or time period used in performance test, injection rate (lb/ton) and schedule with calculations, times when rate or schedule falls below established value, description of cause of excursion and corrective action taken.
Group 1 furnaces and in-line fluxers where reactive flux is used.	Weight of gaseous or liquid flux injected, total reactive chlorine flux injection rate and calculations (including identity, weight, composition of all reactive fluxing agents), times flux rate exceeds established value, description of cause of excursion and corrective action taken.

TABLE 11.—RECORDKEEPING REQUIREMENTS—Continued

Affected source/emission unit/control device/monitoring system	Requirement
Afterburners	Operating temperature data, times 3-hour block average temperature falls below established value, description of excursion and corrective action taken and annual inspections.
Group 1 furnace without add-on air pollution control device.	Site-specific monitoring plan with records to document conformance.
Group 1 sidewell furnace	Operating logs documenting conformance with operating standards for maintaining molten metal level and adding reactive flux only to the sidewell or furnace hearth equipped with controls.
Chip dryer, dross-only furnace, and group 1 melter/holder without air pollution control device processing clean charge.	Records of all charge materials.
Group 2 furnace	Records of all charge materials and fluxing materials or agents.
All affected sources/emission units	Monthly inspections for unit labeling, current copy of all required plans with revisions, records of any approved alternative monitoring or test procedure.
Capture/collection systems	Annual inspections.

V. Summary of Impacts of Proposed Standards

The EPA analyzed the impacts of the proposed standards by developing model processes and model plants based on site-specific information contained in responses to the ICR and voluntary follow up questionnaires, coupled with data obtained during site visits and emission tests. These model processes were then combined to form eight model plants used as the basis for environmental, cost, economic, and other regulatory impact analyses. Additional information on the model processes and model plants is included in the docket. (Docket Item II–B–1. Memorandum. J. Santiago, EPA:MICG, to K. Durkee, EPA:MICG. (Date) Model Processes and Control Device Options for the Secondary Aluminum Industry.)

A. Air Quality Impacts

As shown in Table 12, emission sources in the estimated 86 major source secondary aluminum production plants that would be subject to the NESHAP emit approximately 28,600 Mg/yr (31,500 tpy) of HAPs and other pollutants at the current level of control. Of these emissions, 16,300 Mg/yr (18,000 tpy) are HAPs. The EPA estimates that implementation of the NESHAP would reduce all pollutants by 16,700 Mg/yr (18,300 tpy). Nationwide HAP emissions would be reduced by about 11,300 Mg/yr (12,500 tpy).

TABLE 12.—NATIONWIDE ANNUAL BASELINE EMISSIONS AND EMISSION REDUCTIONS

Pollutant	Baseline emissions (Mg/yr)	Emission reduction (Mg/yr)	Baseline emissions (tpy)	Emission reduction (tpy)
THC [1]	3,782		4,169	
D/F	0.81 kg/yr	0.71 kg/yr	1.79 lb/yr	1.55 lb/yr.
HCl	15,365	11,300	16,902	12,457.
Cl_2	996		1,098	
HAP Metals	58.4	36.3	64.4	40.
PM	8,508	5,331	9,378	5,864.
Total:				
HAPs	16,420	11,336	18,065	12,496.
PM	8,508	5,331	9,378	5,864.
HAPS and other pollutants	28,620	16,524	31,548	18,215.

[1] THC is a surrogate for organic HAPs.

No reduction in THC emissions is estimated because all sources with a THC emission limit for which an afterburner would be required are already equipped with this MACT-level control.

The estimated emission reductions are felt to represent the minimum that would be achieved by the proposed rule since they are based on a reduction in baseline emissions to a level equal to the proposed emission limit. In reality, if emission control equipment is installed to achieve compliance with the proposed rule, emissions would likely be reduced to a level below the emission limit and the actual emission reductions would be larger than the estimates. In addition, emission reductions would also be expected for other pollutants for which there are no specific emission limits. Although these potential emission reductions were not quantified, emission controls installed to reduce HCl emissions are likely to also reduce Cl_2 emissions, the lime added or injected to fabric filters would reduce fluoride as well as chloride emissions, and fabric filters installed to meet PM emission limits also would reduce HAP metal emissions. For example, emission test data indicate that a fabric filter will reduce HAP metal emissions by approximately the same amount as PM emissions. If the same reduction (61.4 percent from the baseline, taking into account that some sources already have these controls) is applied to HAP metal emissions, an emission reduction of about 39.5 tpy from the estimated baseline level of 64.4 tpy would be achieved. Additional information on nationwide and model plant air quality impacts is included in the docket. (See Docket item II–B–16. Memorandum. M. Wright, Research Triangle Institute, to J. Santiago, EPA:MICG. Regulatory Impacts for Secondary Aluminum MACT Standards. September 17, 1998.)

B. Cost Impacts

Nationwide total capital costs are estimated at $148 million with total

annualized costs of $68 million/yr. Estimates of total capital and total annualized costs for each model plant are shown in Table 13.

TABLE 13.—ESTIMATED CAPITAL AND ANNUALIZED COSTS BY MODEL PLANT

Model plant	Total capital costs (thousands $)	Total annualized costs (thousands $/yr)
1	1,390	541
2	1,660	574
3	1,833	702
4	2,944	1,203
5	2,159	1,400
6	3,731	2,142
7	198	134
8	0	0

The cost estimates are based on cost algorithms from the ''OAQPS Control Cost Manual'' (EPA 450/3–90–006, January 1990) applied to the model process control devices. The estimates include control device costs, auxiliary equipment, and direct and indirect installation costs, but do not include costs associated with retrofit situations or monitoring systems. The nationwide annual costs for monitoring, reporting and recordkeeping are estimated at $5.1 million/yr, for the first three years. Additional information on the model plants and cost estimates are included in the docket. (See Docket item II–B–16. Memorandum. M. Wright, Research Triangle Institute, to J. Santiago, EPA:MICG. Regulatory Impacts for Secondary Aluminum MACT Standards. September 17, 1998.)

C. Economic Impacts

The economic impact analysis (EIA) provides an estimate of the anticipated regulatory impacts of the Secondary Aluminum National Emission Standard for Hazardous Air Pollutants. The goal of the EIA is to determine the primary market impacts of the regulation on the secondary aluminum industry including estimated changes in market price, market production, industry annual revenues, and potential facility closures. Secondary market impacts such as potential labor market, energy input, and international trade impacts are also analyzed. The impact of the regulation on small secondary aluminum producers is also evaluated.

The secondary aluminum industry includes facilities primarily engaged in recovering aluminum from new and used scrap and from dross and facilities engaged in producing aluminum sheet, plate, and foil. Establishments in the secondary aluminum industry produce products classified primarily in Standard Industrial Classification (SIC) codes 3341 Secondary Smelting and Refining of Nonferrous Metals and 3353 Aluminum Sheet, Plate, and Foil. The specific processes regulated by the secondary aluminum maximum achievable control technology (MACT) standard include crushing and shredding; drying; delaquering; furnace operations; in-line fluxers; dross-only furnaces; sweating furnaces; and dross cooling.

In recent years, the secondary aluminum industry has become a major market force in the domestic aluminum industry. The recycling of scrap provides a source of aluminum that not only helps the aluminum industry to maintain growth, but also helps conserves energy and slows the depletion of bauxite sources. For many applications, secondary aluminum is comparable to primary aluminum. However, for certain specialized applications only primary aluminum is employed. The secondary aluminum market is highly competitive with numerous sellers, none of which is large enough to influence market price. Primary aluminum producers are typically producers of secondary aluminum also. There is competition between secondary and primary aluminum producers for those grades of metals which the secondary smelters produce.

Although the number of facilities affected by this regulation is not known with precision, the U.S. Department of Commerce's Bureau of Census reports companies with aluminum inventory. In 1994, those producers reporting inventories included 12 primary aluminum producers, 141 companies unaffiliated with primary producers reported inventories, and 25 smelters. The section 114 information collection request (ICR) reports collected for this regulation from secondary aluminum producers indicates that 134 facilities are potentially affected by this regulation. The secondary aluminum facilities are dispersed throughout the country in 36 different states with the largest concentration of facilities in California, Ohio, Indiana, Illinois, Tennessee, Kentucky, and Pennsylvania. Approximately 28 percent of the domestic facilities producing secondary aluminum are owned by companies that are classified as small businesses.

1. Control Cost Estimates and Analytical Approach

Eight different model plants were developed to estimate the facility and nationwide annualized and capital emission control costs for this regulation. Table 14 presents the capital and annualized costs for each of the model plants, as well as estimates of the nationwide costs. The capital costs for this regulation are estimated to be approximately $147.9 million while national annualized costs of approximately $73 million are anticipated. These annualized costs include the burden costs, or costs of monitoring, reporting, and recordkeeping. (All values are shown in 1994 dollars.)

TABLE 14.—MODEL PLANT AND NATIONWIDE CONTROL COST ESTIMATES SECONDARY ALUMINUM NESHAP

[Thousands of 1994 dollars]

Model plant/nationwide	Capital costs	Annualized costs
Model Plant 1	$43,094	$16,770
Model Plant 2	16,603	5,740
Model Plant 3	12,832	4,911
Model Plant 4	26,492	10,829
Model Plant 5	21,587	14,001
Model Plant 6	26,119	14,992
Model Plant 7	1,188	807
Model Plant 8	0	0
Burden Costs		5,142
Nationwide Totals	147,915	73,191

Since capital costs relate to emission control equipment that will be utilized over a period of years, this cost is annualized or apportioned to each year of the anticipated equipment life. The annual capital costs include annual depreciation of equipment plus the cost of capital associated with financing the capital equipment over its useful life. A seven percent discount rate or cost of capital is assumed for this regulation. The annualized capital costs are combined with annual operating and maintenance costs, recordkeeping, monitoring, and reporting costs, and other annual costs to compute the total annualized costs to comply with the proposed rule.

A market model was utilized in the EIA to estimate the impact of the regulation on the secondary aluminum industry and other related markets. For purposes of the EIA, a partial equilibrium microeconomic model of the secondary aluminum industry was developed that assumes the supply of secondary aluminum will decrease as a result of the increased costs of emission controls from levels that would have occurred absent the regulation. The decrease in supply is anticipated to increase market price and decrease the market equilibrium quantity of secondary aluminum produced domestically.

2. Economic Impacts

Table 15 presents primary and secondary market impacts estimated for the Secondary Aluminum NESHAP. Primary market impacts include estimated changes in price, production, industry revenues, and potential facility closures. Secondary market impacts relate to potential employment losses, potential decreases in exports, and increases in imports.

TABLE 15.—PRIMARY AND SECONDARY MARKET IMPACTS SECONDARY ALUMINUM NESHAP

[Thousands of 1994 dollars]

	Estimated impacts
Primary Market Impacts:	
Price Increase (%)	0.75
Production Decrease (%)	(0.49)
Industry Revenues-Value of Domestic Shipments (%)	0.25
Potential Facility Closures	0–1
Secondary Market Impacts:	
Labor Market—Potential Employee Reductions (number of workers) Percent decrease	117 (0.49)
International Trade:	
Exports (%)	(0.25)
Imports (%)	1.75

Decreases are shown in brackets ( ).

In general, the economic impacts of this regulation are expected to be minimal with price increases and production decreases of less than one percent. A market price increase of 0.75 percent and domestic production decrease of 0.49 percent are predicted. Revenues or the value of domestic shipments for the industry are expected to increase by 0.25 percent. The increase in the value of shipments results because the price elasticity of demand for secondary aluminum is inelastic. Products that demonstrate inelastic price elasticity of demand are characterized by larger percentage price increases than production percentage decreases occurring with price increases. For products with inelastic demand, a price increase leads to increases in revenue or value of shipments. Individual facilities within the industry may experience revenue increases or decreases, but on average the industry revenues are anticipate to increase slightly with this regulation. Potentially, one facility may close as a result of the regulation.

Approximately 117 workers may face employment losses as a result of the regulation. Exports of secondary aluminum products to other countries are expected to decline by 0.25 percent while imports of secondary aluminum are expected to increase 1.75 percent.

D. Non-air Health and Environmental Impacts

Secondary aluminum plants are subject to effluent guidelines and standards set pursuant to the Federal Water Pollution Control Act. The EPA's effluent guidelines for secondary aluminum smelting (40 CFR part 421, subpart C) apply to conventional pollutants and/or fluoride, ammonia, aluminum, copper, lead, and zinc from sources that include wet air pollution control systems for scrap drying, scrap screening and milling, dross washing, demagging, delacquering, and casting cooling. For several sources, either no discharge of process wastewater is allowed (requiring recycling) or none (zero) of the specified pollutants are allowed in the discharge.

The proposed NESHAP is based on air pollution control systems which are of the dry type (e.g., afterburners and fabric filters), and there are no water pollution impacts resulting from their use. Solid waste generated by fabric filters in the form of particulate matter (including HAP metals and lime from fabric filters) is typically disposed of by landfilling. With the addition of fabric filters and lime conditioned fabric filters, the amount of solid waste is expected to increase by about 104,235 Mg/yr (114,900 tpy) nationwide. The increase in solid waste is estimated as the sum of the annual reduction in PM emissions and the annual increase in the use of lime in lime-injected fabric filters. (See Docket item II–B–16. Memorandum. M. Wright, Research Triangle Institute, to J. Santiago, EPA:MICG. Regulatory Impacts for Secondary Aluminum MACT Standards. September 17, 1998.)

Dioxins and furans (D/F) and HAP metals (lead, cadmium, and mercury) have been found in the Great Lakes and other water bodies, and have been listed as pollutants of concern due to their persistence in the environment, potential to bioaccumulate, and toxicity to humans and the environment. (See Docket item II–A–3. Deposition of Air Pollutants to the Great Waters: First Report to Congress. EPA:OAQPS. EPA–453/R–93–055. May 1994. pp. 18–21.) Implementation of the NESHAP would aid in reducing aerial deposition of these emissions.

As acid gases, HCl and Cl_2 contribute to the formation of acid rain. In addition, Cl_2 is a very reactive element and combines easily with a variety of organic compounds; these chemical reactions constitute the primary mechanism for the destruction of ozone in the stratosphere. Both HCl and Cl_2 are very corrosive and can cause damage to building materials such as limestone, plant equipment, and to all types of metals and textiles. HCl and Cl_2 also are phototoxicants, which can be injurious to crops and plants including tomatoes, sugar beets, alfalfa, tobacco, blackberries, radishes, certain trees (box elder, crab apple, pin oak, sugar maple, and sweet gum), and certain flowers (roses, sunflowers, and zinnias). (See Docket item II–I–2. Chlorine and Hydrogen Chloride. National Academy of Sciences. Washington, DC. 1976. pp. 85–86, 93, 145–53, 161, 166.) Ambient concentrations of these HAPs would be reduced substantially by the proposed NESHAP.

Occupational exposure limits under 29 CFR part 1910 are in place for each of the regulated HAPs (and surrogates) except D/F. The National Institute for Occupational Safety and Health recommends an exposure level for D/F

at the lowest feasible concentration. (See Docket item II–I–110, NIOSH Recommendations for Occupational Safety and Health: Compendium of Policy Documents and Statements. National Institute for Occupational Safety and Health. January 1992. p. 124.) The proposed NESHAP would reduce emissions, and consequently, occupational exposure levels for plant employees.

E. Energy Impacts

Operating fabric filters and afterburners requires the use of electrical energy to operate fans that move the gas stream. The additional electrical energy requirements are estimated at 116 million kilowatt hours per year (kWh/yr), or 418 terajoules per year (TJ/yr), over current requirements. Afterburners may also use natural gas as fuel. Approximately 325,500 kilocubic feet per year (kft^3/yr) or 322 billion Btu/yr (340 TJ/yr) of additional natural gas would be required.

The increased energy requirements for plants will result in an increase in utility emissions as more energy is generated. Nationwide emissions of PM, sulfur dioxide (SO_2), and nitrogen oxides (NO_X) from electric power plants are estimated to increase by 9.8 Mg/yr (10.8 tpy), 393 Mg/yr (433 tpy), and 197 Mg/yr (217 tpy), respectively. (See Docket item II–B–16. Memorandum. M. Wright, Research Triangle Institute, to J. Santiago, EPA:MICG. Regulatory Impacts for Secondary Aluminum MACT Standards. September 17, 1998.)

VI. Request for Comments

The EPA seeks full public participation in arriving at its final decisions and encourages comments on all aspects of this proposal from all interested parties. In addition, the Agency is specifically requesting comments on the applicability section of the rule. As proposed, aluminum die casters (SIC 3363) and aluminum foundries (SIC 3365) are specifically exempted from the requirements of the rule. The Agency is aware that some operations at these locations may include melting, refining, and some level of reactive fluxing as well as chip drying. The Agency requests data and comment regarding the extent of these secondary aluminum operations at these facilities and the need for emission controls under this NESHAP. The Agency also specifically requests information regarding the extent of small businesses in these two SIC codes which have secondary aluminum operations and which are also major sources as defined in the Clean Air Act. The Agency also requests information regarding the number of large businesses which operate foundry or die casting processes and which are major sources either independently or due to co-location (e.g., foundries or die casters located at automobile plants). The Agency is also requesting information or estimates regarding the quantities of HAP emissions from both major sources and area sources within these SIC codes. Full supporting data and detailed analyses should be submitted with all comments to allow the EPA to make maximum use of the comments.

All comments should be directed to the Air and Radiation Docket and Information Center, Docket No. A–92–61 (see **ADDRESSES**). Comments on this notice must be submitted on or before the date specified in **DATES**.

Commentors wishing to submit proprietary information for consideration should clearly distinguish such information from other comments and clearly label it ''Confidential Business Information'' (CBI). Submissions containing such proprietary information should be sent directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Juan Santiago, c/o Ms. Melva Toomer, U.S. EPA Confidential Business Information Manager, OAQPS (MD–13), Research Triangle Park, North Carolina 27711. Information covered by such a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when it is received by EPA, it may be made available to the public without further notice to the commentor.

VII. Administrative Requirements

A. Docket

The docket is intended to be an organized and complete file of the administrative records compiled by EPA. The docket is a dynamic file, because material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Act.)

B. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the Act. If a public hearing is requested and held, EPA will ask clarifying questions during the oral presentation but will not respond to the presentations or comments. Written statements and supporting information will be considered with equivalent weight as any oral statement and supporting information subsequently presented at a public hearing. Persons wishing to attend or to make oral presentations or to inquire as to whether or not a hearing is to be held should contact the EPA (see **FOR FURTHER INFORMATION CONTACT**). To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each.

Any member of the public may file a written statement on or before April 12, 1999. Written statements should be addressed to the Air and Radiation Docket and Information Center (see **ADDRESSES**), and refer to Docket A–92–61. A verbatim transcript of the hearing and written statements will be placed in the docket and be available for public inspection and copying, or be mailed upon request, at the Air and Radiation Docket and Information Center.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB), and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, the EPA has determined that this regulatory action is not

''significant'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

D. Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines (1) ''economically significant'' as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonable alternatives considered by the Agency.

This proposed rule is not subject to E.O. 13045, entitled, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by E.O. 12866.

E. Enhancing the Intergovernmental Partnership Under Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule implements requirements specifically set forth by the Congress in 42 U.S.C. 7410 without the exercise of any discretion by EPA. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

F. 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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 officials 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 implements requirements specifically set forth by the Congress in 42 U.S.C. 7410 without the exercise of any discretion by EPA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative with other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any one year. In addition, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

H. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) provides that, whenever an agency promulgates a final rule under 5 U.S.C. (MARK) 553, after being required to publish a general notice of proposed rulemaking, an agency must prepare a final regulatory flexibility analysis unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant impact on a substantial number of small entities.

The EPA analyzed the potential impact of the rule on small entities. The EPA received responses to an information collection request from 135 facilities producing products in SIC's 3341 (secondary smelting and refining of nonferrous metals) and 3353 (aluminum sheet, plate, and foil);

however, it is thought that there are in excess of 400 facilities which produce these products. To define the small business entities, the 135 facilities were matched with their parent companies and it was determined that 33 of these companies meet the Small Business Administration definition of a small business entity (less than 750 employees).

The analysis of small business impacts for the secondary aluminum industry focused on a comparison of compliance costs as a percentage of sales (cost/sales ratio). Cost to sales ratio refers to the change in annualized control costs divided by the sale revenues of a particular good or goods being produced in the process for which additional pollution control is required. It can be estimated for either individual firms or as an average for some set of firms such as affected small firms. While it has different significance for different market situations, it is a good rough gauge of potential impact. If costs for the individual (or group) of firms are completely passed on to the purchasers of the good(s) being produced, it is an estimate of the price change (in percentage form after multiplying the ratio by 100). If costs are completely absorbed by the producer, it is an estimate of changes in pretax profits (in percentage form after multiplying the ratio by 100). The distribution of costs to sales ratios across the whole market, the competitiveness of the market, and profit to sales ratios are among the obvious factors that may influence the significance of any particular cost to sales ratio for an individual facility.

Due to the number of facilities and variety of processes used in the affected industry, model plants were developed to categorize facilities based on possible combinations of processes that are performed. These model plant categories were used to estimate applicable emission control costs, including the costs of monitoring, reporting, and record keeping. Eight model plants were created and annual compliance costs were calculated for each one. The individual facilities were then assigned to the model plant that most closely fit their process structure, and the annual compliance cost for that model plant was used in calculating the company's cost/sales ratio.

Two alternative approaches were used to estimate the sales revenues for the affected small businesses. If actual sales data were available, these data were used to compute cost to sales ratios for affected entities. In cases where the actual sales data were unavailable, model plant revenues were estimated based upon the estimated model plant annual production and the average 1994 price of secondary aluminum alloy A–380. Cost to sales data were developed using actual revenue data where available and model plant estimate revenues for each of the 33 small businesses. Cost to sales ratios based on model plant data yield ratios of less than 1 percent for each model plant and range from 0.02 percent to 0.97 percent for model plant 8 and model plant 1, respectively. A summary of the cost to sales ratios for the affected small secondary aluminum producers using model plant data and actual company annual revenues is shown in Table 16 below. As depicted in Table 16, the majority of affected small businesses had cost to sales ratios below 1 percent. Ten companies had cost to sales ratios above 1 percent. Of these ten companies, only one had cost to sales above 3 percent. A cost to sales ratio above 3 percent is an indicator that this small business may experience a significant economic impact as a result of this regulation. Based upon this analysis, the EPA concludes that this regulation will not result in a significant economic impact for a substantial number of small entities. Only one of the 33 small entities is anticipated to experience significantly adverse economic impacts as a result of this regulation.

TABLE 16.—COMPANY-SPECIFIC COST SALES RATIOS

Cost/sales ratio	Number of small companies in range
0.00%–0.99%	23
1.00%–1.99%	7
2.00%–2.99%	2
>3.00%	1
Mean cost/sales ratio = 0.919%	
Total	33

I. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1894.01), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Division, U.S. Environmental Protection Agency (2136), 401 M Street SW, Washington, DC 20460, or by calling (202) 260–2740.

The proposed information requirements include mandatory notifications, records, and reports required by the NESHAP General Provisions (40 CFR part 63, subpart A). These information requirements are needed to confirm the compliance status of major sources, to identify any nonmajor sources not subject to the standards and any new or reconstructed sources subject to the standards, to confirm that emission control devices are being properly operated and maintained, and to ensure that the standards are being achieved. Based on the recorded and reported information, EPA can decide which plants, records, or processes should be inspected. These recordkeeping and reporting requirements are specifically authorized under section 114 of the Act (42 U.S.C. 7414). All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to Agency policies in 40 CFR part 2, subpart B. (See 41 FR 36902, September 1, 1976; 43 FR 39999, September 28, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979.)

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the rule) is estimated to total 9,482 labor hours per year at a total annual cost of $4.1 million. This estimate includes notifications; a performance test and report (with repeat tests where needed); one-time preparation of a startup,

shutdown, and malfunction plan with semiannual reports of any event where the procedures in the plan were not followed and an operation, maintenance, and monitoring plan; semiannual excess emissions reports; initial and semiannual furnace certifications; and recordkeeping. This estimate also includes one time preparation of emissions averaging plans and scrap sampling plans for some respondents. Total capital costs associated with monitoring requirements over the 3-year period of the ICR is estimated at $993 thousand; this estimate includes the capital and startup costs associated with installation of monitoring equipment.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136), 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 Office for EPA.'' Include the ICR number in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after February 11, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by March 15, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

J. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) which are developed or adopted by voluntary consensus bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the OMB, and explanation of the reasons for not using such standards. This section summarizes the EPA's response to the requirements of the NTTA for the analytical test methods included in the proposed rule.

Consistent with the NTTAA, the EPA conducted a search to identify voluntary consensus standards. However, no candidate consensus standards were identified for measuring emissions of the HAPs or surrogates subject to emission standards in the rule. The proposed rule requires standard EPA methods well known to the industry and States. Approved alternative methods also may be used. The EPA, in coordination with the industry and States, have agreed on the use of these test methods in the rule.

K. Pollution Prevention Act

During the development of the proposed NESHAP, EPA explored opportunities to eliminate or reduce emissions through the application of new processes or work practices. The proposed NESHAP requires the implementation of site-specific work practices to prevent or limit the use of materials in furnace operations that generate HAP emissions.

L. Clean Air Act

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Secondary aluminum production, Reporting and recordkeeping requirements.

Dated: December 31, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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 RRR to read as follows:

Subpart RRR—National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

Sec.

General

63.1500 Applicability.
63.1501 Dates.
63.1502 Incorporation by reference.
63.1503 Definitions.
63.1504 [Reserved]

Emission Standards and Operating Requirements

63.1505 Emission standards for affected sources and emission units.
63.1506 Operating requirements.
63.1507 [Reserved]
63.1508 [Reserved]
63.1509 [Reserved]

Monitoring and Compliance Provisions

63.1510 Monitoring requirements.
63.1511 Performance test/compliance demonstration general requirements.
63.1512 Performance test/compliance demonstration requirements and procedures.
63.1513 Equations for determining compliance.
63.1514 [Reserved]

Notifications, Reports, and Records

63.1515 Notifications.
63.1516 Reports.
63.1517 Records.

Other

63.1518 Applicability of general provisions.
63.1519 Delegation of authority.
63.1520 [Reserved]

Appendix A to Subpart RRR of Part 63—Applicability of General Provisions (40 CFR part 63, subpart A) to Subpart RRR

Subpart RRR—National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

General

§ 63.1500 Applicability.

(a) The requirements of this subpart apply to the owner or operator of each secondary aluminum production facility that is a major source of hazardous air pollutants (HAPs) as defined in § 63.2 of this part or is an area source of D/F emissions.

(b) The requirements of this subpart apply to the following new or existing affected sources:

(1) Each new and existing scrap shredder;

(2) Each new and existing chip dryer;

(3) Each new and existing scrap dryer/delacquering/decoating kiln;

(4) Each new and existing group 2 furnace;

(5) Each new and existing sweat furnace;

(6) Each new and existing dross-only furnace;

(7) Each new and existing rotary dross cooler;

(8) Each new group 1 furnace;

(9) Each new in-line fluxer; and

(10) Each secondary aluminum processing unit.

(c) The owner or operator of a secondary aluminum production facility that is a major source is subject to title V permitting requirements.

§ 63.1501 Dates.

(a) The owner or operator of an existing affected source must comply with the requirements of this subpart by: [date 3 years after publication of the final rule in the **Federal Register**].

(b) The owner or operator of a new affected source that commences construction or reconstruction after February 11, 1999 must comply with the requirements of this subpart by [date of publication of final rule in the **Federal Register**] or upon startup, whichever is later.

§ 63.1502 Incorporation by reference.

(a) The following material is incorporated by reference in the corresponding sections noted. The incorporation by reference (IBR) of certain publications listed in the rule will be approved by the Director of the Office of the Federal Register as of the date of publication of the final rule in accordance with 5 U.S.C 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of approval and notice of any change in the material will be published in the **Federal Register**: Chapters 3 and 5 of ''Industrial Ventilation: A Manual of Recommended Practice,'' American Conference of Governmental Industrial Hygienists, (23rd edition, 1998), IBR approved for § 63.1506(c).

(b) The material incorporated by reference is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, 7th Floor, Washington, DC and at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street SW., Washington, DC. The material also is available for purchase from the following address: Customer Service Department, American Conference of Governmental Industrial Hygienists (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, OH 45240–1634, telephone number (513) 742–2020.

§ 63.1503 Definitions.

Terms used in this subpart are defined in the Clean Air Act as amended (the Act), in § 63.2 of this part, or in this section as follows:

Add-on air pollution control device means equipment installed on a process vent that reduces the quantity of a pollutant that is emitted to the air.

Afterburner means an air pollution control device that uses controlled flame combustion to convert combustible materials to noncombustible gases; also known as an incinerator.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (i.e., baghouse) in order to detect bag failures. A *bag leak detection system* includes, but is not limited to, an instrument that operates on triboelectric, light scattering, transmittance, or other effect to monitor relative particulate matter loadings.

Chip dryer means a device that uses heat to evaporate water, oil, or oil/water mixtures from unpainted/uncoated aluminum chips.

Chips means small, uniformly-sized, unpainted pieces of aluminum scrap, typically below 1¼ inches in any dimension, primarily generated by turning, milling, boring, and machining of aluminum parts.

Clean charge means furnace charge materials of pure aluminum, including molten aluminum, T-bar, sow, ingot, alloying elements, uncoated aluminum chips dried at 343°C (650°F) or higher, aluminum scrap dried/delacquered/decoated at 482°C (900°F) or higher, and noncoated runaround scrap.

Dross means the slags and skimmings from aluminum melting and refining operations consisting of fluxing agent(s) and impurities from scrap aluminum charged into the furnace and/or oxidized and non-oxidized aluminum.

Dross-only furnace means a furnace, typically of rotary barrel design, dedicated to the reclamation of aluminum from dross formed during melting, holding, fluxing, or alloying operations carried out in other process units. Dross is the sole feedstock to this type of furnace.

Emission unit means an existing *group 1 furnace* or *in-line fluxer* at a *secondary aluminum production facility*.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media; also known as a baghouse.

Feed/charge weight means, for a furnace that operates in batch mode, the total weight of scrap (including molten aluminum, T-bar, sow, ingot, etc.), alloying agents, and solid fluxes that enter the furnace during an operating cycle. For a furnace or other process unit that operates continuously, *feed/charge weight* means the weight of scrap (including molten aluminum, T-bar, sow, ingot, etc.), alloying agents, and solid fluxes that enter the process unit within a specified time period (e.g., a time period equal to the performance test period).

Fluxing means refining of molten aluminum to improve product quality, achieve product specifications, or reduce material loss, including the addition of salts such as magnesium chloride to cover the molten bath to reduce oxidation (cover flux), the addition of solvents to remove impurities (solvent flux); and the injection of gases such as chlorine to remove magnesium (demagging) or hydrogen bubbles (degassing). *Fluxing* may be performed in the furnace or outside the furnace by an *in-line fluxer*.

Furnace hearth means the combustion zone of a furnace, in which the molten metal is contained.

Group 1 furnace means a furnace of any design that melts, holds, or processes aluminum scrap containing paint, lubricants, coatings, or other foreign materials or within which *reactive fluxing* is performed.

Group 2 furnace means a furnace of any design that melts, holds, or processes only *clean charge* and that performs no *fluxing* or performs *fluxing* using only nonreactive, nonHAP-containing/nonHAP-generating gases or agents.

HCl means, for the purposes of this subpart, emissions of hydrogen chloride that serve as a surrogate measure of the total emissions of the HAPs hydrogen chloride and chlorine.

In-line fluxer means a device exterior to a furnace, typically located in a transfer line from a furnace, used to refine (flux) molten aluminum; also known as a flux box, degassing box, or demagging box.

Lime means calcium oxide or other alkaline reagent.

Lime-injection means the continuous mechanical addition of lime upstream of a *fabric filter* to adsorb or react with pollutants.

Melting/holding furnace means a *group 1 furnace* that processes only *clean charge,* performs melting, holding, and fluxing functions, and does not transfer molten aluminum to or from another furnace.

Operating cycle means for a batch process, the period beginning when the feed material is first charged to the operation and ending when all feed material charged to the operation has been processed. For a batch melting or holding furnace process, *operating cycle* means the period including the charging and melting of scrap aluminum and the fluxing, refining, alloying, and tapping of molten aluminum.

PM means, for the purposes of this subpart, emissions of particulate matter that serve as a measure of total particulate emissions and as a surrogate for metal HAPs contained in the particulates including but not limited to: antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium.

Pollution prevention means source reduction as defined under the Pollution Prevention Act of 1990 (e.g., equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control), and 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 by conservation.

Process train means any set of *group 1 furnaces* and *in-line fluxers* that sequentially handle the same material. A *process train* may consist of affected sources and *emission units* within an affected source. For example, a new *group 1 furnace* may feed a *secondary aluminum processing unit.* Other examples of a *process train* include:

(1) A melting furnace (or multiple melting furnaces operating in parallel) and a holding furnace (or multiple holding furnaces operating in parallel) where molten aluminum is transferred from the melting furnace(s) to the holding furnace(s) and then to a casting operation;

(2) A melting furnace (or multiple melting furnaces operating in parallel) and an *in-line fluxer* where molten aluminum is transferred from the furnace(s) to the *in-line fluxer* and then to a casting operation;

(3) A *melting/holding furnace* (or multiple *melting/holding furnaces* operating in parallel) and an *in-line fluxer* where molten aluminum is transferred from the furnace(s) to the *in-line fluxer* and then to a casting operation; or

(4) A melting furnace (or multiple melting furnaces operating in parallel), a holding furnace (or multiple holding furnaces operating in parallel), and an *in-line fluxer* where molten aluminum is transferred sequentially from the melting furnace(s) to the holding furnace(s) and to the *in-line fluxer* and then to a casting operation.

Reactive fluxing means the use of any gas, liquid, or solid flux that results in a HAP emission. Argon and nitrogen are not reactive and do not produce HAPs.

Reconstruction means the replacement of components of an affected source or *emission unit* such that:

(1) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source; and

(2) It is technologically and economically feasible for the reconstructed source to meet relevant standard(s) established in this subpart.

Replacement of the refractory in a furnace is routine maintenance and is not a *reconstruction.* The repair and replacement of *in-line fluxer* components (e.g., rotors/shafts, burner tubes, refractory, warped steel) is considered to be routine maintenance and is not considered a *reconstruction. In-line fluxers* are typically removed to a maintenance/repair area and are replaced with a repaired unit. This replacement of an existing *in-line fluxer* with a repaired unit is not considered a *reconstruction.*

Residence time means, for an *afterburner,* the duration of time required for gases to pass through the *afterburner* combustion zone. *Residence time* is calculated by dividing the *afterburner* combustion zone volume in cubic feet by the volumetric flow rate of the gas stream in actual cubic feet per second.

Rotary dross cooler means a water-cooled rotary barrel device that accelerates cooling of dross.

Scrap dryer/delacquering/decoating kiln means a unit used primarily to remove various organic contaminants such as oils, paint, lacquer, ink, plastic, and/or rubber from aluminum scrap (including used beverage containers) prior to melting.

Scrap shredder means a unit that crushes, grinds, or breaks scrap into a more uniform size prior to processing or charging to a *chip dryer, scrap dryer/ delacquering/decoating kiln,* or furnace.

Secondary aluminum processing unit means all existing *group 1 furnaces* and all existing *in-line fluxers* within a *secondary aluminum production facility.* Each existing *group 1 furnace* or existing *in-line fluxer* is considered an *emission unit* within a *secondary aluminum processing unit.*

Secondary aluminum production facility means any establishment using post-consumer scrap, aluminum scrap, ingots, foundry returns, dross, or molten metal as the raw material and performing one or more of the following processes: Scrap shredding, scrap drying/delacquering/ decoating, chip drying, furnace operations (i.e., melting, holding, refining, fluxing, or alloying), in-line fluxing, or dross cooling. A *secondary aluminum production facility* may be independent or part of a primary aluminum production facility. Facilities such as manufacturers of aluminum die castings and aluminum foundries are included in this definition if the facility includes any of the affected sources subject to D/F emission limits or has an on-site *group 1 furnace* (i.e., the facility is an area source of D/F emissions).

Sidewell means an open well adjacent to the hearth of a furnace with connecting arches between the hearth and the open well through which molten aluminum is circulated between the hearth, where heat is applied by burners, and the open well, which is used for charging scrap and solid flux or salt to the furnace, injecting fluxing agents, and skimming dross.

Sweat furnace means a furnace used exclusively to reclaim aluminum from scrap that contains high iron levels by using heat to separate the low-melting point aluminum from the scrap while the higher melting-point iron remains in solid form.

TEQ means the international method of expressing toxicity equivalents for dioxins and furans as defined in ''Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-

Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update'' (EPA–625/3–89–016), available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, NTIS no. PB 90–145756.

THC means, for the purposes of this subpart, total hydrocarbon emissions that also serve as a surrogate for the total emissions of organic HAP compounds.

Three-day, 24-hour rolling average means daily calculations of the average 24-hour emission rate (lbs/ton of feed), over the three most recent consecutive 24-hour periods, for a *secondary aluminum processing unit.*

Total reactive chlorine flux injection rate means the sum of the total weight of chlorine in the gaseous or liquid reactive flux and the total weight of chlorine in the solid reactive chloride flux as determined by the procedure in § 63.1512(o).

§ 63.1504 [Reserved]

Emission Standards and Operating Requirements

§ 63.1505 Emission standards for affected sources and emission units.

(a) *Summary.* Except as provided in paragraph (l) of this section for secondary aluminum processing units in an approved emissions plan, the owner or operator of a new or existing affected source must comply with each applicable limit in this section. Table 1 to this section summarizes the emission standards for each type of source.

(b) *Scrap shredder.* On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier,

(1) The owner or operator of a scrap shredder at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere any emissions in excess of 0.023 grams (g) of PM per dry standard cubic meter (dscm) (0.010 grain (gr) of PM per dry standard cubic foot (dscf)).

(2) The owner or operator of a scrap shredder at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere any visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM or visible emissions monitoring is chosen as the monitoring option.

(c) *Chip dryer.* On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier, the owner or operator of a chip dryer must not discharge or cause to be discharged to the atmosphere any emissions in excess of:

(1) 0.40 kilogram of THC, as propane, per megagram (Mg) (0.80 lb of THC, as propane, per ton) of feed from a chip dryer at a secondary aluminum production facility that is a major source; and

(2) 2.50 micrograms (μg) of D/F TEQ per Mg (3.5×10^{-5} gr per ton) of feed from a chip dryer at a secondary aluminum production facility that is a major or area source.

(d) *Scrap dryer/delacquering/decoating kiln.* On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier,

(1) The owner or operator of a scrap dryer/ delacquering/decoating kiln must not discharge or cause to be discharged to the atmosphere any emissions in excess of:

(i) 0.03 kg of THC, as propane, per Mg (0.06 lb of THC, as propane, per ton) of feed from a scrap dryer/ delacquering/ decoating kiln at a secondary aluminum production facility that is a major source;

(ii) 0.04 kg of PM per Mg (0.08 lb per ton) of feed from a scrap dryer/ delacquering/decoating kiln at a secondary aluminum production facility that is a major source;

(iii) 0.25 μg of D/F TEQ per Mg (3.5×10^{-6} gr of D/F TEQ per ton) of feed from a scrap dryer/delacquering/ decoating kiln at a secondary aluminum production facility that is a major or area source; and

(iv) 0.40 kg of HCl per Mg (0.80 lb per ton) of feed from a scrap dryer/ delacquering/decoating kiln at a secondary aluminum production facility that is a major source.

(2) The owner or operator of a scrap dryer/delacquering/decoating kiln at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere any visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(e) *Scrap dryer/delacquering/ decoating kiln: alternative limits.* The owner or operator of a scrap dryer/ delacquering/decoating kiln may choose to comply with the emission limits in this paragraph as an alternative to the limits in paragraph (d) of this section if the scrap dryer/delacquering/decoating kiln is equipped with an afterburner having a design residence time of at least 1 second and the afterburner is operated at a temperature of at least 750 °C (1,400 °F) at all times. On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier:

(1) The owner or operator of a scrap dryer/delacquering/decoating kiln must not discharge or cause to be discharged to the atmosphere any emissions in excess of:

(i) 0.10 kg of THC, as propane, per Mg (0.20 lb of THC, as propane, per ton) of feed from a scrap dryer/delacquering/ decoating kiln at a secondary aluminum production facility that is a major source;

(ii) 0.15 kg of PM per Mg (0.30 lb per ton) of feed from a scrap dryer/ delacquering/decoating kiln at a secondary aluminum production facility that is a major source;

(iii) 5.0 μg of D/F TEQ per Mg (7.0×10^{-5} gr of D/F TEQ per ton) of feed from a scrap dryer/delacquering/ decoating kiln at a secondary aluminum production facility that is a major or area source; and

(iv) 0.75 kg of HCl per Mg (1.50 lb per ton) of feed from a scrap dryer/ decoating/delacquering kiln at a secondary aluminum production facility that is a major source.

(2) The owner or operator of a scrap dryer/delacquering/decoating kiln at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere any visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(f) *Sweat furnace.* On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier, the owner or operator of a sweat furnace at a secondary aluminum production facility that is a major or area source must not discharge or cause to be discharged to the atmosphere any emissions in excess of 0.80 nanogram (ng) of D/F TEQ per dscm (3.5×10^{-10} gr per dscf) at 11 percent O_2.

(g) *Dross-only furnace.* On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier:

(1) The owner or operator of a dross-only furnace at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere any emissions in excess of 0.15 kg of PM per Mg (0.30 lb of PM per ton) of feed.

(2) The owner or operator of a dross-only furnace at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere any visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(h) *Rotary dross cooler.* On and after the date the performance test is conducted or required to be conducted, whichever date is earlier:

(1) The owner or operator of a rotary dross cooler at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere any emissions in excess of 0.09 g of PM per dscm (0.04 gr per dscf).

(2) The owner or operator of a rotary dross cooler at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere any visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(i) *New/reconstructed group 1 furnace.* The owner or operator of a new group 1 furnace must meet the emission standards in this paragraph. On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier:

(1) Except as provided in paragraph (i)(3) of this section for a melter/holder processing only clean charge, the owner or operator must not discharge or cause to be discharged to the atmosphere any emissions in excess of:

(i) 0.20 kg of PM per Mg (0.40 lb of PM per ton) of feed from a group 1 furnace at a secondary aluminum production facility that is a major source;

(ii) 15 μg of D/F TEQ per Mg (2.1 x 10^{-4} gr of D/F TEQ per ton) of feed from a group 1 furnace at a secondary aluminum production facility that is a major or area source. This limit does not apply if the furnace processes only clean charge; and

(iii) 0.20 kg of HCl per Mg (0.40 lb of HCl per ton) of feed or, if the furnace is equipped with an add-on air pollution control device, reduce uncontrolled HCl emissions by at least 90 percent, by weight, for a group 1 furnace at a secondary aluminum production facility that is a major source.

(2) The owner or operator of a group 1 furnace at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere any visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(3) The owner or operator of a group 1 melter/holder processing only clean charge at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere any emissions in excess of 0.40 kg of PM per Mg (0.80 lb of PM per ton) of feed.

(j) *In-line fluxer.* Except as provided in paragraph (j)(1)(iii) of this section for an in-line fluxer using no reactive flux material, the owner or operator of a new/reconstructed in-line fluxer must meet the emission standards in this paragraph. On and after the date the performance test is conducted or required to be conducted, whichever date is earlier:

(1) The owner or operator of an in-line fluxer at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere any emissions in excess of:

(i) 0.02 kg of HCl per Mg (0.04 lb of HCl per ton) of feed; and

(ii) 0.005 kg of PM per Mg (0.01 lb of PM per ton) of feed.

(iii) The emission limits in paragraphs (j)(1)(i) and (j)(1)(ii) of this section do not apply to a new/reconstructed or existing in-line fluxer that uses no reactive flux materials.

(2) The owner or operator of an in-line fluxer at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere any visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(k) *Secondary aluminum processing unit.* The owner or operator must comply with the emission limits calculated using the equations for PM and HCl in paragraphs (k)(1) and (k)(2) of this section for each secondary aluminum processing unit at a secondary aluminum production facility that is a major source. The owner or operator must comply with the emission limit calculated using the equation for D/F in paragraph (k)(3) of this section for each secondary aluminum processing unit at a secondary aluminum production facility that is a major or area source.

(1) The owner or operator must not discharge or allow to be discharged to the atmosphere any 3-day, 24-hour rolling average emissions of PM in excess of:

$$L_{C_{PM}} = \frac{\sum_{i=1}^{n}\left(L_{ti_{PM}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 1)}$$

Where,

L_{tiPM}=The PM emission limit for individual emission unit i in paragraph (i)(1)(i) of this section for a group 1 furnace or in paragraph (j)(1)(ii) of this section for an in-line fluxer;

T_{ti}=The feed rate for individual emission unit i; and

L_{CPM}=The PM emission limit for the secondary aluminum processing unit.

Note: In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the PM limit.

(2) The owner or operator must not discharge or allow to be discharged to the atmosphere any 3-day, 24-hour rolling average emissions of HCl in excess of:

$$L_{C_{HCl}} = \frac{\sum_{i=1}^{n}\left(L_{ti_{HCl}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 2)}$$

Where,

L_{tiHCl}=The HCl emission limit for individual emission unit i in paragraph (i)(1)(iii) of this section for a group 1 furnace or in paragraph (j)(1)(i) of this section for an in-line fluxer; and

L_{cHCl}=The HCl emission limit for the secondary aluminum processing unit.

Note: In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the HCl limit.

(3) The owner or operator must not discharge or allow to be discharged to the atmosphere any 3-day, 24-hour rolling average emissions of D/F in excess of:

$$L_{C_{D/F}} = \frac{\sum_{i=1}^{n}\left(L_{ti_{D/F}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 3)}$$

Where,

$L_{tiD/F}$=The D/F emission limit for individual emission unit i in paragraph (i)(1)(ii) of this section for a group 1 furnace; and

$L_{cD/FK}$=The D/F emission limit for the secondary aluminum processing unit.

Note: Clean charge furnaces cannot be included in this calculation since they are not subject to the D/F limit.

(4) The owner or operator must not discharge or allow to be discharged to the atmosphere any visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device

if a COM is chosen as the monitoring option.

(5) The owner or operator must comply with all requirements of an approved site-specific secondary aluminum processing unit emissions plan and all applicable design, work practice, or operational standards; performance test requirements; monitoring requirements; recordkeeping requirements; and reporting requirements of this subpart for each individual emission unit in a secondary aluminum processing unit.

(l) *Site-specific secondary aluminum processing unit emissions plan.* An owner or operator of a secondary aluminum processing unit must prepare and submit a site-specific emissions plan to the applicable permitting authority for review and approval according to the procedures in this paragraph.

(1) The owner or operator must submit the plan to the applicable permitting authority for review no later than 6 months before the date the secondary aluminum production facility intends to comply with the emission limits.

(2) The owner or operator must include the following information as part of the application for an operating permit for each secondary aluminum processing unit.

(i) The identification of each emission unit in the secondary aluminum processing unit;

(ii) The specific control technology or pollution prevention measure to be used for each emission unit in the secondary aluminum processing unit and the date of its installation or application;

(iii) The test plan for the measurement of emissions as required by § 63.1511(a);

(iv) The emission limit calculated for each secondary aluminum processing unit and performance test results with supporting calculations demonstrating initial compliance with each applicable emission limit;

(v) Information and data demonstrating compliance for each emission unit with all applicable design, equipment, work practice or operational standards; monitoring, recordkeeping, and reporting requirement of this subpart;

(vi) The monitoring requirements applicable to each emission unit in a secondary aluminum processing unit and the monitoring procedures for daily calculation of the 3-day, 24 hour rolling average using the procedure in § 63.1510(s);

(vii) Correlation of measured emissions with the selected process or operating parameter to be monitored; and

(viii) A demonstration that compliance with each of the applicable emission limits will be achieved under all operating conditions.

(3) Upon receipt, the permitting authority will review and approve or disapprove the plan or permit application according to the following criteria:

(i) Whether the plan includes all of the information specified in paragraph (m)(2) of this section; and

(ii) Whether the plan or permit application presents sufficient information to determine that compliance will be achieved and maintained.

(4) The applicable permitting authority will not approve a site-specific plan or permit application containing any of the following provisions:

(i) Any averaging among emissions of differing pollutants;

(ii) The inclusion of any affected sources other than emission units in a secondary aluminum processing unit. A new or reconstructed emission unit cannot be part of a secondary aluminum processing unit;

(iii) The inclusion of any emission unit while it is shutdown; or

(iv) The inclusion of any periods of startup, shutdown, or malfunction in emission calculations.

(5) Following review, the applicable permitting authority may approve the plan or permit application, request changes, or request additional information.

(6) To revise the plan prior to the end of the permit term, the owner or operator must submit a request to the applicable permitting authority containing the information required by paragraph (l)(2) of this section and obtain approval of the applicable permitting authority prior to implementing any revisions.

BILLING CODE 6560–50–P

TABLE 1 to § 63.1505 EMISSION STANDARDS FOR NEW AND EXISTING AFFECTED SOURCES

Affected source	Pollutant	Limit	Units
All new and existing affected sources and emission units controlled with a PM add-on control device that choose to monitor with a COM and all new and existing scrap shredders that choose to monitor with a COM or by visible emissions monitoring	Opacity	10	percent
New and existing scrap shredder	PM	0.01	gr/dscf
New and existing chip dryer	THC D/F[a]	0.80 2.50	lb/ton of feed μg/Mg of feed
New and Existing scrap dryer/ delacquering/ decoating kiln	PM HCl THC D/F[a]	0.08 0.80 0.06 0.25	lb/ton of feed lb/ton of feed lb/ton of feed μg/Mg of feed
Or Alternative limits if afterburner has a design residence time of at least 1 second and operates at a temperature of at least 1,400°F	PM HCl THC D/F[a]	0.30 1.50 0.20 5.0	lb/ton of feed lb/ton of feed lb/ton of feed μg/Mg of feed
New and existing sweat furnace	D/F[a]	0.80	ng/dscm @ 11% O_2
New and existing dross-only furnace	PM	0.30	lb/ton of feed
New or reconstructed in-line fluxer[b]	HCl PM	0.04 0.01	lb/ton of feed lb/ton of feed
Existing or new/ reconstructed in-line fluxer with no reactive fluxing	No limits		Work practice: no reactive fluxing

Affected source	Pollutant	Limit	Units
New and existing rotary dross cooler	PM	0.04	gr/dscf
New and existing clean furnace (Group 2)	No limits		Work practices: clean charge only and no reactive fluxing
New or reconstructed group 1 melter/holder furnace (Processing only clean charge)[b]	PM	0.80	lb/ton of feed
	HCl	0.40 or 90	lb/ton of feed percent reduction if equipped with add-on control device
New or reconstructed group 1 furnace[b]	PM	0.40	lb/ton of feed
	HCl	0.40 or 90	lb/ton of feed percent reduction (if equipped with add-on control device)
	D/F[a]	15.0	μg/Mg of feed
New or reconstructed group 1 furnace[b] with clean charge only	PM	0.40	lb/ton of feed
	HCl	0.40 Or 90	lb/ton of feed percent reduction (if equipped with add-on control device)
	D/F[a]	No Limit	Clean charge only

Affected source	Pollutant	Limit	Units
Secondary aluminum processing unit[a,c] (consists of all existing group 1 furnaces and in-line flux boxes at the facility)	PM[d]	$L_{t_{PM}} = \frac{\sum_{i=1}^{n} (L_{i_{PM}} \times T_i)}{\sum_{i=1}^{n} (T_i)}$	
	HCl[e]	$L_{t_{HCl}} = \frac{\sum_{i=1}^{n} (L_{i_{HCl}} \times T_i)}{\sum_{i=1}^{n} (T_i)}$	
	D/F[f]	$L_{t_{D/F}} = \frac{\sum_{i=1}^{n} (L_{i_{D/F}} \times T_i)}{\sum_{i=1}^{n} (T_i)}$	

FOOTNOTES TO TABLE 1

[a] D/F limit applies to a unit at a major or area source.

[b] These limits are also used to calculate the limits applicable to secondary aluminum processing units.

[c] Equation definitions: L_{iPM} = the PM emission limit for individual emission unit i in the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; T_i = the feed rate for individual emission unit i in the secondary aluminum processing unit; L_{tPM} = the overall PM emission limit for the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; L_{iHCl} = the HCl emission limit for individual emission unit i in the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; L_{tHCl} = the overall HCl emission limit for the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; $L_{iD/F}$ = the D/F emission limit for individual emission unit i [μg/Mg (gr/ton) of feed]; $L_{tD/F}$ = the overall D/F emission

limit for the secondary aluminum processing unit [μg/Mg (gr/ton) of feed]; n = the number of units in the secondary aluminum processing unit.

[d] In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the PM limit.

[e] In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the HCl limit.

[f] Clean charge furnaces cannot be included in this calculation since they are not subject to the D/F limit.

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§ 63.1506 Operating requirements.

(a) *Summary.* On and after the date on which the performance test is conducted or required to be conducted, whichever date is earlier, the owner or operator must operate all new and existing affected sources (including each emission unit in a secondary aluminum processing unit) and control equipment according to the requirements in this section. Operating requirements are summarized in Table 1 to this section.

(b) *Labeling.* The owner or operator must provide and maintain easily visible labels posted on each affected source and emission unit that identifies the applicable emission limits and means of compliance, including:

(1) The type of affected source or emission unit (e.g., chip dryer, scrap dryer/delacquering/decoating kiln, group 1 furnace, group 2 furnace, sweat furnace, dross-only furnace).

(2) The applicable emission limit(s), operational standard(s), and control method(s) (work practice or control device). This may include, but is not limited to, the type of charge to be used for a furnace (e.g., clean scrap only, all scrap, etc., dross only), the type of charge material for a chip dryer, and flux materials, system design and operating practices to be used.

(3) Parameters to be monitored and the compliant value or range of each monitored parameter.

(4) The identification of each emission unit that is part of a secondary aluminum processing unit.

(5) The measured emission rate for each emission unit that is part of a secondary aluminum processing unit.

(6) The identification of each process train, each emission unit that is part of a process train, and the identification of all other emission units in the process train.

(c) *Capture/collection systems.* For each affected source or emission unit equipped with an add-on air pollution control device, the owner or operator must:

(1) Design and install a system for the capture and collection of emissions to meet the engineering standards for minimum exhaust rates as published by the American Conference of Governmental Industrial Hygienists in chapters 3 and 5 of ''Industrial Ventilation: A Handbook of Recommended Practice'' (incorporated by reference in § 63.1502 of this subpart);

(2) Vent captured emissions through a closed system; and

(3) Operate each capture/collection system according to the procedures and requirements in the operation, maintenance, and monitoring plan.

(d) *Feed/charge weight.* The owner or operator of each affected source or emission unit subject to an emission limit in kg/Mg (lb/ton) of feed must:

(1) Install and operate a device that measures and records or otherwise determine the weight of feed/charge (or throughput) for each operating cycle or time period used in the performance test; and

(2) Operate each weight measurement system or other weight determination procedure in accordance with the operation, maintenance, and monitoring plan.

(e) *Scrap shredder.* The owner or operator of a scrap shredder with emissions controlled by a fabric filter must:

(1) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510,

(i) The owner or operator must initiate corrective action within 1-hour of a bag leak detection system alarm and complete the corrective action procedures in accordance with the operation, maintenance, and monitoring plan.

(ii) The owner or operator must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of one hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(2) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, the owner or operator must initiate corrective action within 1-hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the operation, maintenance, and monitoring plan.

(3) If visible emission observations are used to meet the monitoring requirements in § 63.1510, the owner or operator must initiate corrective action within 1-hour of any observation of visible emissions during a daily visible emissions test and complete the corrective action procedures in accordance with the operation, maintenance, and monitoring plan.

(f) *Chip dryer.* The owner or operator of a chip dryer with emissions controlled by an afterburner must:

(1) Maintain the 3-hour block average operating temperature of each afterburner at or above the average temperature established during the performance test.

(2) Operate each afterburner in accordance with the operation, maintenance, and monitoring plan.

(3) Operate each chip dryer using only unpainted/uncoated aluminum chips as the feedstock.

(g) *Scrap dryer/delacquering/decoating kiln.* The owner or operator of a scrap dryer/delacquering/decoating kiln with emissions controlled by an afterburner and a lime-injected fabric filter must:

(1) For each afterburner,

(i) Maintain the 3-hour block average operating temperature of each afterburner at or above the average temperature established during the performance test.

(ii) Operate each afterburner in accordance with the operation, maintenance, and monitoring plan.

(2) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510,

(i) The owner or operator must initiate corrective action within 1-hour of a bag leak detection system alarm and complete the corrective action procedures in accordance with the operation, maintenance, and monitoring plan.

(ii) The owner or operator must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of one hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(3) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, the owner or operator must initiate corrective action within 1-hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the operation, maintenance, and monitoring plan.

(4) Maintain the 3-hour block average inlet temperature for each fabric filter at

or below the average temperature established during the performance test, plus 14°C (25°F).

(5) Maintain free-flowing lime in the hopper to the feed device at all times; and

(i) Maintain the lime feeder setting at the same level established during the performance test; or

(ii) Maintain the 3-hour block average lime injection rate (lbs/hr) at or above the average rate established during the performance test. The owner or operator also must maintain the same schedule of lime injection used in the performance test; or

(iii) Maintain the average lime injection rate for each operating cycle or time period used in the performance test (lb/ton of feed) at or above the average rate established during the performance test. The owner or operator also must maintain the same schedule of lime injection used in the performance test.

(h) *Sweat furnace.* The owner or operator of a sweat furnace with emissions controlled by an afterburner must:

(1) Maintain the 3-hour block average operating temperature of each afterburner at or above the average temperature established during the performance test.

(2) Operate each afterburner in accordance with the operation, maintenance, and monitoring plan.

(i) *Dross-only furnace.* The owner or operator of a dross-only furnace with emissions controlled by a fabric filter must:

(1) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510,

(i) The owner or operator must initiate corrective action within 1-hour of a bag leak detection system alarm and complete the corrective action procedures in accordance with the operation, maintenance, and monitoring plan.

(ii) The owner or operator must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of one hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(2) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, the owner or operator must initiate corrective action within 1-hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the operation, maintenance, and monitoring plan.

(3) Operate each furnace using dross as the sole feedstock.

(j) *Rotary dross cooler.* The owner or operator of a rotary dross cooler with emissions controlled by a fabric filter must:

(1) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510,

(i) The owner or operator must initiate corrective action within 1-hour of a bag leak detection system alarm and complete the corrective action procedures in accordance with the operation, maintenance, and monitoring plan.

(ii) The owner or operator must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of one hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(2) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, the owner or operator must initiate corrective action within 1-hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the operation, maintenance, and monitoring plan.

(k) *In-line fluxer.* The owner or operator of an in-line fluxer (including an in-line fluxer that is part of a secondary aluminum processing unit) with emissions controlled by a lime-injected fabric filter must:

(1) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510,

(i) The owner or operator must initiate corrective action within 1-hour of a bag leak detection system alarm and complete the corrective action procedures in accordance with the operation, maintenance, and monitoring plan.

(ii) The owner or operator must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of one hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(2) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, the owner or operator must initiate corrective action within 1-hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the operation, maintenance, and monitoring plan.

(3) Maintain free-flowing lime in the hopper to the feed device at all times; and

(i) Maintain the lime feeder setting at the same level established during the performance test; or

(ii) Maintain the 3-hour block average lime injection rate (lbs/hr) at or above the average rate established during the performance test. The owner or operator also must maintain the same schedule of lime injection used in the performance test; or

(iii) Maintain the average lime injection rate for each operating cycle or time period used in the performance test (lb/ton of feed) at or above the average rate established during the performance test. The owner or operator also must maintain the same schedule of lime injection used in the performance test.

(4) Maintain the total reactive chlorine flux injection rate for each operating cycle or time period used in the performance test at or below the average rate established during the performance test. The owner or operator also must maintain the same flux injection schedule used in the performance test.

(5) Maintain the 3-hour block average inlet temperature for each fabric filter at or below the average temperature established during the performance test, plus 14°C (25°F).

(l) *In-line fluxer using no reactive flux material.* The owner or operator of a new or existing in-line fluxer using no reactive flux materials must operate

each in-line fluxer using no reactive flux materials.

(m) *Group 1 furnace with add-on air pollution control devices.* The owner or operator of a group 1 furnace (including a group 1 furnace that is part of a secondary aluminum processing unit) with emissions controlled by a lime-injected fabric filter must:

(1) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510,

(i) The owner or operator must initiate corrective action within 1-hour of a bag leak detection system alarm and complete the corrective action procedures in accordance with the operation, maintenance, and monitoring plan.

(ii) The owner or operator must operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of one hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(2) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, the owner or operator must initiate corrective action within 1-hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the operation, maintenance, and monitoring plan.

(3) Maintain the 3-hour block average inlet temperature for each fabric filter at or below the average temperature established during the performance test, plus 14°C (25°F).

(4) Maintain free-flowing lime in the hopper to the feed device at all times; and

(i) Maintain the lime feeder setting at the same level established during the performance test; or

(ii) Maintain the 3-hour block average lime injection rate (lbs/hr) at or above the average rate established during the performance test. The owner or operator also must maintain the same schedule of lime injection used in the performance test; or

(iii) Maintain the average lime injection rate for each operating cycle or time period used in the performance test (lb/ton of feed) at or above the average rate established during the performance test. The owner or operator also must maintain the same schedule of lime injection used in the performance test.

(5) Maintain the total reactive chlorine flux injection rate for each operating cycle or time period used in the performance test at or below the average rate established during the performance test. The owner or operator also must maintain the same flux injection schedule used in the performance test.

(6) Operate each side-well furnace such that:

(i) The level of molten metal remains above the top of the passage between the side-well and hearth during reactive flux injection.

(ii) Reactive flux is added only in the sidewell unless the hearth also is equipped with a control device for PM, HCl, and D/F emissions.

(n) *Group 1 furnace without add-on air pollution control devices.* The owner or operator of a group 1 furnace (including a group 1 furnace that is part of a secondary aluminum processing unit) without add-on air pollution control devices must:

(1) Maintain the total reactive chlorine flux injection rate for each operating cycle or time period used in the performance test at or below the average rate established during the performance test. The owner or operator also must maintain the same flux injection schedule used in the performance test.

(2) Operate each furnace in accordance with the work practice/pollution prevention measures documented in the operation, maintenance, and monitoring plan and the site-specific monitoring plan and within the parameter values or ranges established in the site-specific monitoring plan.

(3) Operate each group 1 melter/holder subject to the emission standards in § 63.1505(i)(2) using only clean charge as the feedstock.

(o) *Group 2 furnace.* The owner or operator of a new or existing group 2 furnace must:

(1) Operate each furnace using only clean charge as the feedstock.

(2) Operate each furnace using no reactive flux.

(p) *Corrective action.* When a process parameter or add-on air pollution control device operating parameter deviates from the value or range established during the performance test or from the parameter in a site-specific monitoring plan, the owner or operator must initiate the corrective actions specified in the operation, maintenance, and monitoring plan. Corrective action taken by the owner or operator must restore operation of the affected source or emission unit (including the process or control device) to its normal or usual mode of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. Corrective actions taken must include follow-up actions necessary to return the process or control device parameter level(s) to the value or range of values established during the performance test and steps to prevent the likely recurrence of the cause of a deviation.

TABLE 1 TO § 63.1506.—SUMMARY OF OPERATING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS

Affected source/emission unit	Monitor type/operation/process	Operating requirements
All affected sources and emission units.	Labeling	Identification, emission limits and means of compliance posted on all affected sources and emission units.
All affected sources and emission units with an add-on air pollution control device.	Emission capture and collection system.	Design and install in accordance with Industrial Ventilation: A Handbook of Recommended Practice; operate in accordance with O, M & M plan.[b]
All affected sources and emission units subject to production-based (lb/ton of feed) emission limits[a].	Charge/feed weight	Operate a device that records the weight of each charge. Operate in accordance with O, M, and M plan.[b]
Scrap shredder with fabric filter	Bag leak detector	Initiate corrective action within 1-hr of alarm and complete in accordance with O, M, & M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.
	or	

TABLE 1 TO § 63.1506.—SUMMARY OF OPERATING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/emission unit	Monitor type/operation/process	Operating requirements
	COM	Initiate corrective action within 1-hr of a 6-min average opacity reading of 5% or more and complete in accordance with O, M, & M plan.[b]
	or	
	VE	Initiate corrective action within 1-hr of any observed VE and complete in accordance with the O, M, & M plan.[b]
Chip Dryer with afterburner	Afterburner operating temperature	Maintain average temperature for each 3-hr period, at or above average operating temperature during the performance test.
	Afterburner operation	Operate in accordance with O, M, and M plan.[b]
	Feed material	Operate using only unpainted aluminum chips.
Scrap dryer/delacquering/decoating kiln with afterburner and lime-injected fabric filter.	Afterburner operating temperature	Maintain average temperature for each 3-hr period at or above average operating temperature during the performance test.
	Afterburner operation	Operate in accordance with O, M, & M plan.[b]
	Bag leak detector	Initiate corrective action within 1-hr of alarm and complete in accordance with the O, M, & M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.
	or	
	COM	Initiate corrective action within 1-hr of a 6-min average opacity reading of 5% or more and complete in accordance with the O, M, & M plan.[b]
	Fabric filter inlet temperature	Maintain average fabric filter inlet temperature for each 3-hr period at or below average temperature during the performance test +14 °C (25 °F).
Scrap dryer/delacquering/decoating kiln with afterburner and lime-injected fabric filter.	Lime injection rate and schedule	Maintain free-flowing lime in the feed hopper or silo at all times.
		Maintain average lime injection rate (lb/hr) at or above rate used during the performance test and adhere to the same lime injection schedule used during the performance test for each 3-hr period or:
		Maintain average lime injection rate (lb/ton of feed) at or above rate used during the performance test and adhere to the same lime injection schedule used during the performance test for each operating cycle or time period used in the performance test or:
		Maintain feeder setting at level established during the performance test.
Sweat furnace with afterburner	Afterburner operating temperature	Maintain average temperature for each 3-hr period at or above average operating temperature during the performance test.
	Afterburner operation	Operate in accordance with O, M, and M plan.[b]
Dross-only furnace with fabric filter	Bag leak detector	Initiate corrective action within 1-hr of alarm and complete in accordance with the O, M, & M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.
	or	
	COM	Initiate corrective action within 1-hr of a 6-min average opacity reading of 5% or more and complete in accordance with the O, M, & M plan.[b]
	Feed material	Operate using only dross as the feed material.
Rotary dross cooler with fabric filter	Bag leak detector	Initiate corrective action within 1-hr of alarm and complete in accordance with the O, M, & M plan[b]; operate such that alarm does not sound more than 5% of operating time in 6-month period.
	or	
	COM	Initiate corrective action within 1-hr of a 6-min average opacity reading of 5% or more and complete in accordance with the O, M, & M plan[b].
In-line fluxer with lime-injected fabric filter (including those that are part of a secondary aluminum processing unit).	Bag leak detector	Initiate corrective action within 1-hr of alarm and complete in accordance with the O, M, & M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.
	or	
	COM	Initiate corrective action within 1-hr of a 6-min average opacity reading of 5% or more and complete in accordance with the O, M, & M plan.[b]
	Lime injection rate and schedule	Maintain free-flowing lime in the feed hopper or silo at all times.
		Maintain average lime injection rate (lb/hr) at or above rate used during the performance test and adhere to the same lime injection schedule used during the performance test for each 3-hr period or:

TABLE 1 TO § 63.1506.—SUMMARY OF OPERATING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/emission unit	Monitor type/operation/process	Operating requirements
		Maintain average lime injection rate (lb/ton of feed) at or above rate used during the performance test and adhere to the same lime injection schedule used during the performance test for each operating cycle or time period used in the performance test or: Maintain feeder setting at level established during performance test.
In-line fluxer with lime-injected fabric filter (including those that are part of a secondary aluminum processing unit).	Reactive flux injection rate and schedule.	Maintain reactive flux injection rate at or below rate used during the performance test and adhere to same flux injection schedule used during the performance test.
	Fabric filter inlet temperature	Maintain average fabric filter inlet temperature for each 3-hour period at or below average temperature during the performance test. +14 °C (25 °F).
In-line fluxer (using no reactive flux material).	Flux materials	Use no reactive flux.
Group 1 furnace with lime-injected fabric filter (including those that are part of a secondary aluminum processing unit).	Bag leak detector	Initiate corrective action within 1-hr of alarm and complete in accordance with the O, M, & M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.
	or	
	COM	Initiate corrective action within 1-hr of a 6-min average opacity reading of 5% or more and complete in accordance with the O, M, & M plan.[b]
	Fabric filter inlet temperature	Maintain average fabric filter inlet temperature for each 3-hour period at or below average temperature during the performance test +14 °C (25 °F).
	Reactive flux injection rate and schedule.	Maintain reactive flux injection rate at or below rate used during the performance test and adhere to the same schedule used in performance test.
Group 1 furnace with lime-injected fabric filter (including those that are part of a secondary aluminum processing unit).	Lime injection rate and schedule ..	Maintain free-flowing lime in the feed hopper or silo at all times.
		Maintain average lime injection rate (lb/hr) at or above rate used during the performance test and adhere to the same lime injection schedule used during the performance test for each 3-hr period or: Maintain average lime injection rate (lb/ton of feed) at or above rate used during the performance test and adhere to the same lime injection schedule used during the performance test for each operating cycle or time period used in the performance test or: Maintain feeder setting at level established at performance test.
	Maintain molten aluminum level ...	Operate side-well furnaces such that the level of molten metal is above the top of the passage between side well and hearth during reactive flux injection.
	Fluxing in sidewell furnace hearth	Add reactive flux only to the sidewell furnace unless the hearth is also controlled.
Group 1 furnace without add-on controls (including those that are part of a secondary aluminum processing unit).	Reactive flux injection rate and schedule.	Maintain reactive flux injection rate at or below rate used during the performance test and adhere to the same flux injection schedule used in performance test.
	Site-specific monitoring plan	Operate furnace within the range of charge materials, contaminant levels, and parameter values established in the site-specific monitoring plan.[c]
	Feed material (melter/holder)	Use only clean charge.
Clean (group 2) furnace	Charge and flux materials	Use only clean charge. Use no reactive flux.

[a] Chip dryers, Scrap dryers/delacquering kilns/decoating kilns, dross-only furnaces, and in-line fluxers and group 1 furnaces including melter/holders (including those that are part of a secondary aluminum processing unit).

[b] O, M, & M plan—Operation, maintenance, and monitoring plan.

[c] Site-specific monitoring plan. Owner/operators of group 1 furnaces without control devices must include a section in their O, M, & M plan that documents work practice and pollution prevention measures by which compliance is achieved with emission limits and process or feed parameter-based operating requirements. This plan and the testing to demonstrate adequacy of the monitoring plan and correlation of parameters over the range of charge materials and fluxing practices must be developed in coordination with and approved by the permitting authority.

§§ 63.1507—63.1509 [Reserved]

Monitoring and Compliance Requirements

§ 63.1510 Monitoring requirements.

(a) *Summary.* On and after the date the performance test is completed or required to be completed, whichever date is earlier, the owner or operator of a new or existing affected source or emission unit must monitor all control equipment and processes according to the requirements in this section. Monitoring requirements for each type of affected source and emission unit are summarized in Table 1 to this section.

(b) *Operation, maintenance, and monitoring plan.* The owner or operator must prepare and implement for each new or existing affected source and emission unit a written operation, maintenance, and monitoring plan. The owner or operator must submit the plan to the applicable permitting authority for review and approval as part of the application for a part 70 or part 71 permit. Any subsequent changes to the plan must be submitted to the applicable permitting authority for review and approval. Pending approval by the applicable permitting authority of an initial or amended plan, the owner or operator must comply with the provisions of the submitted plan. Each plan must contain the following information:

(1) Process and control device parameters to be monitored to determine compliance, along with established operating levels or ranges, as applicable, for each process and control device.

(2) A monitoring schedule for each affected source and emission unit.

(3) Procedures for the proper operation and maintenance of each process unit and add-on control device used to meet the applicable emission limits or standards in § 63.1505.

(4) Procedures for the proper operation and maintenance of monitoring devices or systems used to determine compliance, including:

(i) Quarterly calibration and certification of accuracy of each monitoring device according to the manufacturer's instructions; and

(ii) Procedures for the quality control and quality assurance of continuous emission or opacity monitoring systems as required by the general provisions in subpart A of this part.

(5) Procedures for monitoring process and control device parameters, including procedures for annual inspections of afterburners, and if applicable, the procedure to be used for determining charge/feed (or throughput) weight if a measurement device is not used.

(6) Corrective actions to be taken when process or operating parameters or add-on control device parameters deviate from the value or range established in paragraph (b)(1) of this section, including:

(i) Procedures to determine and record the cause of an exceedance or excursion, and the time the exceedance or excursion began and ended; and

(ii) Procedures for recording the corrective action taken, the time corrective action was initiated, and the time/date corrective action was completed.

(7) A maintenance schedule for each process and control device that is consistent with the manufacturer's instructions and recommendations for routine and long-term maintenance.

(8) Documentation of the work practice and pollution prevention measures used to achieve compliance with the applicable emission limits and a site-specific monitoring plan as required in paragraph (o) of this section for each group 1 furnace not equipped with an add-on air pollution control device.

(c) *Labeling.* The owner or operator must inspect each affected source and emission unit at least once per calendar month to confirm that posted labels as required by the operational standard in § 63.1506(b) are intact and legible.

(d) *Capture/collection system.* The owner or operator must:

(1) Install, operate, and maintain a capture/collection system for each affected source and emission unit equipped with an add-on air pollution control device; and (2) Inspect each capture/collection and closed vent system at least once each calendar year to ensure that each system is operating in accordance with the operational standards in § 63.1506(c) and record the results of each inspection.

(e) *Feed/charge weight.* The owner or operator of an affected source or emission unit subject to an emission limit in kg/Mg (lb/ton) or μg/Mg (gr/ton) of feed must install, calibrate, operate, and maintain a device to measure and record the total weight of feed/charge to the affected source or emission unit over the same operating cycle or time period used in the performance test. As an alternative to a measurement device, the owner or operator may use a procedure acceptable to the applicable permitting authority to determine the total weight of feed/charge to the affected source or emission unit.

(1) The accuracy of the weight measurement device or procedure must be +1 percent of the weight being measured.

(2) The owner or operator must verify the calibration of the weight measurement device every 3 months.

(f) *Fabric filters and lime-injected fabric filters.* The owner or operator of an affected source or emission unit using a fabric filter or lime-injected fabric filter to comply with the requirements of this subpart must install, calibrate, maintain, and continuously operate a bag leak detection system as required in paragraph (f)(1) of this section or a continuous opacity monitoring system as required in paragraph (f)(2) of this section. The owner or operator of a scrap shredder must install and operate a bag leak detection system as required in paragraph (f)(1) of this section, install and operate a continuous opacity monitoring system as required in paragraph (f)(2) of this section, or conduct visible emission observations as required in paragraph (f)(3) of this section.

(1) These requirements apply to the owner or operator of a new or existing affected source or existing emission unit using a bag leak detection system.

(i) The owner or operator must install and operate a bag leak detection system for each exhaust stack of a fabric filter.

(ii) Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the ''Fabric Filter Bag Leak Detection Guidance,'' (dated September 1997). This document is available from the U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring and Analysis Division, Emission Measurement Center (MD–19), Research Triangle Park, NC 27711. This document also is available on the Technology Transfer Network (TTN) under Emission Measurement Technical Information (EMTIC), Continuous Emission Monitoring. Other bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(iii) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less;

(iv) The bag leak detection system sensor must provide output of relative or absolute PM loadings;

(v) The bag leak detection system must be equipped with a device to continuously record the output voltage from the sensor;

(vi) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel;

(vii) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter;

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(ix) Calibration of the system must, at a minimum, consist of establishing the baseline output by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time.

(x) Following initial adjustment of the system, the owner or operator must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time except as detailed in the operation, maintenance, and monitoring plan. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365 day period unless such adjustment follows a complete fabric filter inspection which demonstrates that the fabric filter is in good operating condition.

(2) These requirements apply to the owner or operator of a new or existing affected source or an existing emission unit using a continuous opacity monitoring system.

(i) The owner or operator must install, calibrate, maintain, and operate a continuous opacity monitoring system to measure and record the opacity of emissions exiting each exhaust stack.

(ii) Each continuous opacity monitoring system must meet the design and installation requirements of Performance Specification 1 in appendix B to part 60 of this chapter.

(3) These requirements apply to the owner or operator of a new or existing scrap shredder who conducts visible emission observations.

(i) The owner or operator must perform a visible emissions test for each scrap shredder using a certified observer at least once a day according to the requirements of Method 9 in appendix A to part 60 of this chapter. Each Method 9 test must consist of five 6-minute observations in a 30-minute period; and

(ii) The owner or operator must record the results of each test.

(g) *Afterburner.* These requirements apply to the owner or operator of an affected source using an afterburner to comply with the requirements of this subpart.

(1) The owner or operator must install, calibrate, maintain, and operate a device to continuously monitor and record the operating temperature of the afterburner consistent with the requirements for continuous monitoring systems in subpart A of this part.

(2) The temperature monitoring device must meet each of these performance and equipment specifications:

(i) The temperature monitoring device must be installed at the exit of the combustion zone of each afterburner.

(ii) The monitoring system must record the temperature in 15-minute block averages, and determine and record the average temperature for each 3-hour block period.

(iii) The recorder response range must include zero and 1.5 times the average temperature established according to the requirements in § 63.1512(m).

(iv) The monitoring system calibration drift must not exceed 2 percent of 1.5 times the average temperature established according to the requirements in § 63.1512(m).

(v) The monitoring system relative accuracy must not exceed 20 percent.

(vi) The reference method must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or alternate reference, subject to approval by the Administrator.

(3) The owner or operator must conduct an inspection of each afterburner at least once a year and record the results. At a minimum, an inspection must include:

(i) Inspection of all burners, pilot assemblies, and pilot sensing devices for proper operation and clean pilot sensor;

(ii) Ensure proper adjustment of combustion air and adjust, as necessary;

(iii) Inspection of internal structures (e.g., baffles) to ensure structural integrity;

(iv) Inspection of dampers, fans, and blowers for proper operation;

(v) Inspection for proper sealing;

(vi) Inspection of motors for proper operation;

(vii) Inspection of combustion chamber refractory lining and clean and replace lining as necessary;

(viii) Inspection of incinerator shell for corrosion and/or hot spots;

(ix) For the burn cycle that follows the inspection, document that the incinerator is operating properly and make any necessary adjustments; and

(x) Generally verify that the equipment is maintained in good operating condition.

(xi) Following an equipment inspection, all necessary repairs must be completed in accordance with the requirements of the operation, maintenance, and monitoring plan.

(h) *Fabric filter inlet temperature.* These requirements apply to the owner or operator of an affected source or emission unit subject to D/F and HCl emission standards and using a lime-injected fabric filter to comply with the requirements of this subpart.

(1) The owner or operator must install, calibrate, maintain, and operate a device to continuously monitor and record the temperature of the fabric filter inlet gases consistent with the requirements for continuous monitoring systems in subpart A of this part.

(2) The temperature monitoring device must meet each of these performance and equipment specifications:

(i) The monitoring system must record the temperature in 15-minute block averages, and calculate and record the average temperature for each 3-hour block period.

(ii) The recorder response range must include zero and 1.5 times the average temperature established according to the requirements in § 63.1512(n).

(iii) The monitoring system calibration drift must not exceed 2 percent of 1.5 times the average temperature established according to the requirements in § 63.1512(n).

(iv) The monitoring system relative accuracy must not exceed 20 percent.

(v) The reference method must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or alternate reference, subject to approval by the Administrator.

(i) *Lime injection.* These requirements apply to the owner or operator of an affected source or emission unit using a lime-injected fabric filter to comply with the requirements of this subpart.

(1) The owner or operator must inspect each feed hopper or silo at least once each 8-hour period to verify that lime is always free-flowing and record the results of each inspection. If lime is found not to be free-flowing during any of the 8-hour period, the owner or operator must increase the frequency of inspections to at least once every 4-hour period for the next three days. The owner or operator may return to inspections at least once every 8 hour period if corrective action results in no further blockages of lime during the 3-day period.

(2) The owner or operator must record the lime feeder setting once each day of operation or monitor the 3-hour block average lime injection rate (lb/hr) or

monitor the average lime injection rate for each operating cycle or time period used in the performance test (lb/ton of feed). To monitor the lime injection rate (lb/hr or lb/ton of feed):

(i) Install, operate, calibrate, and maintain a device to continuously monitor and record the weight [kg (lbs)] of lime injected to each fabric filter and record the weight in 15-minute block averages. The accuracy of the weight measurement device must be ± 1 percent of the weight being measured. The owner or operator must verify the calibration of the device every 3 months.

(ii) To monitor the 3-hour block average lime injection rate (lb/hr), determine and record the average injection rate for each 3-hour period using the procedure in § 63.1512(p)(3). The owner or operator also must record the injection schedule for each 3-hour period.

(iii) To monitor the average injection rate (lb/ton of feed), calculate and record the average lime injection rate for each operating cycle or time period used in the performance test using the procedure in § 63.1512(p)(4). The owner or operator also must record the injection schedule for each operating cycle or time period used in the performance test.

(j) *Total reactive chlorine flux injection rate.* These requirements apply to the owner or operator of a group 1 furnace (with or without add-on air pollution control devices) or in-line fluxer.

(1) The owner or operator must install, calibrate, operate, and maintain a device to continuously measure and record the weight of gaseous or liquid reactive flux injected to each affected source or emission unit.

(i) The monitoring system must record the weight for each 15-minute block period over the same operating cycle or time period used in the performance test.

(ii) The accuracy of the weight measurement device must be ± 1 percent of the weight being measured.

(iii) The owner or operator must verify the calibration of the device every 3 months.

(2) The owner or operator must calculate and record the gaseous or liquid reactive flux injection rate (kg/Mg or lb/ton) for each operating cycle or time period used in the performance test using the procedure in § 63.1512(o).

(3) The owner or operator must record, for each 15-minute block period during each operating cycle or time period used in the performance test, the time, weight, and identity of each addition of:

(i) Gaseous or liquid reactive chloride flux other than chlorine; and

(ii) Solid reactive chloride flux.

(4) The owner or operator must calculate and record the total reactive chlorine flux injection rate for each operating cycle or time period used in the performance test using the procedure in § 63.1512(o).

(k) *Chip dryer.* These requirements apply to the owner or operator of a chip dryer with emissions controlled by an afterburner.

(1) The owner or operator must record the identity of all materials charged to the unit for each operating cycle or time period used in the performance test.

(2) The owner or operator must submit a certification of compliance with the applicable operational standard for charge materials in § 63.1506(f)(3) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(i).

(l) *Dross-only furnace.* These requirements apply to the owner or operator of a dross-only furnace.

(1) The owner or operator must record the identity of all materials charged to each unit for each operating cycle or time period used in the performance test.

(2) The owner or operator must submit a certification of compliance with the applicable operational standard for charge materials in § 63.1506(i)(3) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(ii).

(m) *In-line fluxers using no reactive flux.* These requirements apply to the owner or operator of an in-line fluxer that uses no reactive flux materials.

(1) The owner or operator must record the identity of all flux gases, agents, and materials in an operating log for each operating cycle of the in-line fluxer.

(2) The owner or operator must submit a certification of compliance with the operational standard for no reactive flux materials in § 63.1506(l) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(vi).

(n) *Group 1 furnace with add-on air pollution control devices.* These requirements apply to the owner or operator of a group 1 furnace (including those that are part of a secondary aluminum processing unit) using add-on air pollution control devices.

(1) The owner or operator must record in an aluminum level operating log for each charge of a sidewell furnace that the level of molten metal was above the top of the passage between the side well and hearth during reactive flux injection.

(2) The owner or operator must record in a flux materials operating log for each charge that no reactive flux was added to a furnace hearth where hearth emissions are not controlled.

(3) The owner or operator must submit a certification of compliance for the operational standards in § 63.1506(m)(6) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(iii).

(o) *Group 1 furnace without add-on air pollution control devices.* These requirements apply to the owner or operator of a group 1 furnace (including those that are part of a secondary aluminum processing unit) not equipped with add-on air pollution control devices.

(1) The owner or operator must develop in consultation with the applicable permitting authority a written site-specific monitoring plan as part of the operation, maintenance, and monitoring plan that addresses monitoring and compliance requirements for PM, HCl, and D/F emissions.

(i) The owner or operator must submit the proposed site-specific monitoring plan to the applicable permitting authority for review at least 6 months prior to the date the initial performance test is conducted or required to be conducted.

(ii) The permitting authority will review and approve or disapprove a proposed plan, or request changes to a plan, based on whether the plan contains sufficient provisions to ensure continuing compliance with applicable emission limits and demonstrates, based on documented test results, the relationship between emissions of PM, HCl, and D/F and the proposed monitoring parameters for each pollutant. Test data must clearly demonstrate that emissions over the entire range of charge and flux materials processed by the furnace are less than or equal to the emission limit. The relationship between emissions and monitoring parameters for each pollutant must be clearly demonstrated over the entire range of charge and flux materials processed by the furnace.

(2) Each site-specific monitoring plan must document each work practice, equipment/design practice, pollution prevention practice, or other measure used to meet the applicable emission standards.

(3) Each site-specific monitoring plan must include provisions for unit labeling as required in paragraph (c) of this section, feed/charge weight measurement as required in paragraph (e) of this section and flux weight

measurement as required in paragraph (j) of this section.

(4) Each site-specific monitoring plan for a melter/holder subject to the clean charge emission standard in § 63.1505(i)(3) must include these requirements:

(i) The owner or operator must record the identity of all charge materials for each operating cycle or time period used in the performance test; and

(ii) The owner or operator must submit a certification of compliance with the applicable operational standard for clean charge materials in § 63.1506(n)(3) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(iv).

(5) If a continuous emission monitoring system is included in a site-specific monitoring plan, the plan must include provisions for the installation, operation, and maintenance of the system to provide quality-assured measurements of actual or correlated pollutant emissions in accordance with all applicable requirements of the general provisions in subpart A of this part.

(6) If a continuous opacity monitoring system is included in a site-specific monitoring plan, the plan must include provisions for the installation, operation, and maintenance of the system to provide quality-assured measurements of actual or correlated pollutant emissions in accordance with all applicable requirements of this subpart.

(7) If a site-specific monitoring plan includes a scrap inspection program for monitoring the scrap contaminant level of furnace charge materials, the plan must include provisions for the demonstration and implementation of the program in accordance with all applicable requirements in paragraph (p) of this section.

(8) If a site-specific monitoring plan includes a calculation method for monitoring the scrap contaminant level of furnace charge materials, the plan must include provisions for the demonstration and implementation of the program in accordance with all applicable requirements in paragraph (q) of this section.

(p) *Scrap inspection program for group 1 furnace (including those that are part of a secondary aluminum processing unit) without add-on air pollution control devices.* A scrap inspection program must include:

(1) Procedures for scrap inspector training and certification. An inspector training plan must contain:

(i) A description of steps for a correctly performed visual inspection;

(ii) Field practice of procedure with scrap above and below the definition of acceptable scrap;

(iii) An explanation of procedures to mark or segregate clean scrap;

(iv) An explanation of procedures for visual sampling locations within loads;

(v) An explanation of verification and validation procedures; and (vi) Consequences of misclassification or failure to continually validate.

(vii) Criteria for achieving inspector certification. This must include designation by the owner or operator, completion of scrap inspector training, and the demonstrated ability to correctly classify scrap.

(2) Procedures for visual inspection, including:

(i) Inspection procedures for each load received, such as visual inspection of transporting vehicle cargo area, review of relevant shipping documentation, visual inspection of scrap after unloading, inspection of those parts of the load consistent with representative sampling, and marking, tagging, or segregating clean purchased scrap from other scrap.

(ii) Criteria for certifying clean purchased scrap. These must include meeting a set of visual criteria for qualifying scrap as acceptable for use and inspection by a certified inspector.

(3) Procedures for representative sampling and measurements, including:

(i) Procedures for subdividing and sampling within each load received. These must include procedures for dividing the load into segments for representative sampling, sampling from all volumes into which the load was divided, and collection of specific sample sizes.

(ii) Analytical procedure for measuring oil and coatings content. These must include composite samples stored in containers to protect sample integrity, weighing of samples before and after processing to the nearest 0.1 gram, chain of custody procedures for collection, storage, and handling of samples, and a procedure for processing the sample to drive off oil and coatings at a set of reproducible standardized conditions. The sample collection and analytical procedures must clearly demonstrate that the same results are achieved when analyzing multiple samples from the same load including those collected by different inspectors.

(iii) Procedure for visual scrap inspection validation (initial qualification of the scrap inspection program). These must include selection of loads for physical measurements and validation period duration including procedures for selection of random samples without the knowledge of visual inspectors, procedures to ensure collection of sufficient number of samples within a reasonable time period for physical measurements to provide statistical evidence of validation, and procedures for inclusion of off-spec scrap loads to challenge visual inspectors. The criteria for concluding visual inspections can reject unacceptable scrap must include a clear definition of the visual appearance and emissions potential of acceptable scrap. No scrap classified as acceptable may generate emissions in excess of the applicable emission limits during the validation period. The procedure must clearly show that emission limits are not exceeded while processing scrap over the entire range of contaminant levels used.

(iv) Procedures for repeating validation when initial attempts fail. These must include a definition of the minimum time before a new attempt at validation and reconsideration of the definition of acceptable scrap, inspector training, or other procedural matters than may ensure future success.

(v) Procedures for continuing scrap inspection verification (continuing demonstration that scrap visual inspections can reject scrap loads that do not meet the definition of acceptable scrap). These must include periodic verification of visual inspection procedure by physical measurements including a definition of verification intervals and a procedure for determining verification frequency and the number of repetitions. Criteria for verification of scrap inspection program must include provisions to ensure that samples collected for physical measurement meet the definition of acceptable scrap and that revalidation is required for frequent failures of visual inspection procedure.

(vi) Procedure for preparing charge mixtures of clean purchased scrap with dirty scrap. These must include requirements for measurements and blending. All blended scrap must be physically sampled to verify the material meets the definition of acceptable scrap.

(vii) Recordkeeping requirements to document conformance with the plan requirements and monitoring of process or operating parameters to demonstrate continued compliance with all applicable emission limits and operating requirements.

(q) *Monitoring of scrap contamination level by calculation method for group 1 furnace (including those that are part of a secondary aluminum processing unit) without add-on air pollution control devices.* The owner or operator of a group 1 furnace dedicated to processing

a distinct type of furnace charge composed of scrap with a uniform composition (such as rejected product from a manufacturing process for which the coating-to-scrap ratio can be documented) may include a program in the site-specific monitoring plan for determining, monitoring, and certifying the scrap contaminant level using a calculation method rather than a scrap inspection program. A scrap contaminant monitoring program using a calculation method must include:

(1) Procedures for the characterization and documentation of the contaminant level of the scrap prior to the performance test.

(2) Limitations on the furnace charge to scrap of the same composition used in the performance test (through charge selection or blending of coated scrap with clean charge).

(3) Operating, monitoring, recordkeeping, and reporting requirements to ensure that no scrap with a contaminant level higher than that used in the performance test is charged to the furnace.

(r) *Group 2 furnace.* These requirements apply to the owner or operator of a new or existing group 2 furnace.

(1) The owner or operator must record the identity of all materials charged to each furnace, including any nonreactive, nonHAP-containing/nonHAP-generating fluxing materials or agents.

(2) The owner or operator must submit a certification of compliance with the applicable operational standard for charge materials in § 63.1506(p) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(v).

(s) *Secondary aluminum processing unit.* The owner or operator must calculate and record the 3-day, 24-hour rolling average emissions of PM, HCl, and D/F for each secondary aluminum processing unit on a daily basis. To calculate the 3-day, 24-hour rolling average, the owner or operator must:

(1) Calculate and record the total weight of material charged to each emission unit in the secondary aluminum processing unit for each 24-hour day of operation using the charge weight information required in paragraph (e) of this section.

(2) Multiply the total charge weight for each emission unit for the 24-hour period by the emission rate (in lb/ton of feed) for that emission unit as determined during the performance test to provide emissions for each emission unit for the 24-hour period, in pounds.

(3) Divide the total emissions for each secondary aluminum processing unit for the 24-hour period by the total material charged over the 24-hour period to provide the daily emission rate for the secondary aluminum processing unit.

(4) The 24-hour daily emission rate can be computed using Equation 4:

$$E_{day} = \frac{\sum_{i=1}^{n}\left(T_i \times ER_i\right)}{\sum_{i=1}^{n}\left(T_i\right)} \qquad \text{(Eq. 4)}$$

Where,

E_{day} = The daily PM, HCl, or D/F emission rate for the secondary aluminum processing unit for the 24-hour period;

T_i = The total amount of feed for emission unit i for the 24-hour period (tons);

ER_i = The measured emission rate for emission unit i as determined in the performance test (lb/ton or μg/Mg); and

n = The number of emission units in the secondary aluminum processing unit.

(5) Calculate and record the 3-day, 24-hour rolling average for each pollutant each day by summing the daily emission rates for each pollutant over the three most recent consecutive days and dividing by 3.

(t) *Alternative monitoring method.* The following procedure is an approved alternative method for monitoring the lime injection rate for use by the owner or operator of a noncontinuous lime injection system (i.e., lime is added manually to precoat the fabric filter).

(1) The owner or operator must record the time and mass of each lime addition during each operating cycle or time period used in the performance test.

(2) Using the recorded measurements for the total weight of feed or charge and the total weight of lime added, the owner or operator must calculate and record the average lime addition rate (lb/ton of feed) by dividing the total weight of lime added by the total weight of feed. The average lime addition rate, over the same operating cycle or time period used in the performance test, must not fall below the average lime addition rate established during the performance test.

TABLE 1 TO § 63.1510.—SUMMARY OF MONITORING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS

Affected source/emission unit	Monitor type/operation/process	Monitoring requirements
All affected sources and emission units.	Labeling	Check monthly to confirm that labels are intact and legible.
All affected sources and emission units with an add-on air pollution control device.	Emission capture and collection system.	Annual inspection of all emission capture, collection, and transport systems to ensure that systems continue to operate in accordance with ACGIH standards.
All affected sources and emission units subject to production-based (lb/ton of feed) emission limits [a].	Charge/feed weight	Record weight of each charge; weight measurement device or other procedure accuracy of ±1%; calibrate every 3 months.
Scrap shredder with fabric filter	Bag leak detector	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance''; record voltage output from bag leak detector.
	or	
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR 63; determine and record 6-min block averages.
	or	
	VE	Conduct and record results of 30-min daily test in accordance with Method 9.
Chip Dryer with afterburner	Afterburner operating temperature	Continuous measurement device to meet EPA specifications; record average temperature for each 15-min block; determine and record 3-hr block averages.

TABLE 1 TO § 63.1510.—SUMMARY OF MONITORING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/emission unit	Monitor type/operation/process	Monitoring requirements
	Afterburner operation	Annual inspection of afterburner internal parts; complete repairs in accordance with the O, M, & M plan.
	Feed material	Record identity of charge daily; certify charge materials every 6 months.
Scrap dryer/delacquering/decoating kiln with afterburner and lime injected fabric filter.	Afterburner operating temperature	Continuous measurement device to meet EPA specifications; record temperatures in 15-min block averages; determine and record 3-hr block averages.
	Afterburner operation	Annual inspection of afterburner internal parts; complete repairs in accordance with the O, M, & M plan.
	Bag leak detector	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance''; record voltage output from bag leak detector.
	or	
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR 63; determine and record 6-min block averages.
Scrap dryer/delacquering/decoating kiln with afterburner and lime injected fabric filter.	Lime injection rate and schedule	Inspect each feed hopper or silo every 8 hrs to verify that lime is free-flowing; record results of each inspection. If blockage occurs, inspect every 4 hrs for 3 days; return to 8-hr inspections if corrective action results in no further blockage during 3-day period. Weight Measurement device accuracy of ±1%; calibrate every 3 months; record weight of lime injected for each 15-min block period; determine and record 3-hr block average rate (lb/hr) and schedule or Weight measurement device accuracy of ±%; calibrate every 3 months; record weight of lime injected for each 15-min block period; calculate and record rate (lb/ton of feed) and schedule for each operating cycle or time period used in the performance test or: Record feeder setting daily.
	Fabric filter inlet temperature	Continuous measurement device to meet EPA specifications; record temperatures in 15-min block averages; detemine and record 3-hr block averages.
Sweat furnace with afterburner	Afterburner operating temperature	Continuous measurement device to meet EPA specifications; record temperatures in 15-min block averages; determine and record 3-hr block averages.
	Afterburner operation	Annual inspection of afterburner internal parts; complete repairs in accordance with the O, M, & M plan.
Dross-only furnace with fabric filter	Bag leak detector	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance''; record output voltage from bag leak detector.
	or	
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR 63; determine and record 6-min block averages.
	Feed material	Record identity of each charge; certify charge materials every 6 months.
Rotary dross cooler with fabric filter	Bag leak detector	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance''; record output voltage from bag leak detector.
	or	
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR 63; determine and record 6-min block averages.
In-line fluxer with lime-injected fabric filter (including those that are part of a secondary aluminum processing unit).	Bag leak detector	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance''; record output voltage from bag leak detector.
	or	
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR 63; determine and record 6-min block averages.
	Fabric filter inlet temperature	Continuous measurement device to meet EPA specifications; record temperature in 15-min block averages; determine and record 3-hr block averages.
In-line fluxer using no reactive flux	Flux materials	Record flux materials; certify every 6 months for no reactive flux.
In-line fluxer with lime-injected fabric filter (including those that are part of a secondary aluminum processing unit) con't.	Reactive flux injection rate and schedule.	Weight measurement device accuracy of ±1%; calibrate every 3 months; record time, weight and type of reactive flux added or injected for each 15-min block period; calculate and record total reactive flux injection rate for each operating cycle or time period used in performance test.

TABLE 1 TO § 63.1510.—SUMMARY OF MONITORING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/emission unit	Monitor type/operation/process	Monitoring requirements
	Lime injection rate and schedule ..	Inspect each feed hopper or silo every 8 hrs to verify that lime is free-flowing; record results of each inspection. If blockage occurs, inspect every 4 hrs for 3 days; return to 8-hr inspections if corrective action results in no further blockage during 3-day period. Weight measurement device accuracy of ±1%; calibrate every 3 months; record weight of lime injected for each 15-min block period; determine and record 3-hr block average rate (lb/hr) and schedule or: Weight measurement device accuracy of ±1%; calibrate every 3 months; record weight of lime injected for each 15-min block period; calculate and record rate (lb/ton of feed) and schedule for each operating cycle or time period used in the performance test or: Record feeder setting daily.
Group 1 furnace with lime-injected fabric filter (including those that are part of a secondary aluminum processing unit).	Bag leak detector	Install and operate in accordance with ''Fabric Filter Bag Leak Detection Guidance''; record output voltage from bag leak detector.
	or	
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR 63; determine and record 6-min block averages.
	Lime injection rate and schedule ..	Inspect each feed hopper or silo every 8 hrs to verify that lime is free-flowing; record results of each inspection. If blockage occurs, inspect every 4 hrs for 3 days; return to 8-hr inspections if corrective action results in no further blockage during 3-day period. Weight measurement device accuracy of ±1%; calibrate every 3 months; record weight of lime injected for each 15-min block period; determine and record 3-hr block average rate (lb/hr) and schedule or: Weight measurement device accuracy of ±1%; calibration every 3 months; record weight of lime injected for each 15-min block period; calculate and record rate (lb/ton of feed) and schedule for each operating cycle or time period used in performance test or: Record feeder setting daily.
	Reactive flux injection rate and schedule.	Weight measurement device accuracy of ±1%; calibrate every 3 months; record time, weight and type of reactive flux added or injected for each 15-min.
Group 1 furnace with lime injected fabric filter (including those that are part of a secondary aluminum processing unit) con't.	Fabric filter inlet temperature	Continuous measurement device to meet EPA specifications; record temperatures in 15-min block averages; determine and record 3-hr block averages.
	Maintain molten aluminum level ...	Maintain aluminum level operating log; certify every 6 months.
	Fluxing in sidewell furnace hearth	Maintain flux addition operating log; certify every 6 months.
Group 1 furnace without add-on controls (including those that are part of a secondary aluminum processing unit).	Reactive flux injection rate and schedule.	Weight measurement device accuracy of ±1%; calibrate every 3 months; record time, weight and type of reactive flux added or injected for each 15-min block period; calculate and record total reactive flux injection rate for each operating cycle or time period used in performance test.
	Site-specific monitoring plan (approved by permitting agency).	Demonstration of site-specific monitoring plan to provide data and show correlation of emissions across the range of charge and flux materials and furnace operating parameters.
	Feed material (melter/holder)	Record identity of each charge; certify charge materials every 6 months.
Clean (group 2) furnace	Charge and flux materials	Record charge and flux materials; certify every 6 months for clean charge and no reactive flux.

[a] Chip dryers, scrap dryers/delacquering kilns/decoating kilns, dross-only furnaces, and in-line fluxers and group 1 furnaces or melter/holders (including those that are part of a secondary aluminum processing unit).

§ 63.1511 Performance test/compliance demonstration general requirements.

(a) *Site-specific test plan.* Prior to conducting a performance test required by this subpart, the owner or operator must prepare and submit a site-specific test plan meeting the requirements in § 63.7(c) of this part.

(b) *Initial performance test.* Following approval of the site-specific test plan, the owner or operator must demonstrate initial compliance with each applicable emission, equipment, work practice, or operational standard for each affected source and emission unit, and report the results in the notification of compliance status report as described in § 63.1515(b). The owner or operator must conduct each performance test according to the requirements of the general provisions in subpart A of this part and this subpart.

(1) The owner or operator must conduct each test while the affected

source or emission unit is operating at the highest production level and, if applicable, at the highest fluxing rate and representative of the range of materials processed by the unit.

(2) Each performance test for a continuous process must consist of three separate runs; pollutant sampling for each run must be conducted for the time period specified in the applicable method or, in the absence of a specific time period in the test method, for a minimum of 3 hours.

(3) Each performance test for a batch process must consist of three separate runs; pollutant sampling for each run must be conducted over the entire process operating cycle.

(4) Where multiple affected sources or emission units are exhausted through a common stack, pollutant sampling for each run must be conducted for a period of time for all affected sources or emission units to complete one entire process operating cycle or for 24 hours, whichever is shorter.

(5) Initial compliance with an applicable emission limit or standard is demonstrated if the average of three runs conducted during the performance test is less than or equal to the applicable emission limit or standard.

(c) *Test methods.* The owner or operator must use the following methods to determine compliance with the applicable emission limits or standards:

(1) Method 1 in appendix A to part 60 of this chapter for sample and velocity traverses.

(2) Method 2 in appendix A to part 60 of this chapter for velocity and volumetric flow rate.

(3) Method 3 in appendix A to part 60 of this chapter for gas analysis.

(4) Method 4 in appendix A to part 60 of this chapter for moisture content of the stack gas.

(5) Method 5 in appendix A to part 60 of this chapter for the concentration of PM.

(6) Method 9 in appendix A to part 60 of this chapter for visible emission observations.

(7) Method 23 in appendix A to part 60 of this chapter for the concentration of D/F.

(8) Method 25A in appendix A to part 60 of this chapter for the concentration of THC, as propane.

(9) Method 26A in appendix A to part 60 of this chapter for the concentration of HCl. Where a lime-injected fabric filter is used as the control device to comply with the 90 percent reduction standard, the owner or operator must measure the fabric filter inlet concentration of HCl at a point before lime is introduced to the system.

(d) *Alternative methods.* The owner or operator may use an alternative test method, subject to approval by the Administrator.

(e) *Repeat tests.* The owner or operator of new or existing affected sources and emission units must conduct a performance test every 5 years following the initial performance test at the time of permit renewal.

(f) *Establishment of monitoring and operating parameter values.* The owner or operator of new or existing affected sources and emission units must establish a minimum or maximum operating parameter value or an operating parameter range for each parameter to be monitored as required by § 63.1510 that ensures compliance with the applicable emission limit or standard. To establish the minimum or maximum value or range, the owner or operator must use the appropriate procedures in this section and submit the information required by § 63.1515(b)(4) in the notification of compliance status report. The owner or operator may use existing data instead of the results of performance tests to establish operating parameter values for compliance monitoring provided each of the following conditions are met to the satisfaction of the applicable permitting authority:

(1) The complete emission test report(s) used as the basis of the parameter(s) is submitted.

(2) The same test methods and procedures as required by this subpart were used in the test.

(3) The owner or operator certifies that no design or work practice changes have been made to the source, process, or emission control equipment since the time of the report.

(4) All process and control equipment operating parameters required to be monitored were monitored as required in this subpart.

§ 63.1512 Performance test/compliance demonstration requirements and procedures.

(a) *Scrap shredder.* The owner or operator must conduct performance tests to measure PM emissions at the outlet of the control system. If visible emission observations is the selected monitoring option, the owner or operator must record visible emission observations from each exhaust stack for all consecutive 6-minute periods during the PM emission test according to the requirements of Method 9 in appendix A to part 60 of this chapter.

(b) *Chip dryer.* The owner or operator must conduct a performance test to measure THC and D/F emissions at the outlet of the control device while the unit processes only unpainted/uncoated aluminum chips.

(c) *Scrap dryer/delacquering/decoating kiln.* The owner or operator must conduct performance tests to measure emissions of THC, D/F, HCl, and PM at the outlet of the control device.

(1) If the scrap dryer/delacquering/decoating kiln is subject to the alternative emission limits in § 63.1505(e), the average afterburner operating temperature in each 3-hour block period must be maintained at or above 760°C (1,400°F) for the test.

(2) The owner or operator of a scrap dryer/delacquering/decoating kiln subject to the alternative limits in § 63.1505(e) must submit a written certification in the notification of compliance status report containing the information required by § 63.1515(b)(7).

(d) *Group 1 furnace with add-on air pollution control devices.* The owner or operator of a group 1 furnace that processes scrap other than clean charge materials with emissions controlled by a lime-injected fabric filter must conduct performance tests to measure emissions of PM and D/F at the outlet of the control device, and emissions of HCl at the outlet (for the emission limit) or the inlet and the outlet (for the percent reduction standard).

(e) *Group 1 furnace (including melter/holder) without add-on air pollution control devices.* In the site-specific monitoring plan required by § 63.1510(o), the owner or operator of a group 1 furnace (including a melter/holder) without add-on air pollution control devices must include data and information demonstrating compliance with the applicable emission limits.

(1) If the group 1 furnace processes other than clean charge material, the owner or operator must conduct emission tests to measure emissions of PM, HCl, and D/F at the furnace exhaust outlet.

(2) If the group 1 furnace processes only clean charge, the owner or operator must conduct emission tests to simultaneously measure emissions of PM and HCl at the furnace exhaust outlet. A D/F test is not required. Each test must be conducted while the group 1 furnace (including a melter/holder) processes only clean charge.

(f) *Sweat furnace.* The owner or operator must measure emissions of D/F from each sweat furnace at the outlet of the control device.

(g) *Dross-only furnace.* The owner or operator must conduct a performance test to measure emissions of PM from each dross-only furnace at the outlet of each control device while the unit processes only dross.

(h) *In-line fluxer.* The owner or operator must conduct a performance test to measure emissions of HCl and PM at the outlet of the control device. If the in-line fluxer uses no reactive flux materials, emission tests for PM and HCl are not required.

(i) *Rotary dross cooler.* The owner or operator must conduct a performance test to measure PM emissions at the outlet of the control device.

(j) *Secondary aluminum processing unit.* The owner or operator must conduct performance tests as described in paragraphs (j)(1) through (j)(3) of this section. The results of the performance tests are used to establish emission rates in lb/ton for PM and HCl and μg/Mg for D/F emissions from each emission unit. These emission rates are used for compliance monitoring in the calcuation of the 3-day, 24-hour rolling average emission rates using the equation in § 63.1510(r) (Monitoring requirements). A performance test is required for:

(1) Each group 1 furnace processing only clean charge to measure emissions of PM at the outlet of the control device and emissions of HCl at the outlet (for the emission limit) or at the inlet and outlet (for the percent reduction standard);

(2) Each group 1 furnace that processes scrap other than clean charge to measure emissions of PM and D/F at the outlet of the control device and emissions of HCl at the outlet of the control device (for the emission limit) or at the inlet and outlet (for the percent reduction standard); and

(3) Each in-line fluxer to measure emissions of PM and HCl at the outlet of the control device.

(k) *Feed/charge weight measurement.* During the emission test(s) conducted to determine compliance with emission limits in a kg/Mg (lb/ton) format, the owner or operator of an affected source or emission unit subject to an emission limit in a kg/Mg (lb/ton) of feed format must measure (or otherwise determine) and record the total weight of feed or charge to the affected source or emission unit for each of the three test runs and calculate and record the total weight.

(l) *Continuous opacity monitoring system.* The owner or operator of an affected source or emission unit using a continuous opacity monitoring system must conduct a performance evaluation to demonstrate compliance with Performance Specification 1 in appendix B to part 60 of this chapter. Following the performance evaluation, the owner or operator must measure and record the opacity of emissions from each exhaust stack for all consecutive 6-minute periods during the PM emission test.

(m) *Afterburner.* These requirements apply to the owner or operator of an affected source using an afterburner to comply with the requirements of this subpart.

(1) Prior to the initial performance test, the owner or operator must conduct a performance evaluation for the temperature monitoring device according to the requirements of § 63.8 of this part and sections 2, 3, 5, 7, 8, 9, and 10 of Performance Specification 2 in appendix B to part 60 of this chapter.

(2) The owner or operator must use these procedures to establish an operating parameter value or range for the afterburner operating temperature.

(i) Continuously measure and record the operating temperature of each afterburner every 15 minutes during the THC and D/F performance tests;

(ii) Determine and record the 15-minute block average temperatures for the three test runs.

(iii) Determine and record the 3-hour block average temperature measurements for the three test runs.

(n) *Inlet gas temperature.* The owner or operator of a affected source or emission unit using a lime-injected fabric filter must use these procedures to establish an operating parameter value or range for the inlet gas temperature.

(1) Continuously measure and record the temperature at the inlet to the lime-injected fabric filter every 15 minutes during the HCl and D/F performance tests.

(2) Determine and record the 15-minute block average temperatures for the three test runs; and

(3) Determine and record the 3-hour block average of the recorded temperature measurements for the three test runs.

(o) *Flux injection rate.* The owner or operator must use these procedures to establish an operating parameter value or range for the total reactive chlorine flux injection rate:

(1) Continuously measure and record the weight of gaseous or liquid reactive flux injected for each 15 minute period during the HCl and D/F test, determine and record the 15-minute block average weights, and calculate and record the total weight of the gaseous or liquid reactive flux for the three test runs.

(2) Record the identity, composition, and total weight of each addition of solid reactive chloride flux for the three test runs.

(3) Determine the total reactive chlorine flux injection rate by adding the recorded measurement of the total weight of chlorine in the gaseous or liquid reactive flux injected and the total weight of chlorine in the solid reactive chloride flux using Equation 5:

$$W_t = F_1 W_1 + F_2 W_2$$

Where,

W_t=Total chlorine usage, by weight;
F_1=Fraction of gaseous or liquid flux that is chlorine;
W_1=Weight of reactive flux gas injected;
F_2=Fraction of solid reactive chloride flux that is chlorine (e.g., F=0.75 for magnesium chloride); and
W_2=Weight of solid reactive flux.

(4) Divide the weight of total chlorine usage (W_t) for the three test runs by the recorded measurement of the total weight of feed for the three test runs.

(5) If a solid reactive flux other than magnesium chloride is used, the owner or operator must derive the appropriate proportion factor subject to approval by the applicable permitting authority.

(p) *Lime injection.* The owner or operator of an affected source or emission unit using a lime-injected fabric filter system must use these procedures during the HCl and D/F tests to establish an operating parameter value for the feeder setting, the 3-hour block average lime injection rate (lb/hr), or the average lime injection rate for each operating cycle or time period used in the performance test.

(1) Ensure that lime in the feed hopper or silo is free-flowing at all times.

(2) If the owner or operator chooses to monitor the feeder rate setting, record the feeder setting for the three test runs. If the feed rate setting varies during the runs, determine and record the average feed rate from the three runs.

(3) If the owner or operator chooses to monitor the 3-hour block average lime injection rate (lb/hr):

(i) Record the schedule at which lime is injected to the fabric filter during each 3-hour period during each of the three test runs. Determine the average injection schedule for the three test runs.

(ii) Continuously measure and record the weight of lime injected (lbs) for each 15-minute period.

(iii) Determine and record the 15-minute block average weights for the three test runs.

(iv) Determine and record the 3-hour block average lime injection rate (lb/hr) of feed for the three test runs.

(4) If the owner or operator chooses to monitor the average lime injection rate (lb/ton of feed):

(i) Record the schedule at which lime is added during each test run. Determine the average schedule for the three test runs.

(ii) Continuously measure and record the weight of lime injected for each 15-minute period.

(iii) Determine and record the 15-minute block average weights for the three test runs.

(iv) Determine and record the total weight of injected lime for the three test runs.

(v) Using the recorded measurements for the total weight of feed and the total weights of injected lime, calculate and record the average lime injection rate (kg/Mg or lb/ton of feed) by dividing the total weight of lime injected by the total weight of feed for the three test runs.

(q) *Bag leak detection system.* The owner or operator of an affected source or emission unit using a bag leak detection system must submit the information described in § 63.1515(b)(6) as part of the notification of compliance status report to document conformance with the specifications and requirements in § 63.1510(f).

(r) *Labeling.* The owner or operator of each affected source or emission unit must submit the information described in § 63.1515(b)(3) as part of the notification of compliance status report to document conformance with the operational standard in § 63.1506(b).

(s) *Capture/collection system.* The owner or operator of a new or existing affected source or emission unit with an add-on control device must submit the information described in § 63.1515(b)(2) as part of the notification of compliance status report to document conformance with the operational standard in § 63.1506(c).

§ 63.1513 Equations for determining compliance.

(a) *THC emission limit.* Use Equation 6 to determine compliance with an emission limit for THC:

$$E = \frac{C \times MW \times Q \times K_1 \times K_2}{M_v \times P \times 10^6} \qquad \text{(Eq. 6)}$$

Where,

E=Emission rate of measured pollutant, kg/Mg (lb/ton) of feed;

C=Measured volume fraction of pollutant, ppmv;

MW=Molecular weight of measured pollutant, g/g-mole (lb/lb-mole): THC (as propane)=44.11;

Q=Volumetric flow rate of exhaust gases, dscm/hr (dscf/hr);

K_1=Conversion factor, 1 kg/1,000 g (1 lb/lb);

K_2=Conversion factor, 1,000 L/m^3 (1 ft^3/ft^3);

M_v=Molar volume, 24.45 L/g-mole (385.3 ft^3/lb-mole); and

P=Production rate, Mg/hr (ton/hr).

(b) *PM, HCl and D/F emission limits.* Use Equation 7 to determine compliance with an emission limit for PM, HCl, and D/F:

$$E = \frac{C \times Q \times K_1}{P} \qquad \text{(Eq. 7)}$$

Where,

E=Emission rate of PM, HCl, or D/F, kg/Mg (lb/ton) of feed;

C=Concentration of PM, HCl, or D/F, g/dscm (gr/dscf);

Q=Volumetric flow rate of exhaust gases, dscm/hr (dscf/hr);

K_1=Conversion factor, 1 kg/1,000 g (1 lb/7,000 gr); and

P=Production rate, Mg/hr (ton/hr).

(c) *HCl percent reduction standard.* Use Equation 8 to determine compliance with an HCl percent reduction standard:

$$\%R = \frac{L_i - L_o}{L_i} \times 100 \qquad \text{(Eq. 8)}$$

Where,

%R=Percent reduction of the control device;

L_i=Inlet loading of pollutant, kg/Mg (lb/ton); and

L_o=Outlet loading of pollutant, kg/Mg (lb/ton).

(d) *Conversion of D/F measurements to TEQ units.* To convert D/F measurements to TEQ units, the owner or operator must use the procedures and equations in ''Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update'' (EPA–625/3–89–016), available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia, NTIS no. PB 90–145756.

(e) *Secondary aluminum processing unit.* Use the procedures in paragraphs (e)(1), (e)(2), and (e)(3) or the procedure in paragraph (e)(4) of this section to determine compliance with emission limits for a secondary aluminum processing unit.

(1) Use Equation 9 to compute the mass-weighted PM emissions for a secondary aluminum processing unit. Compliance is achieved if the mass-weighted emissions for the secondary aluminum processing unit (E_{cPM}) is less than or equal to the emission limit for the secondary aluminum processing unit (L_{cPM}) calculated using Equation 1 in § 63.1505(k).

$$E_{C_{PM}} = \frac{\sum_{i=1}^{n}\left(E_{ti_{PM}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 9)}$$

Where,

E_{cPM}=The mass-weighted PM emissions for the secondary aluminum processing unit;

E_{tiPM}=Measured PM emissions for individual emission unit i;

T_{ti}=The average feed rate for individual emission unit i during the operating cycle or performance test period; and

n=The number of emission units in the secondary aluminum processing unit.

(2) Use Equation 10 to compute the aluminum mass-weighted HCl emissions for the secondary aluminum processing unit. Compliance is achieved if the mass-weighted emissions for the secondary aluminum processing unit (E_{cHCl}) is less than or equal to the emission limit for the secondary aluminum processing unit (L_{cHCl}) calculated using Equation 2 in § 63.1505(k).

$$E_{C_{HCl}} = \frac{\sum_{i=1}^{n}\left(E_{ti_{HCl}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 10)}$$

Where,

E_{cHCl} = The mass-weighted HCl emissions for the secondary aluminum processing unit; and

E_{tiHCl} = Measured HCl emissions for individual emission unit i.

(3) Use Equation 11 to compute the aluminum mass-weighted D/F emissions for the secondary aluminum processing unit. Compliance is achieved if the mass-weighted emissions for the secondary aluminum processing unit is less than or equal to the emission limit for the secondary aluminum processing unit ($L_{cD/F}$) calculated using Equation 3 in § 63.1505(k).

$$E_{C_{D/F}} = \frac{\sum_{i=1}^{n}\left(E_{ti_{D/F}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 11)}$$

Where,

$E_{cD/F}$ = The mass-weighted D/F emissions for the secondary aluminum processing unit; and

$E_{tiD/F}$ = Measured D/F emissions for individual emission unit i.

(4) As an alternative to using the equations in paragraphs (e)(1), (e)(2), and (e)(3) of this section, the owner or operator may demonstrate compliance for a secondary aluminum processing unit by demonstrating that each existing group 1 furnace is in compliance with

the emission limits for a new group 1 furnace in § 63.1505(i) and that each existing in-line fluxer is in compliance with the emission limits for a new in-line fluxer in § 63.1505(j).

§ 63.1514 [Reserved]

Notifications, Reports, and Records

§ 63.1515 Notifications.

(a) *Initial notifications.* The owner or operator must submit initial notifications to the applicable permitting authority as described in paragraphs (a)(1) through (a)(7) of this section.

(1) As required by § 63.9(b)(1) of this part, the owner or operator must provide notification for an area source that subsequently increases its emissions such that the source is a major source subject to the standard.

(2) As required by § 63.9(b)(3) of this part, the owner or operator of a new or reconstructed affected source, or a source that has been reconstructed such that it is an affected source, that has an initial startup after the effective date of this subpart and for which an application for approval of construction or reconstruction is not required under § 63.5(d) of this part, must provide notification that the source is subject to the standard.

(3) As required by § 63.9(b)(4) of this part, the owner or operator of a new or reconstructed major affected source that has an initial startup after the effective date of this subpart and for which an application for approval of construction or reconstruction is required by § 63.5(d) of this part must provide the following notifications:

(i) Notification of intention to construct a new major affected source, reconstruct a major source, or reconstruct a major source such that the source becomes a major affected source;

(ii) Notification of the date when construction or reconstruction was commenced (submitted simultaneously with the application for approval of construction or reconstruction if construction or reconstruction was commenced before the effective date of this subpart or no later than 30 days of the date construction or reconstruction commenced if construction or reconstruction commenced after the effective date of this subpart);

(iii) Notification of the anticipated date of startup; and

(iv) Notification of the actual date of startup.

(4) As required by § 63.9(b)(5) of this part, after the effective date of this subpart, an owner or operator who intends to construct a new affected source or reconstruct an affected source subject to this subpart, or reconstruct a source such that it becomes an affected source subject to this subpart must provide notification of the intended construction or reconstruction. The notification must include all the information required for an application for approval of construction or reconstruction as required by § 63.5(d) of this part. For major sources, the application for approval of construction or reconstruction may be used to fulfill these requirements.

(i) The application must be submitted as soon as practicable before the construction or reconstruction is planned to commence (but no sooner than the effective date) if the construction or reconstruction commences after the effective date of this subpart; or

(ii) The application must be submitted as soon as practicable before startup but no later than 90 days after the effective date of this subpart if the construction or reconstruction had commenced and initial startup had not occurred before the effective date.

(5) As required by § 63.9(d) of this part, the owner or operator must provide notification of any special compliance obligations for a new source.

(6) As required by §§ 63.9(e) and 63.9(f) of this part, the owner or operator must provide notification of the anticipated date for conducting performance tests and visible emission observations. The owner or operator must notify the Administrator of the intent to conduct a performance test at least 60 days before the performance test is scheduled; notification of opacity or visible emission observations for a performance test must be provided at least 30 days before the observations are scheduled to take place.

(7) As required by § 63.9(g) of this part, the owner or operator must provide additional notifications for sources with continuous emission monitoring systems or continuous opacity monitoring systems.

(b) *Notification of compliance status report.* Each owner or operator must submit a notification of compliance status report within 60 days after the compliance dates specified in § 63.1501. The notification must be signed by the responsible official who must certify its accuracy. A complete notification of compliance status report must include the information specified in paragraphs (a)(1) through (a)(11) of this section. The required information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination. In a State with an approved operating permit program where delegation of authority under section 112(l) of the Act has not been requested or approved, the owner or operator must provide duplicate notification to the applicable Regional Administrator. If an owner or operator submits the information specified in this section at different times or in different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the information previously submitted. A complete notification of compliance status report must include:

(1) All information required in § 63.9(h) of this part. The owner or operator must provide a complete performance test report for each affected source and emission unit. A complete performance test report includes all data, associated measurements, and calculations (including visible emission and opacity tests);

(2) The approved site-specific test plan and performance evaluation test results for each continuous monitoring system (including a continuous emission or opacity monitoring system);

(3) Unit labeling as described in § 63.1506(b), including:

(i) Process type or furnace classification;

(ii) Applicable emission limit, operational standard, and control method;

(iii) Parameters to be monitored and the acceptable range of each monitored parameter; and

(iv) For existing group 1 furnaces or in-line fluxers that are part of a process train or a secondary aluminum processing unit, identification of all emission units in the process train or secondary aluminum processing unit.

(4) The compliant operating parameter value or range established for each affected source or emission unit with supporting documentation and a description of the procedure used to establish the value (e.g., lime injection rate/schedule, total reactive chlorine flux injection rate/schedule, afterburner operating temperature, fabric filter inlet temperature), including the operating cycle or time period used in the performance test.

(5) Design information and analysis, with supporting documentation, demonstrating conformance with the requirements for capture/collection systems in § 63.1506(c).

(6) If applicable, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.1510(f).

(7) Manufacturer specification or analysis documenting the design

residence time of no less than 1 second for each afterburner used to control emissions from a scrap dryer/delacquering/decoating kiln subject to alternative emission standards in § 63.1505(e);

(8) Approved site-specific monitoring plan for each group 1 furnace with no add-on air pollution control device.

(9) Operation, maintenance, and monitoring plan and Startup, shutdown, and malfunction plan, with revisions.

(10) If applicable, the approved site-specific secondary aluminum processing unit emissions plan with supporting documentation demonstrating compliance.

(11) If applicable, the quality improvement plan.

§ 63.1516 Reports.

(a) *Startup, shutdown, and malfunction plan/reports.* The owner or operator must develop and implement a written plan as described in § 63.6(e)(3) of this part that contains specific procedures to be followed for operating and maintaining the source during periods of startup, shutdown, and malfunction and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the standard. The owner or operator shall also keep records of each event as required by § 63.10(b) of this part and record and report if an action taken during a startup, shutdown, or malfunction is not consistent with the procedures in the plan as described in § 63.6(e)(3). In addition to the information required in § 63.6(e)(3), the plan must include:

(1) Procedures to determine and record the cause of the malfunction and the time the malfunction began and ended; and

(2) Corrective actions to be taken in the event of a malfunction of a process or control device, including procedures for recording the actions taken to correct the malfunction or minimize emissions.

(b) *Excess emissions/summary report.* As required by § 63.10(e)(3) of the general provisions in subpart A of this part, the owner or operator must submit semi-annual reports within 60 days after the end of each 6-month period. Each report must contain the information specified in § 63.10(c) of the general provisions in subpart A of this part. When no exceedances of parameters have occurred, the owner or operator must submit a report stating that no excess emissions occurred during the reporting period.

(1) A report must be submitted if any of these conditions occur during a 6-month reporting period:

(i) The corrective action specified in the operation, maintenance, and monitoring plan for a bag leak detection system alarm was not initiated within 1-hour.

(ii) The corrective action specified in the operation, maintenance, and monitoring plan for a continuous opacity monitoring exceedance was not initiated within 1-hour.

(iii) The corrective action specified in the operation, maintenance, and monitoring plan for visible emissions from a scrap shredder was not initiated within 1-hour.

(iv) An excursion of a compliant process or operating parameter value or range (e.g., lime injection rate/schedule or screw feeder setting, total reactive chlorine flux injection rate/schedule, afterburner operating temperature, fabric filter inlet temperature, definition of acceptable scrap, or other approved operating parameter.

(v) An action taken during a startup, shutdown, or malfunction was not consistent with the procedures in the plan as described in § 63.6(e)(3).

(vi) An affected source (including an emission unit in a secondary aluminum processing unit) was not operated according to the requirements of this subpart.

(vii) An exceedance of the 3-day, 24-hour rolling average emission limit for a secondary aluminum processing unit.

(2) Each report must include each of these certifications, as applicable:

(i) For each chip dryer: ''Only unpainted/uncoated aluminum chips were used as feedstock in any chip dryer during this reporting period.''

(ii) For each dross-only furnace: ''Only dross was used as the charge material in any dross-only furnace during this reporting period.''

(iii) For each side-well group 1 furnace with add-on air pollution control devices: ''Each furnace was operated such that the level of molten metal remained above the top of the passage between the side well and hearth during reactive fluxing and reactive flux was added only to the sidewell or to a furnace hearth equipped with an add-on air pollution control device for PM, HCl, and D/F emissions during this reporting period.''

(iv) For each group 1 melter/holder without add-on air pollution control devices and using pollution prevention measures that processes only clean charge material: ''Each group 1 furnace without add-on air pollution control devices subject to emission limits in § 63.1505(i)(2) processed only materials of pure aluminum, including molten aluminum, T-bar, sow, ingot, alloying elements, uncoated aluminum chips dried at 343°C (650°F) or higher, aluminum scrap dried, delacquered, or decoated at 482°C (900°F) or higher, and noncoated runaround scrap during this reporting period.''

(v) For each group 2 furnace: ''Only clean charge materials of pure aluminum, including molten aluminum, T-bar, sow, ingot, alloying elements, uncoated aluminum chips dried at 343°C (650°F or higher), aluminum scrap dried, delacquered, or decoated at 482°C (900°F) or higher, and noncoated runaround scrap were processed in any group 2 furnace during this reporting period and no fluxing was performed or all fluxing performed was conducted using only nonreactive, nonHAP-containing/nonHAP-generating fluxing gases or agents during this reporting period.''

(vi) For each in-line fluxer using no reactive flux: ''Only nonreactive, nonHAP-containing, nonHAP-generating flux gases, agents, or materials were used at any time during this reporting period.''

(3) The owner or operator must submit the results of any performance test conducted during the reporting period, including one complete report documenting test methods and procedures, process operation, and monitoring parameter ranges or values for each test method used for a particular type of emission point tested.

(c) *Annual compliance certifications.* For the purpose of annual certifications of compliance required by part 70 or 71 of this chapter, the owner or operator must certify continuing compliance based upon the following conditions:

(1) Any period of excess emissions, as defined in paragraph (b)(1) of this section, that occurred during the year were reported as required by this subpart; and

(2) All monitoring, recordkeeping, and reporting requirements were met during the year.

§ 63.1517 Records.

(a) As required by § 63.10(b) of the general provisions in subpart A of this part, the owner or operator shall maintain files of all information (including all reports and notifications) required by the general provisions and this subpart.

(1) The owner or operator must retain each record for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The most recent 2 years of records must be retained at the facility. The remaining 3 years of records may be retained off site.

(2) The owner or operator may retain records on microfilm, on computer

disks, on magnetic tape, or on microfiche; and

(3) The owner or operator may report required information on paper or on a labeled computer disk using commonly available and EPA-compatible computer software.

(b) In addition to the general records required by § 63.10(b) of this part, the owner or operator of a new or existing affected source (including an emission unit in a secondary aluminum processing unit) must maintain records of:

(1) For each affected source and emission unit with emissions controlled by a fabric filter or a lime-injected fabric filter:

(i) If a bag leak detection system is used, the number of total operating hours for the affected source or emission unit during each 6-month reporting period, records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action(s) taken.

(ii) If a continuous opacity monitoring system is used, records of opacity measurement data, including records where the average opacity of any 6-minute period exceeds 5 percent, with a brief explanation of the cause of the emissions, the time the emissions occurred, the time corrective action was initiated and completed, and the corrective action taken.

(iii) If a scrap shredder is subject to visible emission observation requirements, records of all Method 9 observations, including records of any visible emissions during a 30-minute daily test, with a brief explanation of the cause of the emissions, the time the emissions occurred, the time corrective action was initiated and completed, and the corrective action taken.

(2) For each affected source with emissions controlled by an afterburner:

(i) Records of 15-minute block average afterburner operating temperature, including any period when the average temperature in any 3-hour block period falls below the compliant operating parameter value with a brief explanation of the cause of the excursion and the corrective action taken; and

(ii) Records of annual afterburner inspections.

(3) For each affected source and emission unit subject to D/F and HCl emission standards with emissions controlled by a lime-injected fabric filter, records of 15-minute block average inlet temperatures for each lime-injected fabric filter, including any period when the 3-hour block average temperature exceeds the compliant operating parameter value +14° C (25°F), with a brief explanation of the cause of the excursion and the corrective action taken.

(4) For each affected source and emission unit with emissions controlled by a lime-injected fabric filter:

(i) Records of inspections at least once every 8-hour period verifying that lime is present in the feeder hopper or silo and flowing, including any inspection where blockage is found, with a brief explanation of the cause of the blockage and the corrective action taken, and records of inspections at least once every 4-hour period for the subsequent 3-days;

(ii) If lime feeder setting is monitored, records of daily inspections of feeder setting, including records of any deviation of the feeder setting from the setting used in the performance test, with a brief explanation of the cause of the deviation and the corrective action taken.

(iii) If lime injection rate (lb/hr) is monitored, records of 15-minute block average weight of lime and 3-hour block averages, including records of any period when the 3-hour block average rate or schedule falls below the compliant operating parameter value, with a brief explanation of the cause of the excursion and the corrective action taken;

(iv) If lime injection rate (lb/ton of feed) is monitored, records of 15-minute block average weights for each operating cycle or time period used in the performance test and lb/ton of feed calculations, including records of any period the lime injection rate or schedule falls below the compliant operating parameter value, with a brief explanation of the cause of the excursion and the corrective action taken;

(v) If lime addition rate for a noncontinuous lime injection system is monitored pursuant to the approved alternative monitoring requirements in § 63.1510(s), records of the time and mass of each lime addition during each operating cycle or time period used in the performance test and calculations of the average lime addition rate (lb/ton of feed).

(5) For each group 1 furnace (with or without add-on air pollution control devices) or in-line fluxer, records of 15-minute block average weights of gaseous or liquid reactive flux injection, total reactive chlorine flux injection rate and calculations (including records of the identity, composition, and weight of each addition of gaseous, liquid or solid reactive chlorine flux), including records of any period the rate exceeds the compliant operating parameter value and corrective action taken.

(6) For each continuous monitoring system, records required by § 63.10(c) of this part.

(7) For each affected source and emission unit subject to an emission standard in kg/Mg (lb/ton) of feed, records of feed/charge (or throughput) weights for each operating cycle or time period used in the performance test.

(8) Approved site-specific monitoring plan for a group 1 furnace without add-on air pollution control devices with records documenting conformance with the plan.

(9) Records of all charge materials for each chip dryer, dross-only furnace, and group 1 melter/holder without air pollution control devices processing only clean charge.

(10) Operating logs for each group 1 sidewell furnace with add-on air pollution control devices documenting conformance with operating standards for maintaining the level of molten metal above the top of the passage between the sidewell and hearth during reactive flux injection and for adding reactive flux only to the sidewell or a furnace hearth equipped with a control device for PM, HCl, and D/F emissions.

(11) Operating logs for each in-line fluxer using no reactive flux materials documenting each flux gas, agent, or material used during each operating cycle.

(12) Records of all charge materials and fluxing materials or agents for a group 2 furnace.

(13) Records of monthly inspections for proper unit labeling for each affected source and emission unit.

(14) Records of annual inspections of emission capture/collection and closed vent systems.

(15) Records for any approved alternative monitoring or test procedure.

(16) Current copy of all required plans, including any revisions, with records documenting conformance with the applicable plan, including:

(i) Startup, shutdown, and malfunction plan;

(ii) Operation, maintenance, and monitoring plan;

(iii) Site-specific secondary aluminum processing unit emission plan (if applicable); and

(iv) Quality improvement plan (if applicable).

(17) For each secondary aluminum processing unit, records of total charge weight for each 24-hour period and calculations of 3-day, 24-hour rolling average emissions.

Other

§ 63.1518 Applicability of general provisions.

The requirements of the general provisions in subpart A of this part that are applicable to the owner or operator subject to the requirements of this subpart are shown in appendix A to this subpart.

§ 63.1519 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the Act, the authorities contained in paragraph (b) of this section are retained by the Administrator and are not transferred to a State.

(b) Applicability determinations pursuant to § 63.1 of this part.

§ 63.1520 [Reserved]

APPENDIX A TO SUBPART RRR OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART RRR

Citation	Requirement	Applies to RRR	Comment
63.1(a)(1)–63.1(a)(4)	General Applicability	Yes	
63.1(a)(5)		No	[Reserved].
63.1(a)(6)–63.1(a)(8)		Yes	
63.1(a)(9)		No	[Reserved].
63.1(a)(10)–63.1(a)(14)		Yes	
63.1(b)	Initial Applicability Determination	Yes	EPA retains approval authority.
63.1(c)(1)	Applicability After Standard Established	Yes	
63.1(c)(2)		Yes	Some plants may be area sources.
63.1(c)(3)		No	[Reserved].
63.1(c)(4)–63.1(c)(5)		Yes	
63.1(d)		No	[Reserved].
63.1(e)	Applicability of Permit Program	Yes	
63.2	Definitions	Yes	Additional definitions in § 63.1503.
63.3	Units and Abbreviations	Yes	
63.4(a)(1)–63.4(a)(3)	Prohibited Activities	Yes	
63.4(a)(4)		No	[Reserved].
63.4(a)(5)		Yes	
63.4(b)–63.4(c)	Circumvention/Severability	Yes	
63.5(a)	Construction and Reconstruction-Applicability.	Yes	
63.5(b)(1)	Existing, New, Reconstructed Sources-Requirements.	Yes	
63.5(b)(2)		No	[Reserved].
63.5(b)(3)–63.5(b)(6)		Yes	
63.5(c)		No	[Reserved].
63.5(d)	Application for Approval of Construction/Reconstruction.	Yes	
63.5(e)	Approval of Construction/Reconstruction	Yes	
63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes	
63.6(a)	Compliance with Standards and Maintenance-Applicability.	Yes	
63.6(b)(1)–63.6(b)(5)	New and Reconstructed Sources-Dates	Yes	
63.6(b)(6)		No	[Reserved].
63.6(b)(7)		Yes	
63.6(c)(1)	Existing Sources Dates	Yes	§ 63.1501 specifies dates.
63.6(c)(2)		Yes	
63.6(c)(3)–63.6(c)(4)		No	[Reserved].
63.6(c)(5)		Yes	
63.6(d)		No	[Reserved].
63.6(e)(1)–63.6(e)(2)	Operation & Maintenance Requirements	Yes	§ 63.1510 requires plan.
63.6(e)(3)	Startup, Shutdown, and Malfunction Plan.	Yes	
63.6(f)	Compliance with Emission Standards	Yes	
63.6(g)	Alternative Standard	No	
63.6(h)	Compliance with Opacity/VE Standards	Yes	
63.6(i)(1)–63.6(i)(14)	Extension of Compliance	Yes	
63.6(i)(15)		No	[Reserved].
63.6(i)(16)		Yes	
63.6(j)	Exemption from Compliance	Yes	
63.7(a)–(h)	Performance Test Requirements-Applicability and Dates.	Yes	§ 63.1511 requires repeat tests every 5 years.
63.7(b)	Notification	Yes	
63.7(c)	Quality Assurance/Test Plan	Yes	
63.7(d)	Testing Facilities	Yes	
63.7(e)	Conduct of Tests	Yes	
63.7(f)	Alternative Test Method	Yes	
63.7(g)	Data Analysis	Yes	
63.7(h)	Waiver of Tests	Yes	
63.8(a)(1)	Monitoring Requirements-Applicability	Yes	
63.8(a)(2)		Yes	
63.8(a)(3)		No	[Reserved].

APPENDIX A TO SUBPART RRR OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART RRR—Continued

Citation	Requirement	Applies to RRR	Comment
63.8(a)(4)		Yes	
63.8(b)	Conduct of Monitoring	Yes	
63.8(c)(1)–63.8(c)(3)	CMS Operation and Maintenance	Yes	
63.8(c)(4)–63.8(c)(8)		Yes	
63.8(d)	Quality Control	Yes	
63.8(e)	CMS Performance Evaluation	Yes	
63.8(f)(1)–63.8(f)(5)	Alternative Monitoring Method	Yes	§ 63.1510 includes approved alternative for non-continuous lime injection systems.
63.8(f)(6)	Alternative to RATA Test	Yes	
63.8(g)(1)	Data Reduction	Yes	
63.8(g)(2)		No	§ 63.1512 requires five 6-min averages for a scrap shredder.
63.8(g)(3)–63.8(g)(5)		Yes	
63.9(a)	Notification Requirements-Applicability	Yes	
63.9(b)	Initial Notifications	Yes	
63.9(c)	Request for Compliance Extension	Yes	
63.9(d)	New Source Notification for Special Compliance Requirements.	Yes	
63.9(e)	Notification of Performance Test	Yes	
63.9(f)	Notification of VE/Opacity Test	Yes	
63.9(g)	Additional CMS Notifications	Yes	
63.9(h)(1)–63.9(h)(3)	Notification of Compliance Status	Yes	
63.9(h)(4)		No	[Reserved].
63.9(h)(5)–63.9(h)(6)		Yes	
63.9(i)	Adjustment of Deadlines	Yes	
63.9(j)	Change in Previous Information	Yes	
63.10(a)	Recordkeeping/Reporting-Applicability	Yes	
63.10(b)	General Requirements	Yes	§ 63.1517 includes additional requirements.
63.10(c)(1)	Additional CMS Recordkeeping	Yes	
63.10(c)(2)–63.10(c)(4)		No	[Reserved].
63.10(c)(5)		Yes	
63.10(c)(6)		Yes	
63.10(c)(7)–63.10(c)(8)		Yes	
63.10(c)(9)		No	[Reserved].
63.10(c)(10)		Yes	
63.10(c)(13)			
63.10(c)(14)		Yes	
63.10(d)(1)	General Reporting Requirements	Yes	
63.10(d)(2)	Performance Test Results	Yes	
63.10(d)(3)	Opacity or VE Observations	Yes	
63.10(d)(4)	Progress Reports/Startup, Shutdown, and Malfunction Reports.	Yes	
63.10(d)(5)			
63.10(e)(1)–63.10(e)(2)	Additional CMS Reports	Yes	
63.10(e)(3)	Excess Emissions/CMS Performance Reports.	Yes	
63.10(e)(4)	COMS Data Reports	Yes	
63.10(f)	Recordkeeping/Reporting Waiver	Yes	
63.11(a)–(b)	Control Device Requirements	No	Flares not applicable.
63.12(a)–(c)	State Authority and Delegations	Yes	EPA retains authority for applicability determinations.
63.13	Addresses	Yes	
63.14	Incorporation by Reference	Yes	Chapters 3 and 5 of ACGIH Industrial Ventilation Manual for capture/collection systems.
63.15	Availability of Information/Confidentiality	Yes	

* * * * *

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Thursday
February 11, 1999

Part III

Environmental Protection Agency

Health Effects From Exposure to High Levels of Sulfate in Drinking Water Study and Sulfate Workshop; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6232–5]

Health Effects from Exposure to High Levels of Sulfate in Drinking Water Study and Sulfate Workshop

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability and request for comments.

SUMMARY: The Safe Drinking Water Act (SDWA), as amended in 1996, directs the U.S. Environmental Protection Agency (EPA) and the Centers for Disease Control and Prevention (CDC) to jointly conduct a study to establish a reliable dose-response relationship for the adverse human health effects from exposure to sulfate in drinking water, including the health effects that may be experienced by sensitive subpopulations (infants and travelers). EPA and CDC are to complete the study by February 1999.

The purpose of this notice is to inform the public of the completion of the ''Health Effects from Exposure to High Levels of Sulfate in Drinking Water Study'' (''Sulfate Study'') and announce the availability of both the Sulfate Study report and the September 28, 1998 Sulfate Workshop summary. This notice provides a summary of these two documents and discusses EPA's next steps on sulfate in drinking water regulatory activities. Comments are requested on the two documents being made available. Today's notice does not include any decisions regarding the determination of whether or not to regulate sulfate.

DATES: Submit comments on or before May 12, 1999.

ADDRESSES: Send written comments to the Comment Clerk, docket number W–99–01, Water Docket (MC4101), USEPA, 401 M St, SW, Washington 20460. Please submit an original and three copies of your comments and enclosures (including references). Comments must be received or postmarked by midnight May 12, 1999.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to ow-docket@epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and form of encryption or in WordPerfect 5.1 or 6.1. Electronic comments must be identified by the docket number W–99–01. Comments and data will also be accepted on disks in WordPerfect 5.1, 6.1 or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Documents discussed in the notice and supporting documentation (i.e., sulfate literature review and relevant literature provided to participants at the Sulfate Workshop), as well as public comments are in docket number W–99–01. The record is available for inspection from 9 to 4 p.m. Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M. St., S.W., Washington, D.C. For access to the docket materials, please call 202–260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: For general information and for copies of the Sulfate Study report and Sulfate Workshop summary, please contact the Safe Drinking Water Hotline at 1–800–426–4791 or 703–285–1093 between 9:00 a.m. and 5:30 p.m. Eastern Time. The documents can also be accessed on the internet at http://www.epa.gov/safewater/sulfate.html.
For specific information and technical inquiries, contact Jennifer Wu at 202–260–0425 or wu.jennifer@epa.gov.

Abbreviations Used in This Document

CCL: Contaminant Candidate List
CDC: Centers for Disease Control and Prevention
EPA: U.S. Environmental Protection Agency
MCL: Maximum Contaminant Level
MCLG: Maximum Contaminant Level Goal
NPDWR: National Primary Drinking Water Regulation
SAQ: self-administered questionnaire
SDWA: Safe Drinking Water Act, as amended
SMCL: secondary maximum contaminant level
WHO: World Health Organization
WIC: Women, Infants and Children

SUPPLEMENTARY INFORMATION:

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III. Statutory Authority and Regulatory History
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VI. Next Steps on Sulfate in Drinking Water Regulatory Activities

I. Introduction

The Safe Drinking Water Act (SDWA), as amended in 1996, directs the U.S. Environmental Protection Agency (EPA) and the Centers for Disease Control and Prevention (CDC) to ''jointly conduct an additional study to establish a reliable dose-response relationship for the adverse human health effects that may result from exposure to sulfate in drinking water, including the health effects that may be experienced by groups within the general population (including infants and travelers) that are potentially at greater risk.'' Section 1412 (b)(12)(B). SDWA specifies that the study be based on the best available peer-reviewed science and supporting studies, conducted in consultation with interested States, and completed in February 1999.

The purpose of this notice is to inform the public of the completion of the ''Health Effects from Exposure to High Levels of Sulfate in Drinking Water Study'' (''Sulfate Study'') and to announce the availability of both the Sulfate Study report and the September 28, 1998 Sulfate Workshop summary. This notice provides a summary of the Sulfate Study report and the Sulfate Workshop summary, as well as discusses EPA's next steps on sulfate in drinking water regulatory activities. Today's notice does not include any decisions regarding the determination of whether or not to regulate sulfate.

II. Sulfate Background Information

Sulfate is a substance that occurs naturally in drinking water. Health concerns regarding sulfate in drinking water have been raised because of reports that diarrhea may be associated with the ingestion of water containing high levels of sulfate. Of particular concern are groups within the general population that may be at greater risk from the laxative effects of sulfate when they experience an abrupt change from drinking water with low sulfate concentrations to drinking water with high sulfate concentrations. One potentially sensitive population is infants receiving their first bottles containing tap water, either as water alone or as formula mixed with water. Other groups of people who could potentially be adversely affected by water with high sulfate concentrations include transient populations (i.e., tourists, hunters, students, and other temporary visitors) and people moving from areas with low sulfate concentrations in drinking water into areas with high concentrations.

III. Statutory Authority and Regulatory History

On July 19, 1979 (44 FR 42195) EPA published a secondary maximum contaminant level (SMCL) for sulfate in drinking water of 250 milligrams per liter (mg/L), based on aesthetic effects

(i.e., taste and odor). This regulation is not a Federally enforceable standard, but is provided as a guideline for States. States are encouraged to implement SMCLs so that the public will drink water provided by public water systems. The World Health Organization's (WHO) recommended sulfate guideline is 400 mg/L, which is based on taste.

In an advance notice of proposed rule making published in the **Federal Register** on October 5, 1983 (48 FR 45502), EPA recommended developing a health advisory for sulfate instead of establishing an enforceable level. On November 13, 1985, EPA proposed a health advisory at 400 mg/L to protect infants (50 FR 46936). However, the proposed health advisory was never finalized.

Under Section 1412 of the 1986 SDWA, EPA was required to establish maximum contaminant level goals (MCLGs) and promulgate National Primary Drinking Water Regulations (NPDWRs) for 83 contaminants, including sulfate. EPA proposed alternative levels of 400 mg/L and 500 mg/L for the MCLG for sulfate on July 25, 1990 (55 FR 30370). However, EPA deferred promulgation of an enforceable sulfate standard in order to identify an implementation approach which was tailored to the target populations. The SMCL guideline of 250 mg/L remains in place. 40 CFR 143.3.

On December 20, 1994 (59 FR 65578), EPA reproposed an MCLG and MCL for sulfate of 500 mg/L. The proposal contained four alternate compliance options designed to allow flexible implementation. EPA had not issued a final enforceable MCL for sulfate when Congress amended the SDWA in 1996.

The SDWA, as amended in 1996, provides specific authority as to sulfate. The statute directs EPA and CDC to jointly conduct a study to establish a reliable dose-response relationship for the adverse health effects from exposure to sulfate in drinking water, including effects on sensitive subpopulations. The SDWA also directs EPA to include sulfate among the five or more contaminants for which the Agency will determine by August, 2001 whether or not to regulate. Sulfate is one of the 50 chemical and 10 microbiological contaminants/contaminant groups included on the Drinking Water Contaminant Candidate List (CCL) published on March 2, 1998 (63 FR 10273). The CCL list is the primary source of priority contaminants for the Agency's drinking water program. Contaminants for priority drinking water research, occurrence monitoring, and guidance development, including health advisories, will also be drawn from the CCL.

IV. Health Effects From Exposure to High Levels of Sulfate in Drinking Water Study

Through an interagency agreement, EPA and CDC jointly conducted a study to establish a reliable dose-response relationship for health effects from exposure to sulfate and to examine the effects in sensitive subpopulations of infants and transients (i.e., tourists, hunters, students, and other temporary visitors). EPA's role in the ''Health Effects from Exposure to High Levels of Sulfate in Drinking Water Study'' (''Sulfate Study'') included participation in planning sessions on study design and execution and in meetings to discuss progress and preliminary results, as well as review of draft documents and the draft Sulfate Study report. This section provides a brief summary of the Sulfate Study report. (For a copy of the report, see section **FOR FURTHER INFORMATION** above.)

The objective of the study was to provide additional information regarding whether sensitive populations (infants and travelers) may be adversely affected by sudden exposure to drinking water containing high levels of sulfate. Specifically, CDC researchers designed a field investigation to recruit 880 infants naturally exposed to high levels of sulfate in the drinking water provided by public water systems and an experimental trial of exposure in adults.

CDC researchers planned a prospective cohort study of infants born in geographic areas with naturally occurring high levels of sulfate in the drinking water provided by public water systems in New Mexico, South Dakota, and Texas. Infants were to be enrolled at birth and followed for four weeks to determine if there was an association between exposure to drinking water containing varying levels of sulfate and reported cases of diarrhea.

CDC researchers conducted a pilot study of the planned recruitment methods and study instruments in four counties in South Dakota with high levels of sulfate in the drinking water provided by the public water systems. Because the CDC researchers experienced recruiting problems during the pilot study, they developed a self-administered questionnaire (SAQ) to examine tap water use. The questionnaires were provided to all women who received care during a two-week period from one of 32 Women, Infants and Children (WIC) clinics in New Mexico, South Dakota, and Texas. The clinics were located in geographic areas with a range of sulfate levels (from less than 100 mg/L to greater than 1000 mg/L) in the drinking water provided by public water systems. The SAQ asked questions about the source of the women's home tap water, what mothers of infants less than or equal to 3 months old were currently feeding their babies, and how pregnant women planned to feed their new infants.

To determine how many of the 1388 women who completed the SAQ would have been eligible to participate in the study based on the drinking water source and use criteria, the CDC researchers examined the responses of the 1164 women (84%) who received their tap water from public water systems and who did not have filters on their home taps. Of the women who use or planned to use infant formula mixed with water, most (80%) used or planned to use water other than tap water, leaving only 74 infants who were or would be exposed to tap water with equal to or greater than 250 mg/L of sulfate. These results are consistent with the findings during the pilot study and indicate that only a very small number of women who live in areas with high levels of sulfate in the tap water provided by public water systems plan to give this water to their infants.

The other population potentially sensitive to abrupt exposure to high levels of sulfate in drinking water is transient adults (students, visitors, hunters, etc.). To study the effects in adults of suddenly changing drinking water sources from one that has little or no sulfate to one that is high in sulfate, CDC researchers conducted an experimental study involving volunteers from Atlanta, Georgia, including CDC employees and employees at the EPA Region IV office. Volunteers were randomly assigned to one of five sulfate exposure groups (i.e., 0, 250, 500, 800, or 1200 mg/L sulfate from sodium sulfate in bottled drinking water) and were provided with bottled drinking water for six days. The bottled water for days 1, 2, and 6 contained plain water, while the bottles for days 3 through 5 contained water with added sulfate. Volunteers were blinded to the level of sulfate in their drinking water.

One hundred and five study participants were divided among the dose groups as follows: 24 received 0 mg/L sulfate; 10 received 250 mg/L sulfate; 10 received 500 mg/L sulfate; 33 received 800 mg/L sulfate; and 28 received 1200 mg/L sulfate. CDC researchers analyzed the number, consistency, and volume of bowel movements recorded each day by study participants. There were no statistically significant differences in the bowel movements among the groups on days 3,

4, 5, or 6. There were also no statistically significant differences in the bowel movements reported when comparing days 1 and 2 (the days when there was no sulfate in the water) with days 3, 4, and 5 within each dose group.

To examine the data for a trend toward increased frequency of reports of diarrhea with increased dose of sulfate, CDC researchers included the dose as an ordinal variable in a logistic regression model of osmotic diarrhea. There was no statistically significant increase in reports of diarrhea with increasing dose (one-sided $p = 0.099$).

The overall purpose of these studies was to examine the association between consumption of tap water containing high levels of sulfate and reports of osmotic diarrhea in susceptible populations (infants and transients). EPA and CDC were unable to conduct a study of infants because the researchers could not identify enough exposed individuals from which to draw a study population. The results of the SAQ indicated that more than half of the pregnant women who completed the survey planned to breast-feed their infants. Of those who planned to use formula mixed with water, most did not plan to use tap water to mix the formula. In the experimental trials with adult volunteers, CDC researchers did not find an association between acute exposure to sodium sulfate in tap water (up to 1200 mg/L) and reports of diarrhea.

V. Sulfate Workshop

As a supplement to the Sulfate Study and literature review, CDC, in coordination with EPA, convened an expert workshop, open to the public, in Atlanta, Georgia on September 28, 1998, whose members reviewed the available literature and the Sulfate Study results, and provided their expert opinions in response to a series of questions about the health effects from exposure to sulfate in drinking water. The following are the questions and summaries of the discussion (for the complete Sulfate Workshop summary, see section **FOR FURTHER INFORMATION** above.):

(1) Do reported studies suggest that a certain sulfate level would not be likely to cause adverse effects? Existing data do not identify the level of sulfate in drinking water that would be unlikely to cause adverse human health effects. The panel members noted that the available published literature included reports that piglets in experimental feeding trials and some people experience a laxative effect when consuming tap water containing from 1,000 to 1,200 mg/L of sulfate (as sodium sulfate). However, none of the studies found an increase in diarrhea, dehydration, or weight loss.

(2) Does the literature support acclimatization or adaptation (what process and time frame does it take)? Based on biologic plausibility and anecdotal reports, evidence indicates that people acclimate to the presence of sulfate in drinking water. In addition, serum sulfate levels are high (compared to adults) in human fetuses and neonates (to support rapid growth and development). However, data describing acclimation and the changes in sulfate metabolism during growth and development are limited.

(3) Can an infant study be done for dose-response anywhere in the U.S. or Canada? The difficulty of locating a population of women feeding their infants formula mixed with unfiltered tap water containing high levels of sulfate hinders the completion of a dose-response study in infants. A study using neonatal pigs could assess a dose response for both magnesium and sodium sulfates.

(4) Is there enough scientific evidence of adverse health effects from sulfate in drinking water to support regulation? [Congress directed EPA to use the best available science to set drinking water goals and regulations.] There is not enough scientific evidence on which to base a regulation, but panelists favored a health advisory in places where drinking water has sulfate levels of 500 mg/L or higher.

VI. Next Steps on Sulfate in Drinking Water Regulatory Activities

EPA is very interested in receiving written comments on the two documents being made available with today's notice. EPA will be further evaluating the two documents referenced in today's notice, analyzing all public comments on the present documents, reviewing all comments on its previously proposed National Primary Drinking Water Regulation (NPDWR) for sulfate (December 20, 1994; 59 FR 65578), and reviewing any other pertinent information that could have a bearing on its decision of whether or not to regulate sulfate as a NPDWR. In so doing, EPA will be evaluating whether or not the statutory tests provided at Section 1412(b)(1)(A) of SDWA for proceeding with such regulation are met:

(1) ''* * * the contaminant may have an adverse effect on the health of persons;

(2) The contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern; and

(3) In the sole judgment of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for person served by public water systems.''

In making this determination, EPA will review, in addition to the dose-response data and information described in today's notice, a host of applicable risk management factors, including, but not limited to: occurrence data on concentrations of sulfate in public water systems; information relative to treatment technologies (particularly, technologies applicable to small public water systems); availability and costs of analytical methods for sulfate; and overall costs and benefits attributable to any likely rule.

Two principal outcomes of this evaluation are possible. The Agency could decide to proceed with a NPDWR for sulfate. In this case, EPA would be required, in accordance with Section 1412(b)(1)(E), to propose a regulation within 24 months after the determination to regulate and issue a final regulation within 18 months after proposal. Alternatively, the Agency could decide not to regulate sulfate as a NPDWR. Such a finding would be considered final Agency action and would be subject to judicial review. Section 1412(b)(1)(B)(ii)(IV). In either case, EPA's rationale for making a determination relative to sulfate would need to be documented and available for public comment. Section1412(b)(1)(B)(iii). It is important to recognize that a decision not to regulate does not prohibit other control actions short of a NPDWR. These other actions could include a National Health Advisory or Consumer Advisory, that would indicate the Agency's view of safe levels of sulfate in drinking water and provide guidance to public water systems and to States that might want to develop drinking water regulations for sulfate.

The Agency will continue to use a variety of means to conduct outreach relative to sulfate and to communicate information about sulfate including the Office of Ground Water and Drinking Water's (OGWDW) web site (http://www.epa.gov/safewater), possible additional **Federal Register** notices, and possible future stakeholder meetings.

Dated: February 5, 1999.

Dana D. Minerva,

Acting Assistant Administrator for Water.

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federal register

Thursday
February 11, 1999

Part IV

Environmental Protection Agency

40 CFR Parts 9 and 370

Emergency Planning and Community Right-to-Know Programs; Amendments to Hazardous Chemical Reporting Thresholds for Gasoline and Diesel Fuel at Retail Gas Stations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 370

[FRL–6300–5]

RIN 2050–AE58

Emergency Planning and Community Right-to-Know Programs; Amendments to Hazardous Chemical Reporting Thresholds for Gasoline and Diesel Fuel at Retail Gas Stations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In today's final rule, EPA is raising the thresholds that trigger Material Safety Data Sheet (MSDS) reporting and annual chemical inventory reporting under sections 311 and 312 of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), for gasoline and diesel fuel stored entirely underground at retail gas stations that comply with requirements for underground storage tanks (USTs). Today's final rule promulgates new threshold levels of 75,000 gallons for gasoline and 100,000 gallons for diesel fuel. These new thresholds will relieve most retail gas stations from reporting gasoline and diesel fuel under EPCRA. The change is intended to reduce reporting burdens while preserving the important public health and safety benefits of the hazardous chemical reporting requirements.

EFFECTIVE DATE: February 11, 1999.

ADDRESSES: Copies of materials relevant to this rulemaking are contained in the CERCLA Docket Office—Docket Number 300RR–IF1, 1235 Jefferson Davis Highway, Crystal Gateway #1, First Floor, Arlington, VA 22202. The docket, which contains the administrative record for 40 CFR part 370, is available for inspection between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays. You can make an appointment to review the docket by calling 703/603–9232. You may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, you will be charged an administrative fee of $25 and a charge of $0.15 per page for each page after 266. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: The RCRA/UST, Superfund, and EPCRA Hotline (the Hotline) at 800/424–9346 (in the Washington, DC metropolitan area, contact 703/412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800/535–7672 (in the Washington, DC metropolitan area, 703/412–3323). Also contact John Ferris or Meg Victor, Chemical Emergency Preparedness and Prevention Office (CEPPO), MC 5104, U.S. EPA, 401 M Street SW, Washington, DC 20460, 202/260–4043 or 202/260–1379, respectively. You may wish to visit the CEPPO Internet site at www.epa.gov/ceppo.

SUPPLEMENTARY INFORMATION: The contents of the **SUPPLEMENTARY INFORMATION** section of today's preamble are:

I. Entities Affected by This Rule
II. Introduction
  A. Statutory Authority for This Rulemaking
  B. Background of this Rulemaking
III. Discussion of the Final Rule
  A. General Discussion
  B. Changes to the Proposal
IV. Discussion of Public Comments Received on the Proposal
  A. Access to Right-to-Know Information on Retail Gas Stations
  B. Knowledge of Locations and Hazards at Retail Gas Stations
  C. Need for Information on Gas Stations for Emergency Planning and Response
  D. Relationship of This Rule to the Underground Storage Tank Program
  E. Effect of This Rule on the Funding of State and Local Programs
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  G. Alternative Thresholds for Gasoline and Diesel Fuel
  H. Zero Threshold for Reporting in Response to Requests for Information
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  J. Effect of This Rule on the Regulatory Burden to Emergency Planners and Industry
  K. Thresholds for Other Facilities/Chemicals
  L. Gasoline and Diesel Fuel Thresholds in Gallons Rather Than Pounds
  M. Defining Gasoline and Diesel Fuel
  N. ''Retail Gas Station'' Definition
V. Regulatory Analysis
  A. Executive Order 12866
  B. Executive Order 12875
  C. Executive Order 12898
  D. Executive Order 13045
  E. Executive Order 13084
  F. Regulatory Flexibility Act
  G. Paperwork Reduction Act
  H. Unfunded Mandates Reform Act
  I. National Technology Transfer and Advancement Act
  J. Congressional Review Act

I. Entities Affected by This Rule

Two general categories of entities are affected by this rule. These categories are industry and state, local, and tribal governments. Within these general categories the rule affects numerous entities, including:

Category	Examples of potentially regulated entities
Industry	Retail gas stations.
State, Local, and Tribal Governments	State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), and fire departments receive the information provided under EPCRA sections 311 and 312.

This table is not exhaustive, but rather it provides a guide for readers affected by this action. To determine whether this action affects your facility, you should carefully examine section 370.20 in today's rule, which explains the applicability of this rule. If you have questions regarding the applicability of this action to a particular entity, consult the Hotline or the people listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Introduction

A. Statutory Authority for This Rulemaking

This final rule is issued under the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), which was enacted as Title III of the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99–499), (SARA).

B. Background of This Rulemaking

EPCRA establishes a program to (1) encourage state and local planning for responding to releases of hazardous chemicals and to (2) provide the public, local governments, fire departments, and other emergency officials with information concerning chemical releases and the potential chemical risks in their communities. EPCRA section 311 requires facilities that have hazardous chemicals above specified thresholds to provide either MSDSs for

those chemicals or a list of those chemicals to their State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC), and local fire department. (For purposes of brevity in this document, the term ''SERC'' is meant to include Tribal Emergency Response Commissions (TERCs)). Under EPCRA section 312, these facilities must also report annually to the SERC, LEPC, and local fire department on the quantities and locations of hazardous chemicals they have on site above specified thresholds. Hazardous chemicals are those that meet the criteria developed by the U.S. Occupational Safety and Health Administration (OSHA) (except as provided in EPCRA 311(e)). EPA estimates that approximately 850,000 facilities are subject to reporting under EPCRA sections 311 and 312.

Facilities must report under section 312 either Tier I or Tier II inventory information. Tier I inventory information is the minimum information that facilities must report to comply with section 312, and includes information on the general types and locations of hazardous chemicals at the facility. Tier II inventory information is more specific information on amounts and locations of hazardous chemicals at the facility. A facility can choose to report Tier II inventory information, and must report it if requested by the SERC, LEPC or fire department, or if a state or local law requires it.

On October 15, 1987 (52 FR 38344) and July 26, 1990 (55 FR 30632), EPA published final rules setting reporting requirements and threshold quantities for reporting under EPCRA sections 311 and 312. A facility must report on a hazardous chemical only if at any time during the prior year it had a quantity of the chemical equal to or greater than the threshold. For extremely hazardous substances (EHSs) (listed in 40 CFR part 355), the threshold is the lesser of 500 pounds or the threshold planning quantity listed in 40 CFR part 355. For all non-EHS hazardous chemicals, the threshold quantity has been 10,000 pounds (today's rule changes the 10,000 pound threshold in certain situations for gasoline and diesel fuel, which are non-EHS hazardous chemicals). However, if the LEPC requests MSDSs or the SERC, LEPC or fire department requests inventory information from a facility, the threshold for reporting in response to requests is zero (as established in the October 15, 1987 rule, 52 FR 38365). In other words, a facility with any quantity of a hazardous chemical is required to provide this information upon request by a SERC, LEPC or fire department.

On June 8, 1998 (63 FR 31267), EPA proposed raising the thresholds for gasoline and diesel fuel stored entirely underground at retail gas stations in compliance with the underground storage tank (UST) regulations. EPA proposed the higher thresholds because input from stakeholders and the experience gained through the first 10 years of EPCRA implementation indicated that emergency responders and the public are generally aware of the hazards of gasoline and diesel fuel and know the locations of retail gas stations. Therefore, nationwide annual reporting for these operations would not be necessary to meet the objectives of EPCRA sections 311 and 312. The proposed thresholds would provide relief from annual reporting for approximately 193,000 retail gas stations. The proposal gave the public 90 days to comment.

Today, EPA is adopting the proposed thresholds of 75,000 gallons for gasoline (all grades combined) and 100,000 gallons for diesel fuel (all grades combined) when these fuels are stored entirely underground at retail gas stations that are in compliance with the UST requirements.

EPA proposed other changes in the June 8, 1998, notice in addition to raising the gasoline and diesel fuel reporting thresholds. At this time the Agency has not reached a final decision on these other proposed changes, and they are not addressed in this rule.

III. Discussion of the Final Rule

This section of the notice provides a brief summary of the final rule, including the Agency's rationale for promulgating the rule and some issues involved in this rulemaking. The following section in this notice, which is called ''Discussion of Public Comments Received on the Proposal,'' provides a summary of the public comments received on the proposal, and of the Agency's responses to the comments. If you are interested in a more detailed discussion of the rule, the Agency's rationale, and the issues involved in the rulemaking, you should read the ''Discussion of Public Comments Received on the Proposal'' section in this notice. You can review an even more detailed summary of the public comments and the Agency's responses, entitled ''Comment Response Summary: EPCRA Sections 311–312 Proposal to Raise Reporting Thresholds for Gasoline and Diesel Fuel,'' which is available from the CERCLA Docket Office in docket number 300RR–IF1 (for the address of the docket office, see the **ADDRESSES** section in this notice).

A. General Discussion

EPCRA sections 311(b) and 312(b) give EPA authority to establish threshold quantities for the reporting of hazardous chemicals. These statutory provisions give EPA discretion to base the thresholds on classes of chemicals or categories of facilities.

Today's final rule amends 40 CFR 370.20, which contains the applicability provisions for the hazardous chemical reporting requirements under EPCRA sections 311 and 312. Section 370.20 is amended to provide new threshold levels for gasoline and diesel fuel at retail gas stations (subject to certain criteria as discussed below), and to provide a definition for ''retail gas station.'' Section 370.20 is also reformatted to make it easier to understand the requirements.

For gasoline and diesel fuel, when stored entirely underground at a retail gas station that is in compliance with all applicable UST requirements (40 CFR part 280 or requirements of the state UST program approved by the Agency under 40 CFR part 281), the new minimum thresholds for reporting under EPCRA sections 311 and 312 are 75,000 gallons for gasoline and 100,000 gallons for diesel fuel. In order for a retail gas station to be eligible to apply the new thresholds for reporting for a given calendar year, the facility must have been in compliance with UST requirements at all times during that year. For purposes of this rule, EPA defines ''retail gas station'' as ''a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for motor vehicle use on land.'' This rule is effective beginning with the 1998 calendar year reporting, which is due on or before March 1, 1999.

Over the years since EPCRA was enacted, EPA has heard from many stakeholders that the section 311 and 312 reports for gasoline and diesel fuel from retail gas stations are unnecessary for emergency planning and community right-to-know purposes. Stakeholders have pointed out that the public and emergency planners and responders are generally aware of the locations of gas stations and of the hazards of gasoline and diesel fuel, without the need for EPCRA reporting. Further, they have pointed out that some of the information reported by retail gas stations under EPCRA sections 311 and 312 duplicates some of the information already reported under UST requirements. EPA has evaluated this issue, and believes that section 311 and 312 reporting is not warranted nationwide, for gasoline and diesel fuel stored entirely underground

at retail gas stations that are in compliance with the UST requirements.

As discussed in EPA's June 8, 1998, proposed rule, the Agency believes that gasoline and diesel fuel, when stored entirely underground at retail gas stations that are in compliance with UST requirements, present a special situation for which separate reporting thresholds under EPCRA sections 311 and 312 are warranted. Factors contributing to this special situation, and which EPA considered in establishing the higher reporting thresholds, include: (1) The public and local emergency officials are generally familiar with the location of retail gas stations, are aware that these facilities have gasoline and diesel fuel, and can typically discern the general storage location of the gasoline and diesel fuel at the facility; (2) the public and local emergency officials generally are aware of the hazards associated with gasoline and diesel fuel; (3) retail gas stations typically store gasoline and diesel fuel in tanks that are entirely underground, which generally mitigates the risk of catastrophic release; and (4) underground storage tanks are regulated under the Underground Storage Tank (UST) program of the Resource Conservation and Recovery Act (RCRA), so a comprehensive regulatory program is in place that establishes standards for the safe performance and operation of USTs, including a requirement to notify government agencies of the presence of such tanks. Although each of these factors alone wouldn't necessarily warrant separate higher thresholds, in combination these factors present a special situation for gasoline and diesel fuel stored at retail gas stations. For these reasons, EPA has raised the threshold levels for reporting under EPCRA sections 311 and 312, for gasoline and diesel fuel stored entirely underground at retail gas stations that are in compliance with UST requirements. The new threshold levels will relieve retail gas stations that have typical quantities of gasoline and diesel fuel from routinely reporting these fuels under EPCRA. Gas stations having unusually large inventories will continue to report their gasoline and diesel fuel.

Although EPCRA section 311 and 312 reporting will not be required nationwide for gasoline and diesel fuel stored at retail gas stations meeting the criteria in this rule, some state or local governments may want such reporting. For example, some state or local agencies may find it convenient for emergency planning purposes to receive information on retail gas stations reported annually on an inventory form. State or local emergency officials who want to obtain this information can still receive it under EPCRA regulations upon request, because this rule does not amend the threshold for reporting in response to a request, which is zero. See 40 CFR 370.20 for the zero threshold provision. Those state or local governments that want retail gas stations to report routinely can also establish state or local laws with lower reporting thresholds than the new federal thresholds promulgated today.

In addition to hazardous chemical reporting, state or local emergency officials may also be able to obtain information on retail gas stations from their state UST offices and other sources, such as telephone listings, chambers of commerce, or trade associations. EPA believes that communications between local emergency planners and facility owners or operators need not be restricted to EPCRA section 311 and 312 reporting.

In establishing new EPCRA sections 311 and 312 reporting thresholds for gasoline and diesel fuel, EPA seeks to strike a balance between the value of information generated for the public and emergency planners and responders, and the burden of generating that information. EPA believes that excluding the majority of retail gas stations from the requirement to report routinely under EPCRA sections 311 and 312 will promote a more manageable EPCRA program, while still protecting the public health and safety of individuals in the community and emergency response officials. Retail gas stations are a large portion of the regulated community under EPCRA sections 311 and 312. Relieving the majority of retail gas stations from routine EPCRA reporting will reduce the quantity of paperwork that SERCs, LEPCs and fire department file, allowing them to focus their resources on other facilities. Since information on the chemical hazards at retail gas stations is already generally known, and can be accessed by means other than EPCRA reporting, emergency planning and response activities will not be impaired.

In addition to the new threshold levels for gasoline and diesel fuel under EPCRA sections 311 and 312, EPA's June 8, 1998, notice proposed other changes to the regulations at 40 CFR parts 355 and 370. At this time, the Agency is only finalizing the new thresholds for gasoline and diesel fuel at retail gas stations. The Agency has not reached any decision on any other of the changes proposed in the June 8 notice. The Agency also has not reached any decision on any other issues that arose in the public comments on the June 8 notice, including new thresholds for gasoline and diesel fuel stored at facilities other than retail gas stations, or new thresholds for other types of fuels.

Today's rule becomes effective upon publication in the **Federal Register**. The Administrative Procedure Act (APA) generally requires that a rule not become effective until at least 30 days after its publication. See 5 U.S.C. § 553(d). The APA exempts from this requirement a rule ''that grants or recognizes an exemption or relieves a restriction.'' Today's rule provides relief from routine EPCRA reporting on gasoline and diesel fuel to all qualifying gas stations. Therefore the rule qualifies for the effective date exemption provided by the APA.

B. Changes to the Proposal

Plain Language Format

On June 8, EPA proposed to re-write and reorganize all of the regulations at 40 CFR parts 355 and 370 in ''plain language'' format, to make the regulations easier to understand and to use. EPA is not finalizing the proposed ''plain language'' regulatory language at this time. The final rule published today, which amends 40 CFR 370.20, is written in a format consistent with the current language in the CFR. Therefore, the final regulatory language raising the gasoline and diesel fuel thresholds is in a format different from that of the proposed language. Although today's rule is not written in the ''plain language'' format that was proposed in the June 8 notice, EPA has reorganized section 370.20 to make it easier to understand. While all of section 370.20 has been reorganized, the only substantive regulatory changes that EPA has made to that section are the new gasoline and diesel fuel thresholds. When EPA promulgates 40 CFR parts 355 and 370 in ''plain language'' format, today's rule will be reformatted accordingly.

Definition of Retail Gas Station

For the purposes of today's rule, EPA defines ''retail gas station'' as ''a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for motor vehicle use on land.'' This definition is added to 40 CFR section 370.20. The final definition published today is different from the proposed definition in several ways, as discussed below.

EPA's final definition of ''retail gas station'' does not explicitly include convenience stores, although the proposed definition included them specifically. Any convenience store that is a ''retail facility engaged in selling

gasoline and/or diesel fuel principally to the public'' is included in EPA's definition of ''retail gas station.'' EPA has chosen to promulgate a broad definition of ''retail gas station'' for the purpose of this rule, rather than listing specific facilities such as truck stops or convenience stores that retail gasoline, to avoid excluding other facilities by implication.

EPA has added the phrase ''for motor vehicle use on land'' to the definition of ''retail gas station'' as it was published in the proposed rule. The Agency added this phrase to clarify that gas stations in marinas and airports that sell fuel for boats or airplanes are not intended to be included in the definition of ''retail gas station'' for the purposes of this rule at this time.

EPA has added ''and/or diesel fuel'' to the definition to clarify that ''retail gas station'' includes those facilities that sell diesel fuel primarily to the public.

EPA changed the phrase ''retail gasoline facility principally engaged in selling gasoline to the public,'' to ''retail facility engaged in selling gasoline and/or diesel fuel principally to the public,'' in the final definition because the proposed definition might have led to interpretations that were more narrow than the Agency's intended meaning of the term. EPA made this change to clarify that a facility's primary sales need not necessarily be of gasoline or diesel fuel in order to be considered a ''retail gas station'' for purposes of this rule. In other words, the facility does not have to make the majority of its sales in gasoline or diesel fuel. However, the majority of the facility's sales of gasoline and/or diesel fuel must be to the public, to be considered a ''retail gas station'' for purposes of this rule.

Compliance With UST Requirements

In EPA's proposed rule, the new gasoline and diesel fuel thresholds applied only to gasoline or diesel fuel ''at a retail gas station, when stored in tanks entirely underground and in compliance with the UST regulations at 40 CFR part 280 * * *'' The final rule language, however, limits applicability of the new thresholds to gasoline or diesel fuel ''that was in tank(s) entirely underground, at a retail gas station that was in compliance at all times during the preceding calender year with all applicable Underground Storage Tank (UST) requirements (40 CFR part 280 or requirements of the state UST program approved by the Agency under 40 CFR part 281) * * *'' EPA made several clarifying changes to the proposed language, as discussed below.

First, the final rule language clarifies that to be eligible for the new gasoline and diesel fuel thresholds, a retail gas station must be in compliance with either the Federal UST requirements at 40 CFR part 280 or, the state UST requirements of the program approved by EPA to operate in lieu of the Federal UST program. Second, the final rule clarifies that, in order for a retail gas station to be eligible to apply the new thresholds for reporting for a given calendar year, the facility must have been in compliance with UST requirements at all times during that year. And third, the final rule clarifies that an entire retail gas station must be in compliance with applicable UST requirements to apply the new thresholds.

If a retail gas station was temporarily out of compliance with UST requirements at any time during a particular calendar year, the facility is ineligible to use the new gasoline and diesel fuel thresholds for reporting for that calendar year. Instead, it must use the standard 10,000 pound hazardous chemical thresholds for any gasoline or diesel fuel it had during that year.

A retail gas station that was in compliance with UST requirements at all times during the preceding year—and is therefore eligible for that year to apply the new thresholds to their gasoline and diesel fuel that are stored entirely underground—applies gasoline and diesel fuel thresholds as follows:

—If the gas station had present at least 10,000 pounds of gasoline or diesel fuel stored in tank(s) *not entirely underground*, the gas station owner/operator must report the gasoline or diesel fuel. The owner/operator must report on the total gasoline or diesel fuel at the facility, regardless of whether it is stored aboveground or underground.

—If the gas station had present at least 75,000 gallons of gasoline or 100,000 gallons of diesel fuel stored in tank(s) entirely underground, the gas station owner/operator must report the gasoline or diesel fuel. The owner/operator must report on the total gasoline or diesel fuel at the facility, regardless of whether it is stored aboveground or underground.

—If the gas station had neither 10,000 pounds of gasoline or diesel fuel stored in tank(s) not entirely underground, nor 75,000 gallons of gasoline or 100,000 gallons of diesel fuel stored in tank(s) entirely underground, the gas station need not report any gasoline or diesel fuel.

If a retail gas station temporarily ceases operations for an entire calendar year, then for that year the facility does not fit EPA's definition of a retail gas station (for the purposes of this rule, a facility must be ''* * * engaged in selling gasoline and/or diesel fuel principally to the public * * *'' to be considered a retail gas station). Such a facility would be subject to the standard 10,000 pound reporting thresholds for gasoline and diesel fuel under EPCRA sections 311 and 312 for that calendar year, regardless of whether its gasoline and diesel fuel are stored entirely underground, and regardless of whether the facility was in compliance with UST requirements for that year. If a retail gas station ceases operations only for a portion of a calendar year the facility still may apply the new gasoline and diesel fuel thresholds (provided the facility meets all of the criteria in today's rule, including complying with UST requirements).

If a retail gas station closes any or all of its underground tanks either permanently or temporarily, the tanks must be closed in compliance with applicable UST requirements. A facility cannot apply the new gasoline and diesel fuel thresholds if it has closed underground tanks not in compliance with UST requirements.

A facility is not in compliance with the UST requirements (and therefore not eligible for the higher EPCRA thresholds of today's rule) when it first fails to meet the UST requirements. For example, if an owner or operator of a retail gas station has a tank system that was not in compliance with UST requirements that went into effect in December of 1998 (see 40 CFR 280.21(a) and 281.31), that owner or operator cannot apply the new thresholds in today's rule for the EPCRA section 312 report that is due March 1, 1999.

For more information on compliance with UST requirements and the relationship between this rule and the UST program see section IV.D in this preamble, which discusses the public comments received on this issue and the Agency's responses.

IV. Discussion of Public Comments Received on the Proposal

EPA received 164 comments related to the new thresholds for gasoline and diesel fuel from a variety of stakeholders, primarily state and local government, industry, and the public. The number of commenters in each group is as follows: industry, 20 commenters; SERCs and state government agencies, 17 commenters; LEPCs and local government agencies, 47 commenters; public interest groups, 2 commenters; individuals, 73 commenters; tribal governments, 2

commenters; professional organizations, 1 commenter; and Federal agencies, 1 commenter. A complete summary of all comments and EPA's responses to them is presented in ''Comment Response Summary: EPCRA Sections 311–312 Proposal to Raise Reporting Thresholds for Gasoline and Diesel Fuel,'' which is available from the docket (see **ADDRESSES** above). The major issues raised by the commenters and the Agency's responses to them are described below.

A. Access to Right-to-Know Information on Retail Gas Stations

Several commenters stated that the proposal decreases ready access to community right-to-know information concerning retail gas stations and their hazards. EPA believes that the public and emergency response officials have a general knowledge of the locations of retail gas stations in their communities, and a general knowledge of the hazards associated with gasoline and diesel fuel. Routine reporting under EPCRA is not necessary nationwide for the public and emergency planners and responders to have knowledge of gas stations. Retail gas stations prominently advertise the presence of gasoline and diesel fuel at their facilities, encourage the public to come on site, and often permit the public to dispense the gasoline and diesel fuel themselves.

Further, any SERC, LEPC, fire department, or member of the public that wants more specific information on retail gas stations may obtain it in several ways. First, this rule does not change the existing requirements for providing MSDSs and inventory information upon request. The SERC, LEPC or fire department having jurisdiction over a facility may ask a facility's owner or operator to submit inventory information, and the owner or operator must comply with such a request (the threshold is zero for reporting in response to such a request). Additionally, any person may obtain MSDS or inventory information with respect to a specific facility by requesting it (MSDS requests are made to the LEPC; inventory information requests are made to the SERC or LEPC). If the SERC or LEPC does not have the requested information, it must request the information from the facility. (However, in the case of a facility that doesn't store more than 10,000 pounds of the substance, the statute provides that a person's request for inventory information must include a statement of need, and the SERC or LEPC has discretion on whether to request the information from the facility. Note that the new higher thresholds for reporting for gasoline and diesel fuel don't affect this statutory 10,000 pound level.) Facilities must provide requested information to the SERC or LEPC making the request, and SERCs and LEPCs then must make the requested information available.

SERCs, LEPCs, fire departments, and members of the public also can obtain information on retail gas stations from other sources. They can contact their UST offices, or can take advantage of information available elsewhere in telephone listings, chambers of commerce, or trade associations to obtain information on gas stations in their planning areas. Finally, state or local governments that want to receive inventory information routinely from retail gas stations can set lower thresholds for gas and diesel fuel at retail gas stations under state or local laws.

In summary, the public can still receive information on gas stations from their SERCs or LEPCs. If those agencies do not have the requested information, generally they must request it from the facility and provide it to the person making the request. At the same time, EPCRA is not the only source of information on retail gas stations. The public can also obtain information on retail gas stations from other agencies, such as UST agencies.

EPA acknowledges that in some cases some information on retail gas stations may now be less readily available, but this does not justify nationwide the substantial burdens of routine reporting by retail gas stations. The purposes of EPCRA reporting are to provide information to state and local emergency officials for planning for chemical emergencies, and to provide information to the public on the potential chemical risks in their communities. Since information on retail gas stations is generally known to emergency responders and the public, and more specific information is available, the general purpose of EPCRA reporting is satisfied without the need for retail gas stations to report routinely.

The Agency recognizes that some SERCs, LEPCs or fire departments send EPCRA section 312 reporting packages to retail gas stations that have submitted section 312 reports for the previous reporting year. Sending such reporting packages to retail gas stations could be considered requesting information from specific facilities under EPCRA section 312, for which the reporting threshold is zero (see 40 CFR 370.20). Retail gas stations receiving such packages should contact the SERC, LEPC or fire department that sent the package, to determine if they are required to report.

B. Knowledge of Locations and Hazards at Retail Gas Stations

A number of commenters supported the proposed increases in reporting thresholds for gasoline and diesel fuel, asserting that the public and emergency responders are aware of the locations of retail gasoline stations independent of EPCRA reporting. Others emphasized that the public and emergency responders are knowledgeable about the hazards of gasoline and diesel fuel. However, a number of commenters disagreed and argued that the public and emergency responders are not aware of the locations or hazards associated with gasoline and diesel fuel.

EPA believes the public and emergency response officials already have a general knowledge of the locations of retail gas stations, and of the general storage locations for gasoline and diesel fuel at gas stations. Retail gas stations prominently advertise the locations of their facilities, and the presence of gasoline and diesel fuel at these facilities. The general storage location for the gasoline and diesel fuel can be determined by the location of the fuel pumps at a facility.

EPA further believes the public and emergency response officials already have a general knowledge of the hazards associated with gasoline and diesel fuel storage at retail gas stations. Gasoline and diesel fuel are common substances that are widely used by the public, and so are familiar to them. Further, routine reporting under EPCRA is not necessary to obtain more specific hazard information. Anyone requiring more specific hazard information on gasoline and diesel fuel (beyond the fire and explosion hazards that are already well known) may obtain it in several ways.

First, this rule does not change the existing requirements for providing upon request MSDSs and inventory information on gasoline and diesel fuel at gas stations—all individuals may obtain MSDS or inventory information with respect to a specific facility by requesting it (MSDS information is requested from the LEPC; inventory information is requested from the SERC or LEPC). Second, some facilities provide hazard labeling voluntarily at their fuel pumps. EPA encourages this practice, which makes some hazard information and warning immediately available to the consumer at the point of use. In addition, some MSDS information may be obtained from other sources—for example, some businesses post MSDSs for their products on the Internet. In summary, information on the hazards of gasoline and diesel fuel has been available, is well known, and

will continue to be available upon request without routine EPCRA reporting.

Several commenters described the hazards posed by gasoline and diesel fuel at retail gas stations and noted that the proposal did not eliminate these hazards. One commenter argued that by raising the threshold level EPA is suggesting that these facilities no longer pose a risk. A few organizations noted that petroleum-based substances are involved in a substantial number of chemical emergencies.

EPA recognizes that hazards exist at retail gas stations and does not suggest that state and local agencies stop planning for emergencies involving such facilities. State and local agencies set their own priorities for emergency planning, based on their assessment of local chemical risks and resources. However, EPA believes that routine reporting by retail gas stations is not necessary nationwide for emergency planners to plan for emergencies involving retail gas stations. The public and local emergency officials are generally familiar with the locations of gas stations, the gasoline and diesel fuel stored at gas stations, and the hazards of those products. EPA's objective is to find a sound balance between the burden of collecting information and the value of that information. As noted previously, state and local emergency officials who want to obtain this information can receive it upon request under EPCRA regulations (the threshold for reporting in response to a request is zero; see 40 CFR 370.20); they may be able to obtain information from their state UST offices; and they can require the information under state or local law and can consult available sources such as telephone listings and trade associations, for locations or other information on gas stations.

One commenter asked whether LEPCs can request information on components of gasoline that are hazardous, such as benzene or MTBE. If a SERC or LEPC specifically requests a facility to complete a Tier II report, the SERC or LEPC could specify that the facility report based on the components of the gasoline. However, the retail gasoline station may not know the concentration of the various constituents that make up gasoline because MSDSs are not required to contain this information.

Finally, several of the comments addressed the risk of ground water contamination. EPA recognizes that protecting groundwater is critical and understands that USTs have the potential to contaminate groundwater. However, the UST program is the regulatory program that provides for the protection of groundwater from leaking underground storage tanks. EPA's UST requirements (codified at 40 CFR part 280), as well as the requirements of state UST programs approved by EPA, establish standards for the safe performance and operation of USTs to protect groundwater.

C. Need for Information on Gas Stations for Emergency Planning and Response

Many SERCs, LEPCs, and fire departments commented that they do not need inventory information reported on retail gas stations, and that managing the gas station data takes limited resources away from more hazardous, less familiar situations. With higher Federal thresholds for gasoline and diesel fuel, SERCs, LEPCs and fire departments still have the flexibility to obtain the information that they need from gas stations for emergency planning and community right-to-know purposes, while those that do not want or need such information can implement a program that directs their resources elsewhere. Because SERCS, LEPCs and fire departments receive only the information that they need, this rule reduces their burden in administering EPCRA as well as minimizing the burden on retail gas stations.

Many other commenters, primarily LEPCs and SERCs, addressed the need to continue current reporting thresholds for retail gas stations to ensure the continued availability of information needed for emergency planning and response. Commenters mentioned a need to receive notice of changes in ownership or contact information, and a need for specific information on locations and amounts stored at retail gas stations.

EPA believes that local emergency planners can include gas stations in their emergency plans without the need for nationwide annual reporting under EPCRA sections 311 and 312. Local emergency officials are generally familiar with the location of retail gas stations, are aware that gasoline and diesel fuel are stored at gas stations, and can discern the general storage location of the gas and diesel fuel at gas stations. Also, as noted above, they can obtain the information from sources other than EPCRA reporting.

Some comments supported the use of current inventory reporting to enable local agencies to track changes in emergency contact information, including 24-hour emergency contacts. EPA does not believe that the need by some SERCs, LEPCs, and fire departments for 24-hour emergency contact reporting justifies retaining EPCRA sections 311 and 312 reporting nationwide for gas and diesel fuel at retail gas stations. State or local governments that need the 24-hour emergency contact information may obtain it from retail gas stations by requesting inventory information under EPCRA 312; they could tailor their requests to require only the emergency contact information (by indicating in a request that the respondent may comply with the request by providing only the specified information). State or local governments can also require gas stations to report emergency contact information under state or local law. Other means exist for obtaining contact information, including state UST offices, fire inspection reports, chamber of commerce information, telephone listings, or trade associations.

Many states collect annual fees or insurance premiums for registered USTs, so the potential exists for an annual update of emergency contact information at the time that the fees are submitted. EPA encourages EPCRA and UST offices to work together toward obtaining 24-hour emergency contact information from gas stations for those EPCRA programs desiring this information.

Some comments suggested that EPA still require that retail gas stations report annually some basic information, such as owner or operator name and emergency contacts. One commenter suggested that full reporting be required on a specified interval, such as every three years. Several commenters suggested that EPA require one-time-only reporting for retail gas stations, with additional reports only if substantive information changes or the facility goes out of business. Another commenter suggested that gas stations submit an annual certification that they qualify for the higher thresholds.

EPA has determined that routine reporting under EPCRA sections 311 and 312 is not needed nationwide for gasoline and diesel fuel stored at retail gas stations under the criteria set forth in the rule. State and local governments, however, may choose to implement state or local laws to tailor EPCRA programs to suit their own needs and resources. For example, state or local governments could require gas stations to report less frequently than yearly, make an ''initial'' or ''one-time-only'' notification, or submit annual certifications under state or local laws. EPA believes that it is better to allow state and local agencies to decide whether this information is needed from retail gas stations and have them seek the information through state or local statutes or other means.

Gas stations already must make an initial notification for their gasoline and diesel fuel USTs under the Federal UST regulations (40 CFR part 280). This is a ''one-time-only'' notification such as that suggested by the commenters. EPA encourages coordination between UST program offices and EPCRA program offices to disseminate UST information to EPCRA agencies and the public. EPA expects that, as cooperative relationships develop between EPCRA program offices and UST program offices, access to UST information will increase.

A few commenters argued that the proposal weakens the relationship between LEPCs and fire departments and owners/operators of gas stations. One commenter feared that the proposed rule would cause confusion and make LEPCs look bad. EPA understands the importance of communications between LEPCs/fire departments and gas station owners/operators. LEPCs and fire departments can contact gas station owners/operators to maintain communications, and can (and many routinely do) conduct inspections in their local planning districts. Communications between LEPCs and retail gas stations need not (and ideally should not) be restricted to formal yearly reporting. EPA does not believe that EPCRA routine reporting under sections 311 and 312 is the most efficient way for the local agencies and retail gas stations to communicate.

D. Relationship of This Rule to the Underground Storage Tank Program

The new EPCRA thresholds apply only to gasoline and diesel fuel in tanks entirely underground at retail gas stations that comply with Federal UST requirements (40 CFR part 280) or, if applicable, requirements of the state UST program approved by the Agency under 40 CFR part 281. The UST program establishes standards for the safe performance and operation of USTs, and requires facilities to make UST notifications. Some of the information reported under UST duplicates some of the information reported under EPCRA, and can be valuable for emergency planning purposes.

States with UST programs approved under 40 CFR part 281 are authorized to administer their state UST program in lieu of the Federal program. State UST programs may be implemented by regulation or by statute. Approximately half of the states currently have approved state UST programs. All approvals and withdrawals of approvals are published in the **Federal Register**. Whether or not a state operates an approved UST program, UST notification forms are submitted to the state (or territory), not to EPA. Retail gas stations on Indian Lands must comply with the Federal UST requirements (40 CFR part 280).

EPA provides addresses and phone numbers for state and territorial UST contacts on the Internet at www.epa.gov/swerust1/states/statcon1.htm, and through the RCRA/UST, Superfund & EPCRA Hotline, at (800) 424–9346. Information about state UST program approval (including a list of approved states) may be accessed at www.epa.gov/swerust1/states/spa1.htm.

Free plain language publications are available to help people understand the Federal UST requirements. Such publications, for example ''Musts for USTs,'' are available through the RCRA/UST, Superfund & EPCRA Hotline, and at EPA's Office of Underground Storage Tanks (OUST) Internet site at www.epa.gov/oust.

Availability and Usefulness of UST Information

Some commenters expressed support for the proposal by saying that state UST databases can be used as a right-to-know resource. Others, however, commented that the UST reporting does not provide adequate emergency planning information, and therefore is not a proper substitute for EPCRA routine reporting.

The Federal UST regulations (40 CFR part 280) require the following information in the UST notifications: name, address, and phone number of the owner of the UST(s); address of the facility at which the UST(s) are located; name, title, and phone number of a contact person at the tank location; type of notification (for example, amended or subsequent); certification; tank information, including status of tank(s), estimated age, estimated total capacity, material of construction, internal protection, external protection, and piping; and substance currently or last stored in greatest quantity by volume. (There are additional information requirements for tank(s) installed after December 22, 1988.) Much of this information can be valuable for emergency planning purposes. In addition, many of the states require additional information from UST facilities, beyond the information required under the Federal regulations.

Furthermore, EPA does not intend that UST information will be the sole source of emergency planning information for retail gas stations. As discussed above, those emergency planners that want information from gas stations have a number of other options for obtaining information from those facilities.

A number of commenters also feared that UST information may not be readily accessible to LEPCs, emergency responders, and the public. Several commenters suggested that EPA make UST information more accessible or modify the UST form. Commenters suggested that the UST form should be submitted to EPCRA agencies to ensure that the UST data are available. One commenter asked whether EPA would collect UST data and make it available to EPCRA agencies. Another commenter suggested that underground storage tank rules should be modified to guarantee public access to UST information.

The states and territories receive UST notification forms. EPA sees no need to duplicate the collection of UST information and provide such information to state and local EPCRA agencies. It would be more efficient and would encourage working relationships if state and local emergency planners request UST information directly from state UST agencies. EPA also notes that a change to the UST regulations would be outside the scope of this rulemaking.

EPA understands that in the majority of states, UST information is currently not reported directly to LEPCs or other emergency planners and responders. The Agency encourages increased coordination between UST program offices and EPCRA program offices desiring information on retail gas stations, to improve communication of UST information to SERCs, LEPCs, and fire departments.

States may choose to combine the UST and EPCRA reporting forms and in fact are encouraged to do so, provided that all of the requirements for both programs are met. Any comprehensive form would need to satisfy the requirements for contents of submission, timing of submission, and recipients of the submission for both the UST and EPCRA programs. The preamble to the June 8, 1998, proposal (63 FR 31267) provides further guidance on this issue.

Although states may choose to collect and disseminate information on retail gas stations through their UST programs, EPA has determined that on a nationwide basis it is not necessary to require that gas stations report annually under EPCRA sections 311 and 312. EPA believes both the public and emergency responders are already aware of most of the information that is submitted under EPCRA sections 311 and 312 for gas stations, specifically the identity of the chemical stored and the hazards associated with the chemical.

Entirely Underground Tanks

Several organizations supported the proposal to increase reporting thresholds for gasoline and diesel fuel in entirely underground tanks. However, several other commenters argued that the phrase ''entirely underground tanks'' will cause confusion, because EPA's UST regulations also apply to partially underground storage tanks. A few commenters wrote that EPA should not limit the thresholds to ''entirely underground'' tanks. They noted that aboveground tanks are subject to fire protection standards and other rules, such as Spill Prevention, Control, and Countermeasures (SPCC) rules, that minimize environmental risk from such tanks. These commenters also stated that aboveground tanks pose less of a risk to groundwater.

The new EPCRA reporting thresholds for gasoline and diesel fuel at retail gas stations apply only to fuel stored in tanks that are entirely underground, because entirely underground storage of gasoline and diesel fuel offers an added level of protection from certain emergencies in comparison to aboveground storage. If an underground storage tank and piping holding gasoline or diesel fuel fails, releasing a large quantity of fuel, the fuel remains under the ground, away from air and ignition sources. Releases below ground can be detected by monitoring (required under UST regulations) so that emergency response action can be taken to recover the fuel and minimize contamination. By contrast, if an aboveground tank or pipeline fails, releasing a large quantity of gasoline or diesel fuel, the fuel will quickly spread and form a pool on the surface of the ground or on paved areas and evaporate, potentially exposing people to harmful vapors. Since a pool of fuel can mix with air, an explosion or large fire can occur if an ignition source is available. Further, aboveground tanks and piping are vulnerable to collision with vehicles, severe weather, and static discharge (lightning). For these reasons, the higher thresholds apply only to gasoline and diesel fuel when they are stored entirely underground.

The Federal UST regulations at 40 CFR 280.12 define an underground storage tank as any tank system that has over 10 percent of its volume underground. Because the UST program and the new EPCRA gasoline and diesel thresholds apply to different universes of tanks, the EPCRA rule cannot use the UST definition in promulgating the new reporting thresholds. Although this rule (codified in 40 CFR part 370) does refer to entirely underground tanks, it neither provides a definition of an underground storage tank nor changes the existing definition under the UST program.

Storage tanks that are entirely underground are included within the definition of UST and would be subject to the UST requirements. EPA has made compliance with the UST requirements an additional condition for applicability of the new gasoline and diesel fuel reporting thresholds under EPCRA.

One commenter argued that EPA should not cover aboveground tanks that are located far from populations. This comment is outside of the scope of this rulemaking. EPA also notes that EPCRA 311 and 312 provide access to hazardous chemical information in all covered facilities, and do not limit the information solely to chemicals that could affect the population outside the storage site boundaries. One important reason for this is that emergency responders use EPCRA information for planning for responses within the facility boundary.

Compliance With UST Requirements

Prior to this rule, retail gas stations had to report on gasoline and diesel fuel regardless of whether they complied with the UST requirements or whether their tanks were leaking. The new gasoline and diesel fuel thresholds provide an incentive to these facilities to comply with UST requirements. Simply being regulated under the UST program is not sufficient for applicability of the new gasoline and diesel fuel thresholds—the new thresholds only apply to gasoline and diesel fuel stored entirely underground at retail gas stations that are in compliance with Federal UST requirements (40 CFR part 280) or requirements of the state UST programs approved by EPA under 40 CFR part 281.

Many commenters agreed with EPA that compliance with RCRA's UST regulations minimizes the risk of accidental release of hazardous chemicals. All USTs must comply with regulations concerning: (1) Design, construction, installation and notification; (2) general operating requirements; (3) release detection; (4) release reporting, investigation, and confirmation; (5) release response and corrective action; (6) out of service USTs and closure; and (7) financial assurance (for USTs containing petroleum). Therefore, a comprehensive regulatory program (including notifications to government entities) is in place that establishes standards for the safe performance and operation of USTs. Limiting use of the new gasoline and diesel fuel thresholds to those facilities in compliance with the UST program assures that only those facilities less likely to face failure of their USTs are relieved from routine reporting under EPCRA sections 311 and 312.

A number of commenters asked EPA for clarification on issues related to how non-compliance with UST requirements affects the gas and diesel fuel thresholds. Commenters asked whether compliance with UST requirements includes compliance with state UST programs approved by EPA under 40 CFR part 281. Some commenters were concerned about who was responsible for determining that a facility was in compliance with the UST requirements; a few stated that LEPCs, SERCs, and fire departments did not have the resources or expertise to make such determinations. Commenters asked that EPA clarify whether temporary non-compliance affects eligibility for the higher thresholds.

Today's final rule clarifies that applicability of the new gasoline and diesel fuel thresholds is contingent upon compliance with Federal UST requirements (40 CFR part 280) *or*, if applicable, the requirements of the state UST program approved by EPA under 40 CFR part 281.

If a retail gas station is not in compliance with all applicable UST requirements at any time during a calendar year, it may not apply the new higher gasoline and diesel fuel thresholds for EPCRA reporting for that calendar year. If that retail gas station exceeded the 10,000-pound reporting threshold for gasoline or diesel fuel during that year, it is subject to EPCRA penalties if it does not properly report under EPCRA sections 311 and 312.

A facility is not in compliance with the UST requirements (and therefore not eligible for the higher EPCRA thresholds of today's rule) when it first fails to meet the UST requirements. For example, if an owner or operator of a retail gas station has a tank system that was not in compliance with UST requirements that went into effect in December of 1998 (see 40 CFR 280.21(a) and 281.31), that owner or operator can not apply the new thresholds in today's rule for the EPCRA section 312 report that is due March 1, 1999.

An entire retail gas station must be in compliance with all applicable UST requirements to apply the new thresholds. If one tank at a retail gas station is out of compliance with UST requirements then that facility may not apply the new gasoline and diesel thresholds, even if other tanks at the facility are in compliance with the requirements.

LEPCs, SERCs, and fire departments are not required to make the determination themselves on whether a facility is in compliance with UST requirements, but may obtain compliance information from state UST programs. State UST program databases are in general available to EPCRA agencies, although data quality, availability, and searchability vary from state to state. EPA believes that the information generated through the UST and EPCRA programs, both of which regulate the safe operation of retail gas stations, should be coordinated to reduce duplication of effort, and in pursuit of good government and sound public policy. EPA encourages both programs to more closely coordinate information sharing efforts at the state and local levels.

The fact that a retail gas station files an EPCRA section 311 or 312 report is not an admission that it is out of compliance with UST requirements. A facility may voluntarily submit its MSDS or hazardous chemical inventory information to local emergency planners.

A commenter asked how a decision in the plaintiff's favor in a citizen suit for violation of UST requirements at a retail gas station would affect the applicability of the new higher thresholds for gasoline and diesel fuel under EPCRA. If a court found a retail gas station out of compliance with UST regulations, that facility could not apply the new gasoline and diesel fuel thresholds for reporting for any calendar year during which the facility was out of compliance with such UST requirements.

E. Effect of This Rule on the Funding of State and Local Programs

EPA understands that some states generate funds for support of state or local EPCRA programs through fees collected from facilities that comply with section 312. Such states may lose revenue since the majority of retail gas stations will no longer report their gasoline and diesel fuel inventories due to EPA's new thresholds.

Some commenters in support of the proposal stated that funding should not be an issue in EPA's decision to promulgate the change in reporting thresholds for gasoline and diesel fuel. However, other organizations noted that lack of funding is an important issue for the proposed threshold changes.

The goals of reporting under EPCRA sections 311 and 312 are to provide information to the public on the hazardous chemicals present in their communities and to provide information for emergency planning. The EPCRA statute does not address the collection of fees for EPCRA reporting.

State and local governments establish fee programs under state or local laws and such programs are not attributable to this or other EPCRA rules.

Although EPCRA does not provide for annual Federal funds for state implementation of the EPCRA program, some Federal funds are available to support emergency planning and community right-to-know programs (for example, Hazardous Materials Emergency Preparedness Grants administered through the U.S. Department of Transportation).

F. State or Local Thresholds for Gasoline and Diesel Fuel

EPA's June 8 proposal explained that although the new gasoline and diesel fuel thresholds would provide relief from routine reporting under EPCRA, state and local governments always may choose to establish lower thresholds under their own laws. Some commenters requested that EPA not encourage states to set their own thresholds. They feared that the proposal would be ineffective in accomplishing the intended reduction in paperwork burdens, because states would use their threshold setting authorities to set lower gasoline and diesel fuel thresholds. One commenter suggested that EPA issue non-binding guidance to encourage states to use EPA's thresholds.

EPCRA section 321 specifically states that EPCRA does not preempt any state or local law. If a state or local government chooses to impose different reporting requirements (for example, different information, different thresholds) or fees to cover state or local costs, EPA has no authority to change these state rules. These state or local rules do not replace EPCRA requirements, but rather are in addition to the Federal reporting rules. States or local governments may elect to merge their requirements with EPCRA reporting (for example, by asking for additional information or requiring the submission of EPCRA forms for chemicals held at lower thresholds), but these state rules do not alter the basic requirements all covered facilities must meet to comply with EPCRA sections 311 and 312.

State and local governments have always had the authority to establish lower thresholds for reporting under state or local law. EPA merely points out that state or local governments have authority to set lower thresholds if this suits their emergency planning and community right-to-know needs. States and local governments have their own circumstances, needs, resources, and issues concerning emergency planning and community right-to-know.

Because many state and local entities do support EPA's proposal, EPA expects that many gas stations will see reporting burden relief. EPA believes that raising the reporting thresholds for gasoline and diesel fuel at retail gas stations will still achieve the goals of planning for chemical emergencies and providing right-to-know information (since the information is available elsewhere), while enabling all planners and responders to concentrate on the priorities and needs in their own communities.

One state agency commented that it is difficult to establish more stringent thresholds at the state level. Nevertheless, neither EPCRA nor other Federal laws prohibit states from using their own authorities to enact state or local laws establishing lower thresholds for reporting. Any substantive or procedural limitations that states impose upon their own authority to promulgate lower thresholds are matters of state and local laws. It is neither feasible nor appropriate for EPA to characterize the difficulty of state or local political decisions.

Any state or local government that wants to continue to receive gasoline and diesel fuel reporting from retail gas stations at a 10,000 pound threshold can do so by enacting state or local laws, or by using the authority to request information from facilities (for which the reporting threshold is zero; see 40 CFR 370.20).

G. Alternative Thresholds for Gasoline and Diesel Fuel

Several commenters supported the proposed threshold levels for gasoline and diesel fuel as appropriate. However, a number of commenters stated that the thresholds are arbitrary because they do not correspond to the inventory range values on the Tier II form or to an amount that could pose a threat as the result of a release. Other commenters stated that the proposal unfairly excludes the largest retail gas stations, even though these facilities meet the criteria described by EPA with regard to awareness of their hazards among the public and responders and coverage by UST regulations.

The new gasoline and diesel fuel thresholds promulgated in this rule are 75,000 gallons for gasoline and 100,000 gallons for diesel fuel. The Agency's intent is to establish new thresholds corresponding to amounts just higher than the typical total amounts of gasoline and diesel fuel held at retail gas stations, so that facilities with typical

inventories would be relieved from reporting. EPA based the new thresholds on data showing that the following were typical fuel capacities at retail stations: gas stations—approximately 32,000 gallons of gasoline overall (all grades combined), and approximately 8,000 gallons of diesel fuel overall; truck stops that retail fuel to the public—approximately 60,000 gallons of gasoline overall, and 90,000 gallons of diesel fuel overall. [See Memorandum to the Docket re: Gas Station Capacity and Universe. Dated October 8, 1997 (300RR–IF1–2–26) in Docket 300RR–IF1 to this rule.]

The majority of retail gas stations, including truck stops, will have gasoline and diesel fuel inventories below the new thresholds. However, facilities with unusually large inventories will exceed the thresholds and will continue to be subject to routine reporting under EPCRA sections 311 and 312. EPA believes that the public and emergency officials are generally aware of the approximate quantities stored at typical gas stations (including truck stops), so emergency planning can occur without the need for routine reporting nationwide. In contrast, because the public and emergency officials may not be aware of the amount stored at facilities with atypically large inventories, those retail gas stations are still subject to annual EPCRA reporting.

One commenter suggested that EPA adopt only one threshold for gasoline and diesel fuel, that of 100,000 gallons. EPA decided to distinguish between gasoline and diesel fuel to specify the thresholds because the typical amounts of gasoline and diesel fuel found at retail gas stations differ. The Agency believes that 75,000 and 100,000 gallons are the upper bound quantities for gasoline and diesel fuel respectively that are stored at typical retail gas stations. Retail gas stations with unusually large inventories of gasoline or diesel fuel are still required to report, since they store atypical amounts of gasoline and/or diesel fuel. Providing a single 100,000-gallon threshold for both gasoline and diesel fuel would extend the reporting exclusion to stations holding unusually large quantities of gasoline.

In addition, some commenters argued that EPA should regulate gasoline and diesel fuel under EPCRA in a manner consistent with the Spill Prevention, Control, and Countermeasures (SPCC) regulations at 40 CFR 112. Under the SPCC regulations, the capacity (for underground storage of oil, including gasoline and diesel fuel) that triggers the requirement for development of an SPCC plan is 42,000 gallons. Commenters argued that if the thresholds for gasoline or diesel fuel were to be raised, they should not be higher than 42,000 gallons.

EPA does not believe that the thresholds established for EPCRA sections 311 and 312 reporting need to be consistent with the Spill Prevention, Control, and Countermeasures (SPCC) program, because these programs serve very different purposes. The EPCRA reporting thresholds should be based on the purpose to be served by the information reported. The purpose of the SPCC program is to help prevent discharges of oil from certain aboveground and underground storage facilities. The SPCC program requires regulated facilities to prepare SPCC plans that address the facility's design, operation, and maintenance procedures established to prevent spills from occurring, as well as countermeasures to control, contain, clean up, and mitigate the effects of an oil spill that could affect navigable waters and adjoining shorelines. The SPCC reporting quantity was established commensurate with this purpose. In contrast, the purpose of EPCRA sections 311 and 312 reporting is to provide information to the public about the presence of hazardous chemicals in their community and to emergency planners and responders for emergency planning, prevention, and response. EPA believes that EPCRA's purposes are served by the threshold levels proposed in this rulemaking.

Further, the purpose of the increase in the EPCRA thresholds for gasoline and diesel fuel, when stored in tanks entirely underground in typical amounts at facilities that are in compliance with the UST program, is to exclude facilities where emergency response officials and the public are generally aware of the approximate gasoline and diesel fuel quantities stored at those facilities. Thus, the increased thresholds for retail gas stations will promote a more manageable EPCRA program while still providing the information needed to protect the public health and safety of individuals in the community and emergency response officials. The SPCC threshold proposed by commenters would not fully serve this purpose because it is too low. If EPA adopted the SPCC threshold, many retail gas stations that EPA intends to exclude would continue to routinely report on their gasoline and diesel fuel inventories under EPCRA, although emergency response officials and the public are generally aware of the approximate quantities stored at those facilities.

In addition, because EPA believes that the UST program offers equivalent protection to the SPCC program, EPA has proposed regulations (56 FR 54612, 54625, October 22, 1991) to exclude from SPCC coverage underground storage tanks (as defined in section 112.2 of the SPCC rule) currently subject to the technical requirements of the UST program in 40 CFR part 280. Thus, the SPCC threshold quantities would no longer be applicable to these tanks.

H. Zero Threshold for Reporting in Response to Requests for Information

EPCRA regulations provide that a facility owner or operator must submit an MSDS to the LEPC upon request, and must submit Tier II inventory information to the SERC, LEPC or fire department upon request (see 40 CFR 370.21(d) and 370.25(c)). The regulations also specify that the threshold for reporting in response to requests for MSDS or Tier II inventory information is zero. In other words, a facility with any quantity of a hazardous chemical is required to provide information upon request by the SERC, LEPC or fire department. In the preamble to the June 8 proposal, EPA pointed out that the zero threshold provision is a useful tool that any SERCs, LEPCs or fire departments who want information from retail gas stations can use to obtain such information.

Several commenters on the proposal discussed the zero threshold provision for reporting information in response to requests. A commenter stated that EPA must maintain the zero reporting threshold for requested information from retail gas stations. Another stated that maintaining the zero threshold will encourage states to require annual Tier II reporting, which will increase the burden on facilities (Tier II information is more comprehensive than Tier I information).

The zero threshold provision for reporting in response to a request for MSDS or Tier II inventory information has been in effect since October 15, 1987, when EPA promulgated a final rule establishing the reporting requirements under EPCRA sections 311 and 312 (52 FR 38344). EPA has not proposed to change the zero threshold provision. Moreover, EPA understands that most states require Tier II reports annually under state laws or regulations; today's rule does not affect these state requirements.

EPA has determined that routine reporting under EPCRA sections 311 and 312 is not needed nationwide for gasoline and diesel fuel stored at retail gas stations under the criteria set forth in this rule. Some state and local governments, however, may want MSDS or inventory information from retail gas

stations. The zero threshold provision for reporting in response to requests provides state and local agencies the flexibility to customize the information that they receive to their emergency planning needs and the needs of their communities. They can tailor their requests to include any subset of the sections 311 and 312 information, by indicating in a request that the respondent may comply with the request by providing only the specified information. For example, they could request only the emergency contact information. Also, they can request that information be reported at any threshold level that suits their needs, from zero up to the federal thresholds.

I. Effect of the Timing of This Rule on State and Local Programs

A few states suggested that if they want to continue to receive routine EPCRA reports from retail gas stations, it will be difficult to enact state legislation in time for it to be effective before EPA's gasoline and diesel fuel threshold changes take effect. Some asked that EPA allow time for outreach to facilities, or for state and local officials to make adjustments to their programs.

EPA notes that the Agency has discussed the issue of raising the thresholds for reporting of gasoline and diesel fuel for retail gas stations for many years with state officials as a way to eliminate duplication of reporting requirements with the UST programs. Recently, EPA discussed this issue with state officials at the Hazardous Material Spills Conference in April 1998. The proposal to raise the thresholds was issued in June 1998; EPA has continued communicating with stakeholders since the publication of the proposed rule. EPA indicated its intent to raise these reporting thresholds effective for reports due March 1, 1999, in a letter to SERCs dated November 30, 1998.

EPA acknowledges the difficulties in the timing of this rulemaking for SERCs, LEPCs or fire departments that want to receive information from retail gas stations, but does not believe that these outweigh the benefits nationwide in reducing an unnecessary burden for all communities. EPA is willing to work with states to assist with compliance packages and in other ways during this transition period, and so indicated in the November 30, 1998 letter to the SERCs. EPA does not believe that continuing this reporting nationwide for an additional year is justified. States still have authority to obtain the information through requesting information under sections 311 and 312, through the UST programs, and possibly using other existing state and local statutes or establishing new ones.

J. Effect of This Rule on the Regulatory Burden to Emergency Planners and Industry

Some commenters agreed with the Agency that the higher gasoline and diesel fuel thresholds will decrease the regulatory burden to retail gas stations, and the efforts of emergency planners that receive the EPCRA reports. Other commenters stated that the proposed thresholds will increase the burden to SERCs and LEPCs, noting in particular the efforts associated with responding to public requests for information, maintaining accurate lists of retail gas stations for planning purposes, and ensuring compliance with UST requirements. Some commenters stated that EPCRA reporting is not burdensome to gas stations and, after the initial submission, requires only a minimal amount of time annually.

The information collection analysis for this rule estimates a decrease in the burden to facility respondents in complying with EPCRA sections 311 and 312 of 587,389 hours per year. This estimate includes the time (averaging approximately 2 hours per facility) necessary to submit the Tier I form for the estimated 193,000 retail gas stations now subject to the higher gasoline and diesel fuel thresholds, and the time necessary for new retail gas stations to familiarize themselves with the regulations (averaging approximately 10 hours per new facility). EPA estimates an overall cost savings of more than $16 million dollars per year as a result of this rule. This figure includes the reduction in costs to retail gas stations for complying, and the reduction in costs to SERCs, LEPCs and fire departments for archiving and maintaining information. EPA believes that, for SERCs, LEPCs and fire departments that choose to manage EPCRA data for retail gas stations, information management efforts will now be reduced because they can tailor the collection of information to suit only their particular needs.

Even if a retail gas station can simply copy their inventory forms from the previous year, sign and re-date the forms, and submit them for EPCRA compliance, the facility needs to spend time managing the information before it is reported, ensuring the information is accurate or modifying it to reflect changes, confirming the addresses of the SERC, LEPC, and local fire department, and submitting the information. Although the reduction in burden to an individual gas station by this rulemaking may not seem large, the overall reduction nationwide is significant.

EPA's analysis for this rule shows that the costs to SERCs, LEPCs and fire departments nationwide will decrease by a total of approximately $45,000, because of a reduction in the amount of paperwork that will have to be managed under EPCRA. EPA believes that the number of public requests to SERCs and LEPCs nationwide for MSDS and inventory information (estimated to be over 17,000 per year) will not change as a result of this rule. The reporting thresholds should have no effect on a member of the public's interest in having information on retail gas stations.

The Agency recognizes that some SERCs, LEPCs or fire departments may consult other sources of information beyond routine EPCRA reporting (such as state UST programs or requests for inventory information) in developing their emergency plans and responding to public inquiries. It is more efficient overall if only those SERCs, LEPCs or fire departments that want or need the information obtain it, rather than requiring reporting nationwide.

For those state or local governments that choose to enact state or local laws to continue to receive hazardous chemical inventory reports from gas stations, there will be effort involved in enacting such laws, although this will be a one-time effort. The flexibility provided by this rule allows those governments to decide where to allocate their resources.

K. Thresholds for Other Facilities/ Chemicals

In the proposal, EPA suggested that gasoline and diesel fuel stored at retail gas stations under the criteria discussed in the rule present a special situation for which separate reporting thresholds under EPCRA sections 311 and 312 are warranted. In developing the proposal, EPA considered whether any other chemicals or facilities should also be relieved of routine EPCRA reporting, such as propane at propane retailers; or gasoline or diesel fuel at motor pools, van and bus lines, rental car facilities and other vehicle fleets, or marinas. EPA did not propose to raise the reporting thresholds for any of these other chemicals or facilities, but asked for public comment on whether they should also be relieved from routine EPCRA reporting.

Many commenters stated that it would be inappropriate to raise the EPCRA sections 311 and 312 reporting thresholds for facilities other than retail gas stations. Others, however, requested that EPA expand the applicability of the

increased reporting thresholds beyond retail gas stations to cover other facilities. Types of facilities addressed in the proposal and mentioned by the commenters include fueling stations for marinas, rental car facilities, bus lines, motor pools, and other vehicle fleets.

Some commenters suggested raising the thresholds for other types of facilities that were not mentioned in the proposal, including automobile and truck dealerships, aircraft service facilities, electric utility operation centers, manufacturing and other non-retail facilities, municipal and state fleet facilities (for example, school bus and public works garages), Federal facilities, residential and commercial buildings, and trucking terminals. Some commenters wrote that promulgation of higher gasoline and diesel fuel thresholds for retail gas stations will cause other industries to request similar burden relief, which, if approved, would increase the emergency planning burden on local agencies.

The Agency notes that this final rule only addresses and promulgates higher reporting thresholds for gasoline and diesel fuel when stored in tanks entirely underground at retail gas stations that are in compliance with UST requirements. At this time EPA has not reached a final decision on whether to expand the applicability of the higher thresholds to other facilities. The standard 10,000-pound reporting threshold continues to apply for gasoline, diesel fuel, and other non-EHS hazardous chemicals stored at these other facilities. (See below for a discussion of the definition of ''retail gas station'' for the purposes of this rule.)

Several commenters addressed propane retailers and propane, suggesting that propane should not be eligible for a higher reporting threshold. A few commenters suggested that raising the thresholds for gasoline and diesel fuel may cause industry to request that thresholds for other substances, such as propane, also be raised. Some commenters requested that the higher threshold apply to kerosene. Most of these commenters stated that kerosene is very similar to diesel fuel and, thus, should be subject to the same 100,000-gallon proposed reporting threshold. Commenters also mentioned other petroleum products, including heating fuels (for example, #2 fuel oil), aviation fuel, and other alternative fuels (for example, methanol- and ethanol-related mixtures M85, E85, and E95).

This final rule only addresses and promulgates higher reporting thresholds for gasoline and diesel fuel when stored in tanks entirely underground at retail gas stations that are in compliance with UST requirements. At this time the Agency has not reached a final decision on whether to expand the applicability of the higher thresholds to substances other than gasoline and diesel fuel. For the purposes of this rule, however, EPA does not consider the substances listed by the commenters to be included in the higher thresholds established for gasoline and diesel fuel. (See below for a discussion of the meaning of the terms ''gasoline'' and ''diesel fuel'' for the purposes of this rule.) The standard 10,000-pound reporting threshold continues to apply to all non-EHS hazardous chemicals, except gasoline and diesel fuel stored at retail gas stations under the criteria set forth in this rule.

L. Gasoline and Diesel Fuel Thresholds in Gallons Rather Than Pounds

A number of commenters addressed the Agency's decision to set the proposed higher thresholds for gasoline and diesel fuel in gallons instead of pounds. Many of these supported the change to gallons. Others suggested that EPA change thresholds for all liquids to gallons and that reporting should be in gallons as well.

This rulemaking addresses only new thresholds for gasoline and diesel fuel held entirely underground at retail gas stations. The Agency chose to express the thresholds in gallons instead of pounds to make it easier for retail gas stations to make their compliance determination, since their gasoline and/or diesel inventory is typically expressed in gallons. EPA's proposal did not address other issues that commenters have raised, including changing thresholds for other liquids from pounds to gallons or reporting in gallons instead of or in addition to pounds. These other changes are outside the scope of this rulemaking.

EPA believes that very few retail gas stations will have inventories over the new gasoline and diesel fuel thresholds and will therefore need to report. For those who must report, consistent with past practices and the reporting requirements of EPCRA, reporting as required in Federal regulations is in pounds. States may (as some do already) allow reporting in gallons, in pounds, or in both, consistent with their statutes, past practices, and any reporting structures or software they may have developed.

One commenter requested that the Agency eliminate all range codes used to report inventory information, and require written inventory amounts with all liquids in gallons and all dry chemicals in pounds. EPA's proposed rule did not address elimination of or changes to the codes; such a change is outside the scope of this rulemaking.

M. Defining Gasoline and Diesel Fuel

A number of commenters discussed whether ''gasoline'' and ''diesel fuel'' should be defined for purposes of this rule. Some argued for definitions; others agreed with the Agency that such definitions are not needed. Among those supporting definitions, some stated that kerosene should be included in the definition of diesel fuel as should heating fuel and aviation fuel. One commenter asserted that lack of a definition could lead to the application of the new thresholds to alternative fuel mixtures that contain large concentrations of methanol or ethanol.

The concepts of ''gasoline'' and ''diesel fuel,'' used as fuel in motor vehicles (or motor vehicle type engines), are generally understood by the regulated community and the public. Therefore, EPA does not believe that formal definitions are needed for the purposes of this rule. Definitions for ''gasoline'' and ''diesel fuel'' might be too broad or too narrow for their use in this rule and would require revisions for new gasoline or diesel fuel formulations. Codifying formal definitions of ''gasoline'' and ''diesel fuel'' would add unnecessary complexity to this rule since these terms are popularly understood.

Alternative fuels containing different proportions of ethanol, alternative fuels containing methanol, other alternative fuels, aviation fuel, heating fuel, and kerosene are not generally described as or called ''gasoline'' or ''diesel fuel'' and are not commonly understood to be present at retail gas stations. One exception—EPA includes gasohol within the term ''gasoline'' for purposes of this rule. Gasohol, which is composed of at least 90 percent gasoline and up to 10 percent ethanol, is commonly understood to be included in the term ''gasoline.'' Therefore, this regulation, which establishes new thresholds for gasoline and diesel fuel at retail gas stations, does not apply to any alternative fuels (except for gasohol), aviation fuel, heating fuel or kerosene. The standard hazardous chemical threshold of 10,000 pounds (or lower thresholds for EHSs) continues to apply to these other fuels.

A few commenters suggested the need for clarification of the Chemical Abstracts Service Registry Number (CASRN) for gasoline and diesel fuel. EPA believes that listing CAS numbers for gasoline and diesel fuel is unnecessary and could cause confusion for both gas station operators and the

general public who may not be familiar with CAS numbers. As noted above, the general public is familiar with the terms ''gasoline'' and ''diesel fuel'; specifying CAS numbers, which are unfamiliar to many and subject to change, may cause confusion and will not add clarity. EPA recognizes that there are various formulations of gasoline throughout the year as well as differences in formulations throughout the country, adding to possible confusion should EPA begin to specify subsets of ''gasoline.''

N. ''Retail Gas Station'' Definition

Several comment letters discussed the definition proposed for ''retail gas station'' for this rule. One commenter stated that the phrase ''retail gas station'' need not be defined because it is commonly understood. Others objected to the inclusion of the phrase ''convenience store'' and argued for the inclusion of truck stops. For the purposes of this rule, EPA defines ''retail gas station'' as ''a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for motor vehicle use on land.'' EPA asserts that this definition is sufficient for the purposes of this rule because the Agency's intended meaning is clearly understood by the general public. The Agency believes that a definition of ''retail gas station'' is necessary for the purposes of this rule to limit use of the new gasoline and diesel fuel thresholds to those facilities that meet the specific criteria set forth in the rule.

EPA has added the phrase ''for motor vehicle use on land'' to the definition of ''retail gas station'' as it was published in the proposed rule. The Agency added this phrase to clarify that gas stations in marinas and airports that sell fuel for boats or airplanes are not intended to be included in the definition of ''retail gas station'' for the purposes of this rule at this time. EPA received some comments suggesting that the new gasoline and diesel fuel thresholds be applied to facilities other than ''retail gas stations.'' The Agency has not reached a decision on whether to apply the new thresholds at other facilities. The new thresholds apply only at ''retail gas stations'' as defined in this rule.

A commenter suggested that ''truck stops'' be explicitly included in the definition of ''retail gas station.'' EPA intends that any truck stop that is a retail facility engaged in selling gasoline and/or diesel fuel principally to the public is included in the definition of ''retail gas station'' for the purposes of this rule. Such a truck stop is covered by EPA's definition of ''retail gas station'; therefore, truck stops need not be explicitly included. Convenience stores that retail gasoline to the public are also covered by EPA's definition of ''retail gas station,'' and need not be explicitly included. EPA has chosen to promulgate a broad definition of ''retail gas station,'' rather than listing specific facilities such as truck stops or convenience stores that retail gasoline, to avoid excluding other facilities by implication.

One commenter suggested that EPA not include convenience stores under the proposed rule because not all convenience stores sell gasoline. EPA notes that convenience stores that sell gasoline and diesel fuel satisfy the same criteria described in the proposal that apply to other retail gas stations; namely, the public and local emergency officials are generally familiar with the location of these facilities and the hazards associated with the gasoline and diesel fuel dispensed there, convenience stores typically store gasoline and diesel fuel in tanks that are entirely underground, and these tanks are regulated under RCRA's UST program. Convenience stores that are also retail gas stations have recognizable pumps, which the public can readily see. As with other retail gas stations, convenience stores that retail gasoline and diesel fuel to the public advertise the presence of these fuels at their facilities, invite the public to come on site, and generally allow the public to dispense the fuels themselves.

A number of organizations submitted comments on the issue of specific SIC/NAICS codes for retail gas stations covered by the proposal. Some commenters supported the listing of specific SIC or NAICS codes, while others did not think such codes were necessary or useful. EPA has determined that SIC/NAICS codes are too restrictive and should not be used to determine applicability of the new gasoline and diesel fuel thresholds. SIC codes (to be replaced eventually with NAICS codes) can change with shifts in the economy and, if specified, could possibly include facilities not meeting the criteria for the new thresholds. The use of multiple overlapping codes would only add confusion.

V. Regulatory Analysis

A. Executive Order 12866

Under Executive Order 12866 [58 FR 51735, October 4, 1993], the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this rule is a ''significant regulatory action'' because it raises novel policy issues. Nevertheless, after reviewing information regarding this action, OMB has waived review of this action.

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 12898

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as

appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. EPA has determined that the regulatory changes in this rule will not have a disproportionate impact on minorities and low-income populations. This rule does not address health or environmental risks or standards. Furthermore, this rule will affect regulated entities (retail gas stations) that are located throughout all communities, not only in low income or minority communities.

D. Executive Order 13045

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'': (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. In addition, the rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866.

E. Executive Order 13084

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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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 officials 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. This rule raises existing reporting thresholds for gasoline and diesel fuel at retail gas stations nationwide. In cases where the Indian tribal governments are themselves subject to the reporting requirements, this rule reduces their reporting burden. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA has examined this rule's effect on small entities as required by the Regulatory Flexibility Act and has determined that this action will not have a significant economic impact on a substantial number of small entities. This rule would reduce regulatory burdens for small entities. The overall economic effect of this regulation has been determined to equate to 587,389 hours of burden reduction at a total cost saving of approximately $16 million per year to all regulated entities. Therefore, this regulation will result in a cost savings. Accordingly, the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

G. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0072.

EPA currently has an approved ICR (ICR No. 1352.06) of $66,435,442 for the existing EPCRA sections 311 and 312 reporting requirements (40 CFR part 370). This burden estimate is based on the estimates of 803,682 annual responses from 679,051 respondents. The average burden for MSDS reporting under 40 CFR 370.21 is estimated at 12.8 hours for new and newly regulated facilities and approximately 2 hours for those existing facilities that obtain new or revised MSDSs or receive requests for MSDSs from local governments. For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine which chemicals meet or exceed reporting thresholds, and to submit MSDSs or lists of chemicals to SERC, LEPCs, and local fire departments. For existing facilities, this burden includes the time required to submit revised MSDSs and new MSDSs to local officials. The average reporting burden for facilities to perform Tier I or Tier II inventory reporting under 40 CFR 370.25 is estimated to be approximately 3.2 hours per facility, including the time to develop and submit the information. There are no recordkeeping requirements for facilities under EPCRA sections 311 and 312. The average burden for state and local governments to respond to requests for MSDSs or Tier II information under 40 CFR 370.30 is estimated to be 0.25 hours per request.

As part of the President's program for reinventing government and reforming regulatory policy, EPA is reducing the reporting burden imposed by the EPCRA regulations at 40 CFR Part 370. EPA anticipates that today's final rule will reduce the burden on facilities for part 370 from 2,960,215 hours to 2,372,826 hours, for a reduction of 587,389 hours under ICR number 1352.06. EPA estimates the overall cost savings (including burden hour costs) from this rule to be more than $16 million. This figure includes estimated cost savings for facilities of approximately $16 million nationwide; and estimated cost savings for SERCs, LEPCs and fire departments of approximately $45,000 nationwide. The savings for SERCs, LEPCs and fire departments result from a reduction in the capitol costs needed to archive and maintain information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a

Federal agency. This includes the time needed to review instructions; develop, acquire, install, and use 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.

In the ICR associated with this regulation (ICR number 1352.06), the agency has decided to adjust the time necessary for SERCs and LEPCs to respond to public inquiries from .17 hours to .25 hours. This adjustment is not due to today's action, but rather the Agency is taking this opportunity to make this adjustment because the Agency believes that the average time of .25 hours per request more adequately reflects the time necessary to respond to public inquiries.

EPA is also taking this opportunity to amend the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's changes amends the table to list those information requirements promulgated under the Hazardous Chemical Reporting: Community Right-to-Know which appeared in the **Federal Register** on October 15, 1987 (52 FR 38333). The affected regulations are codified at 40 Code of Federal Regulations (CFR) part 370. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedures Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

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.

H. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local and tribal governments or the private sector. This rule does not impose an enforceable duty on any state, local or tribal governments or the private sector. For this same reason, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of UMRA.

EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The intent of this rule is to provide burden relief to regulated entities, including small governments.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective February 11, 1999.

List of Subjects in 40 CFR parts 9 and 370

Environmental protection, Chemicals, Community right-to-know, Disaster assistance, Hazardous Substances, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund.

Dated: February 4, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR parts 9 and 370 are amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new heading with entries in numerical order to the table to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Hazardous Chemical Reporting: Community Right-to-Know	
370.21	2050–0072
370.25	2050–0072
370.30	2050–0072
* * * * *	

PART 370—HAZARDOUS CHEMICAL REPORTING: COMMUNITY RIGHT-TO-KNOW

1. The authority citation for part 370 continues to read as follows:

Authority: Secs. 311, 312, 324, 325, 328, 329 of Pub. L. 99–499, 100 Stat. 1613, 42 U.S.C. 11011, 11012, 11024, 11025, 11028, 11029.

2. Section 370.20 is revised to read as follows:

§ 370.20 Applicability.

(a) *General.* The requirements of this subpart apply to any facility that is required to prepare or have available a material safety data sheet (MSDS) for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated under that Act.

(b) *Minimum threshold levels.* Except as provided in paragraph (b)(5) of this section, the minimum threshold level for reporting under this subpart shall be as specified in paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) of this section:

(1) The minimum threshold for reporting for extremely hazardous substances is 500 pounds (or 227 kgs—approximately 55 gallons) or the TPQ, whichever is lower.

(2) The minimum threshold for reporting for gasoline (all grades combined) that was in tank(s) entirely underground, at a retail gas station that was in compliance at all times during the preceding calendar year with all applicable Underground Storage Tank (UST) requirements (40 CFR part 280 or requirements of the state UST program approved by the Agency under 40 CFR part 281), is 75,000 gallons (or approximately 283,900 liters). For purposes of this part, retail gas station means a retail facility engaged in selling gasoline and/or diesel fuel principally to the public, for motor vehicle use on land.

(3) The minimum threshold for reporting for diesel fuel (all grades combined) that was in tank(s) entirely underground, at a retail gas station that was in compliance at all times during the preceding calendar year with all applicable UST requirements (40 CFR part 280 or requirements of the state UST program approved by the Agency under 40 CFR part 281), is 100,000 gallons (or approximately 378,500 liters).

(4) The minimum threshold for reporting for all other hazardous chemicals is 10,000 pounds (or 4,540 kgs.)

(5) The minimum threshold for reporting in response to requests for submission of an MSDS or a Tier II form under §§ 370.21(d) and 370.25(c) of this part shall be zero.

(c) *MSDS reporting.* The owner or operator of a facility subject to this subpart shall submit an MSDS on or before October 17, 1990 (or within three months after the facility first becomes subject to this subpart), for all hazardous chemicals present at the facility at any one time in amounts equal to or greater than their thresholds.

(d) *Inventory reporting.* The owner or operator of a facility subject to this subpart shall submit the Tier I form (or Tier II form) on or before March 1, 1991 (or March 1 of the first year after the facility first becomes subject to this subpart), and annually thereafter, covering all hazardous chemicals present at a facility at any one time during the preceding calendar year in amounts equal to or greater than their thresholds.

[FR Doc. 99–3255 Filed 2–10–99; 8:45 am]

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federal register

Thursday
February 11, 1999

Part V

Department of Commerce

Economic Development Administration

Economic Development Assistance Program for Disaster Recovery Activities, Availability of Funds; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 981228326–8326–01]

RIN 0610–ZA08

Economic Development Assistance Program for Disaster Recovery Activities, Availability of Funds

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Funding notice.

SUMMARY: The Economic Development Administration (EDA) announces the availability of $14.1 million in disaster economic recovery assistance under the Omnibus Appropriations Act of 1998 in response to the September 10, 1998 Disaster Declaration by the Secretary of Commerce under the Magnuson-Stevens Fishery Conservation and Management Act. This Disaster Declaration was made as a result of the commercial failure of the Alaska salmon fisheries in Bristol Bay and the Yukon and Kuskokwim River tributaries.

EDA's program will be to assist the approximately 106 affected communities in the disaster-impacted areas with planning, technical assistance, revolving loan funds, and infrastructure grants to address the economic problems caused by this disaster.

DATES: This notice is effective February 11, 1999. Applications are accepted on a continuous basis.

ADDRESSES: Interested parties should contact the Seattle Regional Office or the Economic Development Representative for the area (see listing in ''Other Information'').

FOR FURTHER INFORMATION CONTACT: See listing in ''Other Information'' section of this Notice.

SUPPLEMENTARY INFORMATION: Applicants should be aware that a false statement on the application is grounds for denial of the application or termination of the grant award and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

Applicants seeking an early start, i.e., to begin a project before EDA approval, must obtain a letter from EDA allowing such early start. Such approval may be given with the understanding that an early start does not constitute project approval. Applicants should be aware that if they incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

If an application is selected for funding, EDA has no obligation to provide any additional future funding in connection with an award. Renewal of an award to increase funding or extend the period of performance is at the sole discretion of EDA.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

No award of Federal funds will be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to DoC are made.

Notwithstanding any other provision of law, no person is required to respond to nor shall a 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 Office of Management and Budget (OMB) control number. This notice involves a collection of information requirement subject to the provisions of the PRA and has been approved by OMB under Control Number 0610–0094.

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

Prospective participants (as defined at 15 CFR Part 26, section 105) ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Drug-Free Workplace Requirements (Grants)'' and the related section of the certification form prescribed above applies;

Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, Appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

EDA also requires that compliance with environmental regulations, in accordance with the National Environmental Policy Act (NEPA), be completed before construction begins.

Unless otherwise noted below, eligibility, program objectives and descriptions, application procedures, selection procedures, evaluation criteria and other requirements for all programs are set forth in EDA's interim final rule published in the FR (64 FR 5347, Feb. 3, 1999) as separate Part II. Eligibility, grant rates, criteria and other requirements will change when EDA's interim-final rule to implement Public Law 105–393 becomes effective on February 11, 1999.

EDA will continue coordination with the National Marine Fisheries Service (NMFS).

Catalog of Federal Domestic Assistance (CFDA)

The Special Economic Development Adjustment Assistance Program is listed under CFDA 11.307.

Funding Availability

Funds in the amount of $14.1 million are available for this disaster economic recovery program and shall remain available until expended. These funds

are provided under Section 763 of Omnibus Appropriations Act (Public Law 105–277). The funds are available for awarding disaster assistance grants pursuant to the Public Works and Economic Development Act of 1965, as amended, (Public Law 89–136, 42 U.S.C. 3121 *et seq.*), including the comprehensive amendment of the Economic Development Administration Reform Act of 1998 (Public Law 105–393) (PWEDA). Public Law 105–393 which becomes effective no later than February 11, 1999, will be implemented by amendments to EDA's regulations (see EDA's interim rule published as separate Part II in the FR on 64 FR 5347, February 3, 1999). EDA's interim rule provides new requirements and procedures concerning, but not limited to eligibility, grant rates, and criteria.

Grant Rates

Grant rates, as established under PWEDA and implementing regulations published in the FR (64 FR 5347, Feb. 3, 1999) as separate Part II, may vary, if permitted by PWEDA and its implementing regulations, and may depend on factors such as type of applicant, relative needs and financial capacity of applicants.

Eligible Applicants

Prior to the effective date of Public Law 105–393, eligible applicants include the state or political subdivisions thereof, including municipalities and quasi-public corporations and authorities, Indian tribes and Alaskan native villages, and non-profit organizations representing an EDA-designated redevelopment area or part thereof located in the affected disaster areas in the State of Alaska.

Eligible applicants under Public Law 105–393 include the state or other political subdivisions thereof, including a city or public or private nonprofit organization or association acting in cooperation with a political subdivision of the state, economic development district, Indian tribes and Alaskan native villages, and areas in the State of Alaska as provided in Section 301(a) of Public Law 105–393.

Proposal Submission Procedures

Proposals for assistance under this disaster recovery program shall be submitted to EDA on a completed Form ED–900P, OMB Control No. 0610–0094. Applicants must clearly demonstrate how the EDA assistance will help the area recover from the economic hardship and other problems caused by this disaster, and that such assistance has been preceded by sound planning. Interested parties should contact the Economic Development Representative for the area, or the EDA Seattle Regional Office for a proposal package (see Listing under ''Other Information'').

Application Procedures

A determination of whether to invite an application under this disaster recovery program for EDA assistance will be issued based upon the Agency's review of the applicant's proposal under the evaluation criteria herein and EDA's regulations published in the FR (64 FR 5347, Feb. 3, 1999), as separate Part II.

Funding Instrument

Prior to the effective date of Public Law 105–393, funds will be awarded in accordance with the requirements of Title IX of the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136; 42 U.S.C. 3121 *et. seq.*); and thereafter in accordance with Section 209 of Public Law 105–393 and EDA's regulations published in the FR (64 FR 5347, Feb. 3, 1999) as separate Part II.

Project Selection Criteria

It is anticipated that the funds announced herein for disaster recovery assistance may not be sufficient to meet all of the economic recovery needs for which requests are received. Evaluation criteria will not be assigned weights. EDA will consider the following criteria to select the grant project award. While each of the criteria are important, any one or combination of criteria may be the basis for selecting an application for award: (1) Prior to the effective date of Public Law 105–393, projects that are consistent with an adjustment strategy; thereafter consistent with an area Comprehensive Economic Development Strategy (CEDS). In meeting the strategy or CEDS requirements, as appropriate, EDA will accept a State Emergency Recovery Plan, or the product of an equivalent state or local strategic economic recovery planning process with short-term and long-term goals; (2) projects which leverage EDA funds with appropriate state, local, private, and other Federal assistance efforts; (3) projects that enhance/stimulate sustainable economic development; (4) restoration of critical infrastructure and public facilities which respond to emergency needs and are essential to economic activity and commerce; (5) projects that assist the restoration of businesses, stimulate the development of new businesses and accelerate the development of new and/or improved job opportunities within the affected areas; (6) projects which upgrade or enhance the reliability of critical infrastructure/public facilities to current building, environmental, and safety standards or codes and that are essential to stabilizing the economic base of the disaster area; (7) projects in areas with high levels of economic distress; (8) projects that enhance opportunities for economic diversification; and (9) given the limited funds available from this appropriation, the amount requested shall be relative to the amount of economic distress/damage sustained by the community (applicants must be able to demonstrate need based on economic distress/damage resulting from the disaster).

To establish the merits of project proposals, interested parties should contact the EDA Economic Development Representative or EDA Seattle Regional Office for the area (see listing below) for a proposal form, (ED–900P). Requests for assistance shall be submitted directly to the EDA Economic Development Representative or EDA Seattle Regional Office that is listed below.

EDA will evaluate proposals to determine whether they can meet the criteria established. Following the review of the proposals, EDA will invite those entities whose projects are selected for consideration to submit full applications (ED–900A, OMB Control No. 0610–0094). In addition to the real property title requirements at 13 CFR Part 314, applicants will be expected to submit satisfactory evidence of rights of entry assuring prompt access to project property at the time of grant award in those cases where applicants do not hold title to all real property required for the projects at time of application.

Other Information

Except as modified herein, evaluation criteria, competitive selection procedures, application procedures, and other requirements for the applicable assistance program are described in the FR (64 FR 5347, February 3, 1999) published on February 3, 1999 as separate Part II.

For further information contact the Economic Development Representative or EDA Seattle Regional Office listed below:

A. Leonard Smith, Regional Director, Seattle Regional Office, Suite 1856, Jackson Federal Building 915 Second Avenue, Seattle, Washington 98174, Telephone: (206) 220–7660, Internet Address: LSmith7@doc.gov

State Covered—Alaska

Seattle Region, Bernhard E. Richert, Jr., Economic Development Representative, 605 West 4th Avenue, Room G–80, Anchorage, Alaska 99501–7594, Telephone: (907) 271–

2272, Internet Address: brichert@doc.gov

Dated: February 4, 1999.

Phillip A. Singerman,

Assistant Secretary for Economic Development.

[FR Doc. 99–3462 Filed 2–9–99; 10:55 am]

BILLING CODE 3510–24–P

federal register

Thursday
February 11, 1999

Part VI

Department of Commerce

Economic Development Administration

Trade Adjustment Assistance for the Alaskan Salmon Fishing Industry, Availability of Funds; Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 990107006–9006–01]

RIN 0610–ZA09

Trade Adjustment Assistance for the Alaskan Salmon Fishing Industry, Availability of Funds

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Funding notice.

SUMMARY: The Economic Development Administration (EDA) announces the availability of $5.0 million in trade adjustment assistance to help the Alaskan salmon fishing industry, which has been affected by the loss of sales due to the Asian financial crisis, imports from other countries, and the low runs of salmon in Bristol Bay and in the Yukon and Kuskokwim River tributaries as noted in the September 10, 1998 Disaster Declaration by the Secretary of Commerce under the Magnuson-Stevens Fishery Conservation and Management Act. This Disaster Declaration was made as a result of the commercial failure of the Alaska salmon fisheries in Bristol Bay and the Yukon and Kuskokwim River tributaries.

EDA's program will assist the Alaskan salmon fishing industry with technical assistance grants or cooperative agreements to address the economic problems caused by this trade injury and natural disaster. EDA expects that the successful application will call for preparing a strategic marketing plan for the Alaskan salmon fishing industry and using the remaining resources available under this announcement to implement that plan.

DATES: This announcement is effective February 11, 1999. Proposals must be received no later than 5:00 p.m. Eastern Standard time, by the last day of the three calendar week period following publication of this notice. Such proposals must be received (no faxes or e-mails) at the address in the ''Other Information'' section at the end of this notice.

ADDRESSES: Interested parties should contact the Coordinator, Trade Adjustment Assistance and Technical Assistance (see listing in ''Other Information'').

FOR FURTHER INFORMATION: See listing in ''Other Information'' section of this notice.

SUPPLEMENTARY INFORMATION: Applicants should be aware that a false statement on the application is grounds for denial of the application or termination of the grant award and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

Applicants seeking an early start, i.e., to begin a project before EDA approval, must obtain a letter from EDA allowing such early start. Such approval may be given with the understanding that an early start does not constitute project approval. Applicants should be aware that if they incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

If an application is selected for funding, EDA has no obligation to provide any additional future funding in connection with an award. Renewal of an award to increase funding or extend the period of performance is at the sole discretion of EDA.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

No award of Federal funds will be made to an applicant who has an outstanding delinquent Federal debt until either:

l. The delinquent account is paid in full;

2. A negotiated repayment schedule is established and at least one payment is received; or

3. Other arrangements satisfactory to DoC are made.

Notwithstanding any other provision of law, no person is required to respond to nor shall a 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 Office of Management and Budget (OMB) control number. This notice involves a collection of information requirement subject to the provisions of the PRA, Forms SF–424 and SF–424A, OMB Control Number 0348–0043. All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

Prospective participants (as defined at 15 CFR Part 26, section 105) ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Drug-Free Workplace Requirements (Grants)'' and the related section of the certification form prescribed above applies;

Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR part 28, Appendix B.

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

EDA also requires that compliance with environmental regulations, in accordance with the National Environmental Policy Act (NEPA), be completed before construction begins.

Unless otherwise noted below, eligibility, program objectives and descriptions, application procedures, selection procedures, evaluation criteria and other requirements for all programs are set forth in EDA's regulations published in the FR (64 FR 5347, Feb. 3, 1999) as separate Part II. Eligibility, grant rates, criteria and other requirements will change when EDA's interim-final rule to implement Public Law 105–393 becomes effective on February 11, 1999.

EDA will continue coordination with the National Marine Fisheries Service (NMFS).

Catalog of Federal Domestic Assistance (CFDA)

The Trade Adjustment Assistance Program for Industries is listed under CFDA 11.313.

Funding Availability

Funds in the amount of $5.0 million are available under this announcement and shall remain available until expended. These funds are provided under Section 763 of the Omnibus Appropriations Act of 1998 (P. L. 105–277).

Grant Rates

Grant or cooperative agreement rates typically are shared on 50% Federal, 50% industry basis. However, EDA may vary these rates if an acceptable justification for a lower industry rate is provided by the applicant.

Eligible Applicants

Applicants must be associations, unions or other nonprofit fishing industry organizations with a thorough understanding of and expertise concerning the Alaskan salmon fishing industry.

Proposal Submission Procedures

Proposals for assistance under this announcement must include a narrative that addresses the project selection criteria and a completed Form SF–424 and SF–424A, OMB Control No. 0348–0043, and be submitted to the Coordinator, Trade Adjustment and Technical Assistance (see Listing under ''Other Information'').

Application Procedures

A determination of whether to invite applications under this announcement will be issued based upon the Agency's review of the proposals under the evaluation criteria herein and EDA's regulations published in the **Federal Register** (64 FR 5347, Feb. 3, 1999) as separate part II.

Funding Instrument

Any grant or cooperative agreement awarded under this announcement will be in accordance with the requirements of the Trade Act of 1974, as amended (Public Law 93–618; 19 U.S.C. 2101 *et seq.*) and EDA's regulations published in the **Federal Register** (64 FR 5347, Feb. 3, 1999) as separate Part II.

Project Selection Criteria

Evaluation criteria will not be assigned weights. EDA will consider several criteria, any one or a combination of which may be the basis for selecting the applicant to be funded under this notice. These criteria are the extent to which the proposal: (1) Demonstrates an understanding of the economic damage resulting from the natural disaster and trade related impacts in the Alaskan salmon fishing industry; (2) documents that the applicant has a thorough understanding of and expertise concerning the Alaskan salmon fishing industry and its needs; (3) makes a strong case that it will yield some short-term actions that can be implemented by firms in the Alaskan salmon fishing industry rather than relying only on long-term solutions; and (4) includes the use of a committee, with representatives from the Alaskan salmon fishing industry, to assist in providing project oversight.

Trade Adjustment Assistance for industrywide projects can only be awarded to industries in which firms or workers groups have been certified as trade-impacted under the Trade Act of 1974, as amended. EDA has already made this finding for the Alaskan fishing industry.

EDA will evaluate proposals to determine whether they can meet the criteria established. Following the review of the proposals, EDA will invite any entity whose proposal is selected to submit a full application. (SF–424, OMB Control No. 0348–0043).

Other Information

Except as modified herein, evaluation criteria, competitive selection procedures, application procedures, and other requirements for the applicable assistance program are described in EDA's regulations, published in the **Federal Register** (64 FR 5347, February 3, 1999) as separate Part II.

For further information contact the Coordinator, Trade Adjustment and Technical Assistance listed below: Anthony J. Meyer, Coordinator, Trade Adjustment and Technical Assistance, Economic Development Administration, U.S. Department of Commerce, Room H7317, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230, Telephone: (202) 482–2127, Internet Address: tmeyer2@doc.gov

Dated: February 4, 1999.

Phillip A. Singerman,

Assistant Secretary for Economic Development.

[FR Doc. 99–3463 Filed 2–9–99; 10:55 am]

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Pipeline safety:
- Hazardous liquid transportation—
  - Older hazardous liquid and carbon dioxide pipelines; pressure testing within terminals and tank farms; correction; published 2-11-99

TREASURY DEPARTMENT

Customs Service

Merchandise remaining at place of arrival or unlading beyond lay order period; general order; penalties for failure to notify Customs; correction; published 2-11-99

TREASURY DEPARTMENT

Government Securities Act; implementation:
- Brokers and dealers reporting requirement; Year 2000 compliance; published 1-12-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:
- African horse sickness; disease status change—
  - Qatar; comments due by 2-16-99; published 1-14-99

Plant-related quarantine, domestic:
- Karnal bunt disease—
  - Compensation; comments due by 2-16-99; published 12-17-98

Plant-related quarantine, foreign:
- Solid wood packing material from China; comments due by 2-16-99; published 12-17-98

AGRICULTURE DEPARTMENT

Rural Utilities Service

Telecommunications standards and specifications:
- Materials, equipment, and construction—
  - Customer access locations; service installation standard; comments due by 2-19-99; published 12-21-98

COMMERCE DEPARTMENT

Economic Analysis Bureau

International services surveys:
- Foreign direct investments in U.S.—
  - Annual survey; exemption levels; comments due by 2-16-99; published 1-14-99

COMMERCE DEPARTMENT

Export Administration Bureau

Encryption items; comments due by 2-16-99; published 12-31-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Fishing participation credit; comments due by 2-18-99; published 1-19-99
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico reef fish; comments due by 2-16-99; published 12-18-98

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):
- Historically underutilized business zone (HUBZone) empowerment contracting program; comments due by 2-16-99; published 12-18-98

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:
- Clothes washers—
  - Energy conservation standards; comments due by 2-16-99; published 1-11-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Oil and natural gas production and natural gas transmission and storage; comments due by 2-16-99; published 1-15-99

Air pollution; standards of performance for new stationary sources:
- Solid waste landfills that commenced construction prior to May 30, 1991 and have not been modified or reconstructed since May 30, 1991; comments due by 2-16-99; published 12-16-98

Air programs:
- Ambient air quality surveillance—
  - Washington and Oregon; ozone monitoring season modification; comments due by 2-19-99; published 1-20-99
  - Washington and Oregon; ozone monitoring season modification; comments due by 2-19-99; published 1-20-99

Air quality implementation plans; approval and promulgation; various States:
- Illinois; comments due by 2-16-99; published 1-15-99
- Louisiana; comments due by 2-16-99; published 1-14-99

Hazardous waste:
- Lead-based paint debris; toxicity characteristic rule; temporary suspension; comments due by 2-16-99; published 12-18-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Bifenthrin; comments due by 2-16-99; published 12-16-98
- Copper ammonium complex; comments due by 2-16-99; published 12-16-98
- Tralkoxydim; comments due by 2-16-99; published 12-16-98

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due

by 2-16-99; published 12-17-98

Toxic substances:

Lead-based paint activities—

Lead-based paint debris; management and disposal; comments due by 2-16-99; published 12-18-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Fixed satelite service and terrestrial system in Ku-band; comments due by 2-16-99; published 1-12-99

Frequency allocations and radio treaty matters:

3650-3700 MHz government transfer band; comments due by 2-16-99; published 1-14-99

Radio and television broadcasting:

Broadcast and cable equal employment opportunity rules and policies; revision; comments due by 2-18-99; published 1-14-99

Television broadcasting:

Digital television capacity by noncommercial licenses; ancillary or supplementary use; comments due by 2-16-99; published 2-11-99

FEDERAL EMERGENCY MANAGEMENT AGENCY

Preparedness:

Offsite radiological emergency preparedness program; services fee; comments due by 2-16-99; published 12-15-98

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Historically underutilized business zone (HUBZone) empowerment contracting program; comments due by 2-16-99; published 12-18-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Adhesive coatings and components—

Silver chloride-coated titanium dioxide; comments due by 2-16-99; published 1-15-99

INTERIOR DEPARTMENT

Reclamation Bureau

Farm operations in excess of 960 acres, information requirements; and formerly excess land eligibility to receive non-full cost irrigation water; comments due by 2-18-99; published 1-19-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Surface coal mining and reclamation operations:

Ownership and control mining operations; definitions, permit requirements, enforcement actions, etc.; comments due by 2-19-99; published 12-21-98

JUSTICE DEPARTMENT

Prisons Bureau

Inmate control, custody, care, etc.:

Sex offender release notification; designation of offenses; comments due by 2-16-99; published 12-16-98

LABOR DEPARTMENT

Employment and Training Administration

Nonimmigrants on H-1B visas employed in specialty occupations and as fashion models; labor condition applications and employer requirements

Wage recordkeeping requirements; comments due by 2-19-99; published 2-5-99

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine safety and health:

Underground mines—

Diesel particulate matter; occupational exposure; comments due by 2-16-99; published 10-19-98

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Historically underutilized business zone (HUBZone) empowerment contracting program; comments due by 2-16-99; published 12-18-98

SECURITIES AND EXCHANGE COMMISSION

Securities:

Cross-border tender offers, business combinations, and rights offerings; comments due by 2-16-99; published 12-15-98

STATE DEPARTMENT

Privacy Act; implementation; comments due by 2-16-99; published 1-6-99

TRANSPORTATION DEPARTMENT

Coast Guard

Boating safety:

Manufacturing requirements—

Recreational boats; hull identification numbers; comments due by 2-16-99; published 11-16-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airmen certification:

Aircraft dispatchers; eligibility and certification requirements; comments due by 2-16-99; published 10-19-98

Airworthiness directives:

Airbus; comments due by 2-18-99; published 1-19-99

Construcciones Aeronauticas, S.A.; comments due by 2-19-99; published 1-20-99

McCauley Propeller Systems; comments due by 2-16-99; published 12-18-98

Pratt & Whitney; comments due by 2-19-99; published 12-21-98

Class D and Class E airspace; comments due by 2-16-99; published 1-15-99

Class D and E airspace; comments due by 2-16-99; published 1-5-99

Class E airspace; comments due by 2-17-99; published 1-25-99

TREASURY DEPARTMENT

Internal Revenue Service

Estate and gift taxes:

Marital deduction; valuation of interest in property passing to surviving spouse; public hearing; comments due by 2-16-99; published 12-16-98