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# Presidential Documents

**Title 3—**

## The President

**Proclamation 7386 of December 9, 2000**

## Human Rights Day, Bill of Rights Day, and Human Rights Week, 2000

**By the President of the United States of America**

**A Proclamation**

On December 15, 1791, the Bill of Rights was ratified. A century and a half later, on December 10, 1948, the United Nations General Assembly adopted the Universal Declaration of Human Rights. Though separated by more than 150 years, these two documents are not dusty relics of a distant past—the ideas they so powerfully express continue to shape the destiny of individuals and nations across the globe.

Because the rights guaranteed by these documents, such as freedom of conscience, freedom of speech, freedom of assembly, and freedom from arbitrary arrest, are such an inherent part of America's history and national character, we at times may take them for granted. We sometimes forget that people elsewhere in the world are suffering, struggling, and even dying because these rights are denied them by oppressive governments. In countries such as Afghanistan, Burma, and the Sudan, men and women are harassed, arrested, and executed for worshipping according to their conscience. In many corners of the world, modern-day slavery still exists, with criminals trafficking in women and children and profiting from their servitude.

But there is hope for the future. Globalization and the revolution in information technology are helping to break down the former barriers of geography and official censorship. People fighting for human rights in disparate places around the world can talk to one another, learn from one another, and shine the light of public scrutiny on the dark corners of the world. Free nations can work in concert to combat human rights abuses, as the United States did last spring when we joined with the Philippines and more than 20 other Asian and Pacific nations to develop a regional action plan to combat trafficking in persons and protect trafficking victims.

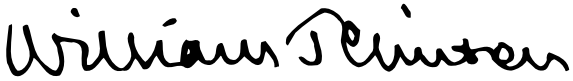
The Reverend Martin Luther King, Jr., once said that the arc of the moral universe is long, but it bends toward justice. We have seen the truth of that statement in the history of America, where each generation has strived to live up to our founders' vision of human dignity: that we are all created equal and that we all have the right to life, liberty, and the pursuit of happiness. But that statement holds true for the world's history as well; in our own lifetime, we have seen the fall of the Berlin Wall and the triumph of democracy in the Cold War. More people live in freedom today than at any other time in history.

But that march toward freedom is not inevitable; it is advanced by individual acts of courage and will; by the strong voices of people refusing to be silenced by their oppressors; by the willingness of free people and free nations to defend the rights of men, women, and children. Heroes like Lech Walesa in Poland, Vaclav Havel in the Czech Republic, Nelson Mandela in South Africa, and Aung San Suu Kyi in Burma are powerful reminders of how precious our human rights are and how high the cost is to sustain them. The Bill of Rights and the Universal Declaration of Human Rights that we celebrate this week are not merely proud words preserved on paper; they are a pledge written on our consciences and to oppressed people

everywhere, so that they too will some day know the meaning of dignity and the blessing of human rights.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 2000, as Human Rights Day; December 15, 2000, as Bill of Rights Day; and the week beginning December 10, 2000, as Human Rights Week. I call upon the people of the United States to celebrate these observances with appropriate activities, ceremonies, and programs that demonstrate our national commitment to the Bill of Rights, the Universal Declaration of Human Rights, and promotion and protection of human rights for all people.

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



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# Rules and Regulations

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

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Parts 213 AND 315

**RIN 3206–AJ28**

### Excepted Service; Career and Career-Conditional Employment

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim regulations with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to implement the staffing provisions of the Federal Career Intern Program. This program will serve to assist agencies in recruiting and attracting exceptional men and women who have a variety of experience, academic disciplines, or competencies necessary for the effective analysis and execution of public programs.

**DATES:** This interim rule is effective December 14, 2000. Comments must be received on or before January 16, 2001.

**ADDRESSES:** Send or deliver written comments to: Carol J. Okin, Associate Director for Employment, Office of Personnel Management, Room 6500, 1900 E Street, NW., Washington, DC 20415–9000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzy Barker, *smbarker@opm.gov;* Ms. Karen Jacobs, *kkjacobs@opm.gov;* or Mr. Mike Mahoney, *mjmahone@opm.gov;* on 202–606–0830 or FAX (202) 606–0390.

**SUPPLEMENTARY INFORMATION:** On July 6, 2000, President Clinton signed Executive Order 13162 authorizing the establishment of the Federal Career Intern Program to assist agencies in recruiting and attracting exceptional individuals with a variety of experience, academic disciplines, or competencies necessary for the effective analysis and execution of public programs. Agencies have the authority to recruit from a variety of sources to locate candidates that would most likely meet their mission and needs. The executive order tasked OPM to develop appropriate procedures for the recruitment, screening, placement and continuing career development for the Career Interns. These procedures must conform to the merit systems principles and assure equal employment opportunity and the application of appropriate veterans' preference criteria.

The program is intended to be used for grades GS–5, 7, and 9 (and equivalent) positions or other trainee positions appropriate for the program. Agencies must request OPM approval to cover additional grades to meet unique or specialized needs. For those positions subject to the *Luevano* Consent Decree, agencies will be required to use those assessment tools permitted under the decree. Interns will be appointed in the excepted service (Schedule B) for a period not to exceed 2 years, unless extended up to 1 additional year with the approval of OPM. Upon successful completion of the internships, the interns will be eligible for noncompetitive conversion to career or career-conditional appointments. Throughout the internship, the employee must participate in a formal training program and job assignments to develop competencies appropriate to the agency's mission and needs.

If an agency selects one of its internal career or career-conditional employee for the program, and he/she fails to complete the program for reasons unrelated to misconduct or suitability, the agency shall place the employee back in a position of equivalent status, tenure and pay as the position the employee left. Here are some examples:

(1) If an employee of the Environmental Protection Agency (EPA) is selected for an internship with EPA and the employee fails to complete the internship, EPA will be responsible for placing the employee.

(2) If an employee of the Department of Treasury (Treasury) is selected for an internship with EPA and the employee fails to complete the internship, EPA is not obligated to place the employee. Also, Treasury is not obligated to place the employee.

(3) Within Departments that have components or bureaus, such as the Department of Justice (Justice), the Department would have the discretion to decide whether or not to treat all of its components as separate and independent agencies or as part of the Department. For example: If an employee of Immigration and Naturalization Service (INS), a bureau within Justice, is selected for an internship within Justice headquarters and the employee fails to complete the internship, neither the headquarters office nor the INS is obligated to place the employee. The INS and the headquarters office are treated as separate agencies.

### Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days. The delay in the effective date is being waived because the executive order was signed on July 6, 2000, and agencies began developing their intern programs. Agencies will be able to make appointments immediately upon publication of the regulations.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities (including small businesses, small organizational units and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

### E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

### List of Subjects in 5 CFR Parts 213 and 315

Government employees, Reporting and recordkeeping requirements.

U.S. Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

## PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

**Authority:** 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; Sec. 213.101 also issued under 5 U.S.C. 2103; Sec. 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38

U.S.C. 4301 *et seq.*; Pub. L. 105–339, 112 STAT. 3182–83; and E.O. 13162.

2. In § 213.3202, paragraph (o) is added to read as follows:

**§ 213.3202 Entire executive civil service.**

* * * * *

(o) *The Federal Career Intern Program*—(1) *Appointments.* Appointments made under the Federal Career Intern Program may not exceed 2 years, except as described in paragraph (o)(2) of this section. Initial appointments shall be made to a position at the grades GS–5, 7, or 9 (and equivalent) or other trainee levels appropriate for the Program. Agencies must request OPM approval to cover additional grades to meet unique or specialized needs. Agencies will use part 302 of this chapter when making appointments under this Program.

(2) *Extensions.* (i) Agencies must request, in writing, OPM approval to extend internships for up to 1 additional year beyond the authorized 2 years for additional training and/or developmental activities.

(ii) Agencies are delegated the authority to extend, without prior OPM approval, 2-year internships for up to an additional 120 days to cover rare or unusual circumstances, and where agencies have established criteria for approving extensions.

(3) *Qualifications.* Candidates will be evaluated using OPM qualification requirements or OPM-approved, agency-specific qualification requirements.

(4) *Tenure Group.* Career interns are in the excepted service Tenure Group II for purposes of § 351.502 of this chapter. Expiration of the internship is not subject to part 351 of this chapter.

(5) *Promotions.* During the internship period, individuals participating in the program may receive promotions as determined by an agency's plan. This provision does not confer entitlement to promotion.

(6) *Conversion to Competitive Service.* Except as provided in paragraph (o)(6)(ii) of this section, service as an intern shall confer no rights to further Federal employment in either the competitive or excepted service upon the expiration of the internship period.

(i) Competitive civil service status may be granted to career interns who successfully complete their internships and meet all qualification, suitability, and performance requirements. These noncompetitive conversions will be effective on the date the 2-year service requirement is met, or at the end of the extended period.

(ii) An employee who held a career or career-conditional appointment in an agency immediately before entering the Career Intern Program in the same agency, and who fails to complete the Career Intern Program for reasons unrelated to misconduct or suitability, shall be placed in a career or career-conditional position in the current agency at no lower grade or pay than the one the employee left to accept the position in the Career Intern Program. For purposes of this paragraph, agency means an Executive Department, Government corporation, or independent establishment as defined in 5 U.S.C. 105. An Executive Department may treat each of its bureaus or components (first major subdivision that is separately organized and clearly distinguished from other bureaus or components in work function and operation) as a separate agency or as part of one agency, but must do so by agency directive in establishing the program.

(iii) Service under the Career Intern Program counts toward career tenure in the competitive service, if the Career Intern is converted to a career-conditional appointment under § 315.712 of this chapter.

(7) *Terminations.* The appointment of a career intern expires at the end of the 2-year internship period, plus any extensions. The employing agency may, with no break in service, convert the intern to a career or career-conditional appointment in accordance with § 315.712 of this chapter. If an employee is not converted to a career or career-conditional appointment, the career intern appointment terminates, unless specifically eligible for placement under paragraph (o)(6)(ii) of this section.

(8) *Career Development.* Agencies will provide the career interns with formal training and developmental opportunities to acquire the appropriate agency-identified competencies needed for conversion. These activities may include, but are not limited to, formal training classes, rotational or other job assignments, attendance at conferences and seminars, interagency assignments, or other activities approved by the agency.

(9) *Agency Responsibilities.* Each agency will determine the appropriate use of the Career Intern Program relating to recruitment needs in specific occupational series, grades, and geographical areas, ensuring that programs are developed and implemented in accordance with the merit system principles. Agencies may adapt the program to meet their individual requirements, including, but not limited to such aspects as:

(i) Deciding how to delegate the authority to develop Career Intern Programs (*e.g.,* department-wide versus bureaus and agency components);

(ii) Defining the roles and responsibilities of supervisors and other key officials in career intern program administration, such as human resources staff, budget and finance staff, career counselors, or mentors;

(iii) Designing, implementing, and documenting formal program(s) for the training and development of employees selected under the provisions of this Part, including the type and duration of assignments;

(iv) Deciding how to inform the career interns of what will be expected during the internship, including developmental assignments and performance requirements; and

(v) Planning, coordinating, implementing and monitoring program activities.

## PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

3. The authority citation for part 315 is revised to read as follows:

**Authority:** 5 U.S.C. 1302, 3301, and 3302; E.O. 10577. 3 CFR, 1954–1958 Comp. P. 218, unless otherwise noted; and E.O. 13162. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 120034, 3 CFR, 1978 Comp. p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(d). Sec. 315.611 also issued under Section 511, Pub. L. 106–117, 113 STAT. 1575–76. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987, Comp., p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

4. In § 315.201, a new paragraph (b)(1)(xix) is added to read as follows:

### Subpart B—The Career-Conditional Employment System

**§ 315.201 Service requirement for career tenure.**

* * * * *

(b) * * *

(1) * * *

(xix) The date of appointment as a career intern under Schedule B, § 213.3202(o) of this chapter, provided the employee's appointment is converted to career or career-conditional appointment under § 315.712.

5. A new section § 315.712 is added to subpart G to read as follows:

## Subpart G—Conversion to Career or Career-Conditional Employment From Other Types of Employment

* * * * *

### § 315.712 Conversion based on service as a Career Intern

(a) *Agency authority.* An agency may convert noncompetitively to career or career-conditional employment, a career intern who:

(1) Has successfully completed a Career Intern Program, under § 213.3202(o) of this chapter, at the time of conversion; and

(2) Meets all citizenship, suitability and qualification requirements.

(b) *Tenure on conversion.* An employee whose appointment is converted to career or career-conditional employment under paragraph (a) of this section becomes:

(1) A career-conditional employee except as provided in paragraph (b)(2) of this section;

(2) A career employee when he or she has completed the service requirement for career tenure or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* An employee whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

[FR Doc. 00–31887 Filed 12–13–00; 8:45 am]
BILLING CODE 6325–01–P

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 929

**[Docket No. FV00–929–5 FR]**

## Cranberries Grown in the States of Massachusetts, et al.; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate for the Cranberry Marketing Committee (Committee) for the 2000–2001 and subsequent fiscal periods from $.06 to $.08 per barrel of cranberries acquired by handlers. The Committee is responsible for local administration of the marketing order which regulates the handling of cranberries grown in the production area. Authorization to assess cranberry handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began September 1 and ends August 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** December 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243; Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the ''order.'' The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, cranberry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable cranberries beginning September 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rate established for the Committee for the 2000–2001 and subsequent fiscal periods for cranberries from $0.06 to $0.08 per barrel of cranberries.

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

For the 1999–2000 fiscal period, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The assessment rate for the 1999–2000 fiscal period was increased from $0.04 to $0.06 cents per barrel to generate enough funds to cover increased costs due to the industry's oversupply situation. Committee expenses in 1999–2000 were initially estimated at $548,231, but were increased to $675,339 to cover additional meeting and other expenses related to the development of volume regulation for the 2000–2001 season.

At its June 6, 2000, meeting the Committee developed its 2000–2001 budget and assessment rate. In July, the Committee conducted a mail vote, and unanimously recommended 2000–2001

expenditures of $778,840 and an assessment rate of $.08 per barrel of cranberries. The expenditures and assessment rate were discussed and unanimously reaffirmed at the Committee's August 28, 2000, meeting. A further increase in the assessment rate for 2000–2001 was recommended because the Committee needs additional funds to implement volume regulation and further address the industry's oversupply situation.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include $223,647 for administration costs, $119,464 for personnel, and $67,500 for Committee meetings. Budgeted expenses for these items in the 1999–2000 budget were $130,358 for administration, $119,807 for personnel, and $81,700 for Committee meetings.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected barrels of cranberries acquired by handlers. Acquisitions for the year are estimated at 6,400,000 barrels which should provide $512,000 in assessment income. Income derived from handler assessments, along with interest income, operating reserves, and funds from the Foreign Agricultural Service for export marketing programs will be adequate to cover budgeted expenses. Any excess funds will be used by the Committee to build up its operating reserve. Funds in the reserve, currently $45,000, will be kept within the approximately one year's operational expenses permitted by the order (§ 929.42(a)).

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

Although the assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2000–2001 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

**The Regulatory Flexibility Act and Effects on Small Businesses**

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

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

There are approximately 20 handlers of cranberries who are subject to regulation under the order and approximately 1,100 producers of cranberries in the regulated area. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of cranberry handlers and producers may be classified as small entities.

The assessment rate for the 1999–2000 fiscal period was increased from $0.04 to $0.06 cents per barrel to generate enough funds to cover increased costs due to the industry's oversupply situation. Committee expenses in 1999–2000 were initially estimated at $548,231, but had to increase to $675,339 to cover additional meeting and other expenses related to the development of volume regulation for the 2000–2001 season.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from $0.06 to $0.08 per barrel of cranberries acquired by handlers. The Committee unanimously recommended 2000–2001 expenses of $778,840. The major expenditures recommended by the Committee include $223,647 for administration costs, $119,464 for personnel, and $67,500 for Committee meetings. Budgeted expenses for these items in 1999–2000 were $130,358, $119,807, and $81,700, respectively.

The increased assessment rate was recommended by the Committee because the Department approved a volume regulation for the 2000–2001 season to help stabilize marketing conditions. The Committee needs additional funds to administer the volume regulation and further address the industry's oversupply situation.

The Committee discussed the alternative of continuing the existing $0.06 per barrel assessment rate, but concluded that the Committee could run out of funds with the implementation of a volume regulation program. The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected barrels of cranberries acquired by handlers. Acquisitions for the year are estimated at 6,400,000 barrels which should provide $512,000 in assessment income. Income derived from handler assessments, along with interest income, operating reserves, and funds from the Foreign Agricultural Service for export marketing programs will be adequate to cover budgeted expenses. Any excess funds will be used by the Committee to build up its operating reserve. Funds in the reserve, currently $45,000, will be kept within the approximately one year's operational expenses permitted by the order (§ 929.42(a)).

This action increases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. In addition, the Committee's meeting was widely publicized throughout the cranberry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Board meetings, all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

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

A proposed rule concerning this action was published in the **Federal Register** on November 2, 2000 (65 FR 65788). Copies of the proposed rule were also mailed or sent via facsimile to all cranberry handlers. Finally, the proposal was made available through the Internet by the Office of the Federal

Register. A 15-day comment period ending on November 17, 2000, was provided. No comments were received.

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

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

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are already receiving 2000–2001 crop cranberries from growers and the assessment rate applies to all cranberries received during the 2000–2001 crop year and subsequent seasons; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are aware of this rule which was recommended at a public meeting; and (4) a 15-day comment period was provided for in the proposed rule published in the **Federal Register** and no comments were received.

**List of Subjects in 7 CFR Part 929**

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

## PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 929.236 is revised to read as follows:

**§ 929.236 Assessment rate.**

On and after September 1, 2000, an assessment rate of $0.08 per barrel is established for cranberries.

Dated: December 8, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–31798 Filed 12–13–00; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

## Agricultural Marketing Service

## 7 CFR Part 984

**[Docket No. FV00–984–2 FR]**

## Walnuts Grown in California; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Walnut Marketing Board (Board) for the 2000–01 and subsequent marketing years from $0.0118 to $0.0134 per kernelweight pound of assessable walnuts. The $0.0016 increase is necessary because this year's estimate of assessable walnuts is about 13 percent less than last year's estimate. The Board locally administers the Federal marketing order which regulates the handling of walnuts grown in California (order). Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** December 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 984 (7 CFR part 984), both as amended, regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule increases the assessment rate established for the Board for the 2000–01 and subsequent marketing years from $0.0118 to $0.0134 per kernelweight pound of assessable walnuts. The $0.0016 increase is necessary because this year's estimate of assessable walnuts is about 13 percent less than last year's estimate. Thus, sufficient income will not be generated at the current assessment rate for the Board to meet its anticipated expenses.

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

For the 1999–2000 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate of $0.0118 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on September 8, 2000, and unanimously recommended 2000–01 expenditures of $2,937,885 and an assessment rate of $0.0134 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $2,967,356. The recommended assessment rate is $0.0016 higher than the $0.0118 rate currently in effect. The higher assessment rate is necessary because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be 245,000 tons (220,500,000 kernelweight pounds merchantable), which is about 13 percent less than last year's estimate. Thus, sufficient income would not be generated at the current rate for the Board to meet its anticipated expenses.

Major expenditures recommended by the Board for the 2000–01 year include $2,382,455 for marketing and production research projects, $305,250 for general expenses such as administrative salaries and insurance, $165,380 for office expenses, $59,800 for a production research director, and $25,000 as a contingency. Budgeted expenses for these items last year were $2,413,038 for marketing and production research projects, $289,709 for general expenses, $179,809 for office expenses, $59,800 for a production research director, and $25,000 as a contingency, respectively.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. Merchantable shipments for the year are estimated at 220,500,000 kernelweight pounds which should provide $2,954,700 in assessment income and allow the Board to cover its expenses. Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year §thnsp;984.69). The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and other information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2000–01 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 5,000 producers of walnuts in the production area and about 48 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Using an average f.o.b. price of $2.10 per kernelweight pound of walnuts for the 1999–2000 marketing year, handlers would have had to ship more than 2,380,953 pounds of walnuts to exceed sales of $5,000,000. Approximately 33 percent of the handlers shipped over 2,380,953 kernelweight pounds of walnuts and 67 percent shipped less than that amount during the 1999–2000 marketing year. Based on the foregoing, it can be concluded that the majority of California walnut handlers may be classified as small entities, excluding receipts from other sources. A majority of the California walnut growers also may be classified as small entities.

This rule increases the assessment rate established for the Board and collected from handlers for the 2000–01 and subsequent marketing years from $0.0118 to $0.0134 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2000–01 expenses of $2,937,885. The recommended $0.0016 increase in the assessment rate is necessary because this year's estimate of assessable walnuts is about 13 percent less than last year's estimate. Thus, sufficient income would not be generated at the current rate for the Board to meet its anticipated expenses.

Major expenditures recommended by the Board for the 2000–01 year include $2,382,455 for marketing and production research projects, $305,250 for general expenses such as administrative salaries and insurance, $165,380 for office expenses, $59,800 for a production research director, and $25,000 as a contingency. Budgeted expenses for these items last year were $2,413,038 for marketing and production research projects, $289,709 for general expenses, $179,809 for office expenses, $59,800 for a production research director, and $25,000 as a contingency, respectively.

Prior to arriving at this budget, the Board considered information from various sources, such as the Board's Budget and Personnel Committee, Research Committee, and Marketing Development Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the walnut industry. The recommended $0.0134 per kernelweight pound assessment rate was then determined by dividing the total recommended budget by the 220,500,000 kernelweight pound estimate of assessable walnuts for the year. This is approximately $16,815 above the anticipated expenses, which the Board determined to be acceptable.

Unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year (§ 984.69).

A review of historical information and preliminary information pertaining to the current marketing year indicates that the grower price for 2000–01 could range between $0.50 and $0.70 per kernelweight pound of assessable walnuts. Therefore, the estimated assessment revenue for the 2000–01 year as a percentage of total grower revenue could range between 2.0 and 2.7 percent.

Regarding the impact of this action on affected entities, this action will increase the assessment rate currently imposed on walnut handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the order.

In addition, the Board's meeting was widely publicized throughout the walnut industry and all interested persons were invited to attend and participate in Board deliberations on all issues. Like all Board meetings, the September 8, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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

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

A proposed rule concerning this action was published in the **Federal Register** on October 23, 2000 (65 FR 63219). Copies of the proposed rule were also mailed or sent via facsimile to all walnut handlers. The proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending November 22, 2000 was provided for interested persons to respond to the proposal. No comments were received.

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

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

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2000–01 marketing year began on August 1, 2000, and the order requires that the rate of assessment for each marketing year apply to all merchantable walnuts handled during the year; (2) the Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are aware of this action which was unanimously recommended at a public meeting and is similar to other assessment rate actions issued in past years; and (4) a proposed rule on this action was published in the **Federal Register** and no comments were received.

**List of Subjects in 7 CFR Part 984**

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

## PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 984.347 is revised to read as follows:

### § 984.347 Assessment rate.

On and after August 1, 2000, an assessment rate of $0.0134 per kernelweight pound is established for California merchantable walnuts.

Dated: December 8, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–31797 Filed 12–13–00; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NE–43–AD; Amendment 39–12040; AD 2000–25–06]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines.

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule, request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney (PW) PW4000 turbofan engines with the current design low pressure turbine (LPT) 4th stage air seal installed. This action requires, based on engine model, replacement of the current design seal with a new design seal, or with a modified seal. This amendment is prompted by reports of cracks in LPT 4th stage air seals. The actions specified by this AD are intended to reduce stresses that could lead to LPT 4th stage air seal cracking, resulting in seal fracture, uncontained engine failure, and damage to the airplane.

**DATES:** Effective date December 29, 2000. Comments for inclusion in the Rules Docket must be received on or before December 29, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''*9-ane-adcomment@faa.gov*''. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced under the caption **SUPPLEMENTARY INFORMATION** 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 FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**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:** The FAA recently received reports of five LPT 4th stage air seals found cracked. An investigation revealed that the cracking is being caused by excessive axial loads on the air seal. The thermal environment and mechanical loads are causing the current design LPT 4th stage air seals to grow radially and axially.

This is causing insufficient distance between the LPT stage 3 disk and LPT stage 4 disk, that results in an excessive axial load leading to air seal cracks. This action requires, based on engine model, replacement of the current design seal with a new design seal, or with a modified seal. This amendment is prompted by reports of cracks in LPT 4th stage air seals. The actions specified by this AD are intended to reduce stresses that could lead to LPT 4th stage air seal cracking, resulting in seal fracture, uncontained engine failure, and damage to the airplane. Pratt & Whitney has issued two relevant Alert Service Bulletins, (ASB) No. PW4G–100–A72–155, Revision 1, dated October 27, 2000, and ASB No. PW4ENG A72–707, Revision 1, dated October 27, 2000. The ASB's introduce a new design LPT 4th stage air seal P/N 51N038, and provide instructions for modifying the current design air seal P/N 50N478 to increase service life.

## Required Actions

Since the unsafe condition described is likely to exist or develop on other engines of the same type design that are certificated for operation in the United States, this AD is being issued to replace, based on engine model, the current design seal P/N 50N478 with a new design seal P/N 51N038, or modification of the current design seal. This AD is also being issued to reduce stresses that could lead to LPT 4th stage air seal cracking, resulting in seal fracture, uncontained engine failure, and damage to the airplane.

## Immediate Adoption

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

## Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–43–AD.'' The postcard will be date stamped and returned to the commenter.

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order (EO) No. 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under EO No. 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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:

**2000–25–06 Pratt & Whitney:** Amendment 39–12040. Docket 2000–NE–43–AD.

*Applicability:* This airworthiness directive is applicable to Pratt & Whitney (PW) PW4052, PW4056, PW4060, PW4060A, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4164, PW4168, PW4168A, PW4460, and PW4462 turbofan engines, with low pressure turbine (LPT) 4th stage air seal, part number (P/N) 50N478 or P/N 50N478–001 installed. These engines are installed on but not limited to Boeing 747, 767, McDonnell Douglas MD–11, Airbus Industrie A300, A310, and A330 series airplanes.

**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 (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**

Compliance with this AD is required as indicated, unless already done.

To reduce stresses that could lead to fatigue cracking of the LPT 4th stage air seal, resulting in seal fracture, uncontained engine failure, and damage to the airplane, do the following:

(a) If the limits in Table 1 of this AD for 4th stage air seal P/N 50N478 or P/N 50N478–001 have been exceeded, replace with a serviceable part prior to further flight.

(b) Replace 4th stage air seal, P/N 50N478 or 50N478–001, with a serviceable part, based on engine model, prior to exceeding the cycles-since-new (CSN) or cycles-in-

service (CIS) time limits in Table 1 of this AD.

TABLE 1.—4TH STAGE AIR SEAL TIME LIMITS

| Engine model | 4th stage air seal P/N | Cycles-since-new (CSN) on effective date of this AD | Limit |
|---|---|---|---|
| (1) PW4052, PW4060, PW4060A, PW4156, and PW4158. | 50N478 ..... | Fewer than or equal to 8,000 CSN | 8,000 CSN. |
| (2) PW4056, PW4152, PW4156A, and PW4460, that have incorporated service bulletin (SB) PW4ENG 72–657, Revision 1, dated July 19, 2000. | 50N478 ..... | Fewer than or equal to 8,000 CSN | 8,000 CSN. |
| (3) PW4056, PW4152, PW4156A, and PW4460, that have not incorporated SB PW4ENG 72–657, Revision 1, dated July 19, 2000. | 50N478 ..... | Fewer than or equal to 4,500 CSN | 4,500 CSN. |
| (4) PW4062 and PW4462 ..... | 50N478 ..... | Fewer than or equal to 7,000 CSN | 7,000 CSN. |
| (5) PW4164, PW4168, and PW4168A ..... | (i)50N478 or 50N478–001. | Fewer than or equal to 3,000 CSN | 4,500 CSN. |
| | (ii)50N478 or 50N478–001. | More than 3,000 CSN but fewer than or equal to 4,500 CSN. | 1,500 CIS after the effective date of this AD. |
| | (iii) 50N478 or 50N478–001. | More than 4,500 CSN but fewer than 6,000 SCN. | 6,000 CSN. |

For the purposes of this AD, a serviceable part is defined in Table 2 as follows:

TABLE 2.—SERVICEABLE PARTS

| For engine models | Serviceable P/N |
|---|---|
| (1) PW4052, PW4056, PW4060, PW4060A, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4460, and PW4462. | 51N038 or 50N478-001 |
| (2) PW4164, PW4168, and PW4168A. | 51N038 |

**Alternative Methods of Compliance**

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

**Special Flight Permits**

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

**Effective Date of This AD**

(f) This amendment becomes effective December 29, 2000.

Issued in Burlington, Massachusetts, on December 5, 2000.

**Diane S. Romanosky,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–31537 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30220; Amdt. No. 2027]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City,

OK 73169 (Mail address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents in unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

## The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include ''or GPS or FMS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove ''or GPS or FMS'' from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as ''RNAV'' will be redesignated as ''VOR/DME RNAV'' without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAP's are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

## Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 8, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

### §§ 97.23, 97.27, 97.33, 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's effective at 0901 UTC on the dates specified:

** * * Effective January 25, 2001*

Ann Arbor, MI, Ann Arbor Muni, VOR or GPS RWY 6, Amdt 13A, CANCELLED
Ann Arbor, MI, Ann Arbor Muni, VOR RWY 6, Amdt 13A
Ann Arbor, MI, Ann Arbor Muni, VOR or GPS RWY 24, Amdt 13A, CANCELLED
Ann Arbor, MI, Ann Arbor Muni, VOR RWY 24, Amdt 13A
Erwin, NC, Erwin/Harnett County, NDB or GPS RWY 23, Orig-C, CANCELLED
Erwin, NC, Erwin/Harnett County, NDB RWY 23, Orig-C
Pulaski, TN, Pulaski/Abernathy Field, VOR/DME or GPS RWY 33,Orig-A, CANCELLED
Pulaski, TN, Pulaski/Abernathy Field, VOR/DME RWY 33, Orig-A

[FR Doc. 00–31930 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30219; Amdt. No. 2026]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. these regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by references are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and amendment number.

## The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timel8iness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

## Conclusion

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 Execution 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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 8, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

## Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

### § 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

| FDC date | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 09/19/00 | CT | Windsor Locks | Bradley Intl | 0/1538 | VOR OR TACAN RWY 33 ORIG . . . |
| 09/19/00 | CT | Windsor Locks | Bradley intl | 0/1539 | ILS RWY 33 AMDT 7 . . . |
| 09/27/00 | CA | Lake Tahoe | South Lake Tahoe | 0/1949 | LDA/DME-2 RWY 18 AMDT 1 . . . |
| 09/27/00 | CA | Lake Tahoe | South Lake Tahoe | 0/1951 | GPS RWY 18 ORIG . . . |

| FDC date | State | City | Airport | FDC No. | SIAP |
|---|---|---|---|---|---|
| 09/27/00 | CA | Lake Tahoe | South Lake Tahoe | 0/1952 | VOR/DME OR GPS-A AMDT 3A . . . |
| 09/27/00 | CA | Lake Tahoe | South Lake Tahoe | 0/1953 | LDA/DME-1 RWY 18 AMDT 7 . . . |
| 10/27/00 | MS | Olive Branch | Olive Branch | 0/3365 | NDB OR GPS RWY 18, AMDT 4A . . . |
| 10/27/00 | TN | Memphis | Memphis Intl | 0/3349 | ILS RWY 18R AMDT 12A . . . |
| 11/08/00 | OK | Sand Springs | William R Pogue Muni | 0/4457 | NDB RWY 35, AMDT 2A . . . REPLACES FDC 0/3887 PUBLISHED IN TL00–26. |
| 11/17/00 | MA | Mansfield | Mansfield Muni | 0/4304 | GPS RWY 32 ORIG-A . . . |
| 11/17/00 | MA | Mansfield | Mansfield Muni | 0/4305 | NDB RWY 32 AMDT 6C . . . |
| 11/17/00 | NY | White Plains | Westchester County | 0/4293 | ILS RWY 16 AMDT 22B . . . |
| 11/17/00 | NY | White Plains | Westchester County | 0/4294 | ILS RWY 34 AMDT 3 . . . |
| 11/21/00 | FL | Fort Myers | Page Field | 0/4377 | RADAR-1, AMDT 2 . . . |
| 11/21/00 | FL | Fort Myers | Page Field | 0/4379 | ILS RWY 5, AMDT 6D . . . |
| 11/21/00 | FL | Fort Myers | Page Field | 0/4380 | NDB RWY 5, AMDT 5B . . . |
| 11/21/00 | FL | Fort Myers | Page Field | 0/4381 | VOR RWY 13, ORIG-A . . . |
| 11/21/00 | LA | Eunice | Eunice | 0/4374 | NDB OR GPS RWY 16 ORIG-A . . . |
| 11/21/00 | TX | El Paso | El Paso Intl | 0/4373 | NDB RWY 22 AMDT 28B . . . |
| 11/23/00 | AR | Siloam Springs | Smith Field | 0/4407 | VOR OR GPS-A AMDT 8 . . . |
| 11/23/00 | LA | Eunice | Eunice | 0/4405 | VOR/DME OR GPS-A AMDT 2 . . . |
| 11/23/00 | OK | Ardmore | Ardmore Muni | 0/4403 | ILS RWY 31 AMDT 4 . . . |
| 11/24/00 | ID | Boise | Boise Air Terminal (Gowen Field) | 0/4424 | GPS RWY 28L AMDT 1B . . . |
| 11/29/00 | CA | Sacramento | Sacramento Executive | 0/4588 | ILS RWY 2 AMDT 22A . . . |
| 11/29/00 | MO | Mosby | Clay County Regional | 0/4590 | GPS RWY 18 ORIG-B . . . |
| 11/30/00 | NY | Islip | Long Island MacArthur | 0/4694 | ILS RWY 24 AMDT 2 . . . |
| 11/30/00 | LA | Baton Rouge | Baton Rouge Metropolitan/Ryan Field | 0/4602 | GPS RWY 31 ORIG-A . . . |
| 11/30/00 | LA | Homer | Homer Muni | 0/4601 | NDB OR GPS RWY 12 AMDT 1 . . . |
| 11/30/00 | LA | Minden | Minden-Webster | 0/4600 | GPS RWY 19 ORIG . . . |
| 11/30/00 | MT | Poplar | Poplar | 0/4665 | RNAV RWY 9, ORIG . . . |
| 11/30/00 | MT | Poplar | Poplar | 0/4666 | RNAV RWY 27, ORIG . . . |
| 11/30/00 | NH | Manchester | Manchester | 0/4651 | ILS RWY 35 AMDT 20 . . . |
| 11/30/00 | NH | Manchester | Manchester | 0/4652 | VOR/DME OR GPS RWY 17 ORIG-A . . . |
| 11/30/00 | NH | Manchester | Manchester | 0/4653 | NDB OR GPS RWY 35 AMDT 13A . . . |
| 11/30/00 | NH | Manchester | Manchester | 0/4654 | VOR/DME RNAV RWY 6 AMDT 4 . . . |
| 11/30/00 | NH | Manchester | Manchester | 0/4655 | VOR RWY 35 AMDT 15A . . . |
| 11/30/00 | NH | Manchester | Manchester | 0/4656 | GPS RWY 6 ORIG . . . |
| 11/30/00 | NH | Manchester | Manchester | 0/4658 | ILS RWY 17 AMDT 2 . . . |
| 11/30/00 | TX | CLEBURNE | Cleburne Muni | 0/4733 | LOC/DME RWY 15 ORIG . . . |
| 11/30/00 | TX | Cleburne | Cleburne Muni | 0/4734 | VOR/DME RNAV RWY 15 ORIG . . . |
| 11/30/00 | TX | Houston | George Bush Intercontinental Airport/ Houston. | 0/4619 | GPS RWY 27 AMDT 1 . . . |
| 11/30/00 | TX | Marshall | Harrison County | 0/4628 | GPS RWY 33 ORIG-D . . . |
| 11/30/00 | TX | Marshall | Harrison County | 0/4629 | VOR/DME RNAV RWY 33 AMDT 1C . . . |
| 11/30/00 | WA | Bellingham | Bellingham Intl | 0/4716 | MLS RWY 34 ORIG . . . |
| 11/30/00 | WA | Bellingham | Bellingham Intl | 0/4717 | GPS RWY 34, ORIG-A . . . |
| 11/30/00 | WA | Bellingham | Bellingham Intl | 0/4722 | NDB RWY 16, ORIG . . . |
| 11/30/00 | WA | Bellingham | Bellingham Intl | 0/4725 | GPS RWY 16, ORIG-A . . . |
| 11/30/00 | WA | Bellingham | Bellingham Intl | 0/4728 | ILS RWY 16, AMDT 3 . . . |
| 11/30/00 | WI | Mosinee | Central Wisconsin | 0/4721 | ILS RWY 8, AMDT 11B . . . |
| 12/01/00 | AL | Tuscaloosa | Tuscaloosa Muni | 0/4757 | ILS RWY 4, AMDT 14B . . . |
| 12/01/00 | FL | Boca Raton | Boca Raton | 0/4773 | GPS RWY 5, AMDT 1 . . . |
| 12/01/00 | FL | Boca Raton | Boca Raton | 0/4774 | VOR/DME OR GPS-A, ORIG-A . . . |
| 12/01/00 | UT | Wendover | Wendover | 0/4804 | VOR/DME OR TACAN RWY 26, ORIG . . . |
| 12/04/00 | LA | Bunkie | Bunkie Muni | 0/4814 | VOR/DME OR GPS-A, AMDT 5 . . . THIS REPLACES FDC 0/4814 |
| 12/04/00 | MO | Harrisonville | Lawrence Smith Memorial | 0/4826 | VOR/DME RWY 35 ORIG . . . |
| 12/04/00 | MO | Harrisonville | Lawrence Smith Memorial | 0/4828 | GPS RWY 35 ORIG . . . |
| 12/04/00 | MO | St Joseph | Rosecrans Memorial | 0/4831 | LOC BC RWY 17 AMDT 8B . . . |
| 12/05/00 | OK | Lawton | Lawton-Fort Sill Regional | 0/4873 | RADAR-2 AMDT 1 . . . |

[FR Doc. 00–31929 Filed 12–13–00; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30218; Amdt. No. 2025]**

## Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice of Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

### Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 8, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME,VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective December 28, 2000*

Greeley, CO, Greeley-Weld County, ILS RWY 34, Orig
Holyoke, CO, Holyoke, NDB RWY 14, Orig
Holyoke, CO, Holyoke, NDB RWY 32, Orig
Wadena, MN, Wadena Muni, RNAV RWY 34, Orig

** * * Effective January 25, 2001*

Barrow, AK, Wiley Post—Will Rogers memorial, ILS/DME RWY 6, Amdt 2B, CANCELLED
Barrow, AK, Wiley Post—Will Rogers memorial, ILS RWY 6, Orig
Arkadelphia, AR, Dexter B. Florence Memorial Field, GPS RWY 4, Orig-A
Blytheville, AR, Blytheville Muni, GPS RWY 36, Orig-A
De Queen, AR, J. Lynn Helms Sevier County, GPS RWY 8, Orig-A
Harrison, AR, Boone County, NDB RWY 18, Amdt 5D
Harrison, AR, Boone County, GPS RWY 18, Orig-A
Helena/West Helena, AR, Thompson-Robbins, GPS RWY 17, Orig-A
Hot Springs, AR, Memorial Field, Zaple VOR RWY 5, Amdt 4A
Hot Springs, AR, Memorial Field, NDB RWY 5, Amdt 7B
Newport, AR, Newport Muni, GPS RWY 18, Orig-B
Newport, AR, Newport Muni, GPS RWY 36, Orig-B
Fairfield, IA, Fairfield Muni, RNAV (GPS) RWY 18, Orig
Fairfield, IA, Fairfield Muni, VOR/DME RNAV RWY 18, Amdt 1C, CANCELLED
Oelwein, IA, Oelwein Muni, RNAV (GPS) RWY 13, Orig
Oelwein, IA, Oelwein Muni, VOR/DME RNAV OR GPS RWY 13, Amdt 2A, CANCELLED
Alexandria, LA, Esler Regional, VOR OR GPS RWY 32, Amdt 13, CANCELLED
De Quincy, LA, De Quincy Industrial Airpark, GPS RWY 15, Orig-A
De Quincy, LA, De Quincy Industrial Airpark, GPS RWY 33, Orig-A
Hammond, LA, Hammond Muni, GPS RWY 31, Orig-B
Houma, LA, Houma-Terreboone, VOR/DME OR GPS RWY 30, Amdt 11C
Houma, LA, Houma-Terreboone, GPS RWY 18, Orig-A
New Iberia, LA, Acadiana Regional, NDB OR GPS RWY 34, Amdt 8B
Grants, NM, Grants-Milan Muni, GPS RWY 31, Orig-C
Las Vegas, NM, Las Vegas, Muni, GPS RWY 32, Orig-A
Santa Fe, NM, Santa Fe Muni, NDB RWY 2, Amdt 4A
Garrison, ND, Garrison Muni, RNAV (GPS) RWY 13, Orig
Garrison, ND, Garrison Muni, RNAV (GPS) RWY 31, Orig
Guymon, OK, Guymon Muni, GPS RWY 18, Orig, CANCELLED
Guymon, OK, Guymon Muni, RNAV (GPS) RWY 18, Orig
Williamsport, PA, Williamsport Regional, VOR/DME RNAV–A, Orig, CANCELLED
Pulaski, TN, Abernathy Field, NDB OR GPS RWY 15, Amdt 4, CANCELLED
Pulaski, TN, Abernathy Field, RNAV (GPS) RWY 15, Orig
Pulaski, TN, Abernathy Field, RNAV (GPS) RWY 33, Orig
Big Spring, TX, Big Spring McMahon-Wrinkle, VOR/DME OR GPS RWY 17, Amdt 7B
Bonham, TX, Jones Field, NDB RWY 17, Amdt 4
Borger, TX, Hutchinson County, VOR OR GPS RWY 17, Amdt 8A
Dallas, TX, Redbird, VOR/DME OR GPS RWY 17, Orig-A
Dumas, TX, Moore County, VOR/DME RNAV RWY 19, Amdt 3D
Dumas, TX, Moore County, GPS RWY 19, Orig-A
Fort Worth, TX, Fort Worth Meacham Intl, NDB OR GPS RWY 16L, Amdt 5A
Fort Worth, TX, Fort Worth Spinks, VOR/DME RNAV RWY 35L, Orig-A
Hamilton, TX, Hamilton Muni, NDB RWY 36, Orig-A
Hamilton, TX, Hamilton Muni, GPS RWY 36, Orig-A
Marfa, TX, Marfa Muni, VOR RWY 30, Amdt 5A
Marfa, TX, Marfa Muni, GPS RWY 30, Orig-A
Mesquite, TX, Mesquite Metro, NDB OR GPS RWY 17, Amdt 5A
Midland, TX, Midland Airpark, VOR/DME OR GPS RWY 25, Amdt 3A
New Braunfels, TX, New Braunfels Muni, GPS RWY 13, Orig-B
Palacios, TX, Palacios Muni, GPS RWY 13, Orig-A
Seminole, TX, Gaines County, NDB RWY 35, Amdt 1
Sinton, TX, San Patricio County, VOR/DME RWY 14, Amdt 1A
Sinton, TX, San Patricio County, VOR/DME RWY 32, Amdt 8A
Morgantown, WV, Morgantown Muni—Walter L. Bill Hart Field, RNAV (GPS) RWY 18, Amdt 1
Madison, WI, Dane County Regional—Truax Field, RADAR–1, Amdt 16

[FR Doc. 00–31928 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Parts 162, 171 AND 178

**[T.D. 00–88)**

**RIN 1515–AC69**

## Civil Asset Forfeiture

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Interim rule; solicitation of comments.

**SUMMARY:** This document amends the Customs Regulations, on an interim basis, in order to implement the provisions of the Civil Asset Forfeiture Reform Act of 2000 (CAFRA), insofar as these provisions are applicable to laws enforced by Customs. The CAFRA creates general rules governing civil forfeiture proceedings. However, CAFRA specifically exempts from certain of its requirements forfeitures that are made under a number of statutes, among these being: The Tariff Act of 1930 or any other provision of law codified in title 19, United States Code; the Internal Revenue Code of 1986; the Federal Food, Drug, and Cosmetic Act; and the Trading with the Enemy Act. In addition, the interim rule makes minor conforming changes to the Customs Regulations in order to reflect a recodification of existing statutory law.

**DATES:** Interim rule is effective August 23, 2000, and applies to any forfeiture proceeding commenced on or after August 23, 2000. Comments must be received on or before February 12, 2001.

**ADDRESSES:** Written comments may be addressed to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Jeremy Baskin, Penalties Branch (202–927–2344).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 2 of the Civil Asset Forfeiture Reform Act of 2000 (''CAFRA''), Pub. L. 106–185, 114 Stat. 202, enacted on April 25, 2000, and codified at title 18, United States Code, section 983 (18 U.S.C. 983), creates general rules for civil forfeiture proceedings. This section of the CAFRA, however, specifically exempts from certain of its requirements forfeitures undertaken pursuant to the following statutes: The Tariff Act of 1930 or any other provision of law codified in title

19, United States Code; the Internal Revenue Code of 1986; the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*); the Trading with the Enemy Act (50 U.S.C. App. 1 *et seq.*); and section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).

Under section 2 of the CAFRA, specified duties and obligations are placed upon Government officials to be designated by seizing agencies. To clarify and implement the law in this regard, the interim rule identifies the particular Customs official who will grant extensions of time for sending notices of seizure, as authorized by 18 U.S.C. 983(a)(1)(B), and it identifies those Customs officials who will rule on requests for immediate release of seized property, as authorized by 18 U.S.C. 983(f)(2). The interim regulations also provide clear guidance to Customs officials in the processing of property seized for forfeiture under the CAFRA.

To address these matters, the interim rule adds a new subpart H to part 162 of the Customs Regulations (19 CFR part 162, subpart H).

Furthermore, the interim regulations make clear that acceptance of an administrative forfeiture remission does not make the government liable for fees, costs or interest pursuant to 28 U.S.C. 2465. In this respect, a new § 171.24 is added to the Customs Regulations (19 CFR 171.24) to provide that, in the case of any seizure for forfeiture that is remitted or mitigated under 19 U.S.C. 1618 or 31 U.S.C. 5321, the person who accepts such a remission or mitigation decision will not be considered to have substantially prevailed in a civil forfeiture proceeding for purposes of being able to collect any fees, costs or interest from the Government.

With the exception of the amendment providing for a new § 171.24, seizures exempt from the requirements of section 2 of the CAFRA will be processed in accordance with existing regulations.

Lastly, Pub. L. 103–272, 108 Stat. 745, dated July 5, 1994, reenacted and recodified the provisions of title 49, United States Code. To this end, the interim rule removes the reference to ''49 U.S.C. App.'' appearing in part 171, subpart F, of the Customs Regulations (19 CFR part 171, subpart F), and adds in its place a reference to ''49 U.S.C. 80303'', in accordance with the recodification of the statutory provision specifically made by section 1(e) of Public Law 103–272.

## Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C.

## Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act and Executive Order 12866

The interim regulations do not impose any additional requirements upon the public. Rather, these regulations are intended both to confer certain additional rights on property owners or interested parties, and to provide clear guidance to Customs officials in the processing of property seized for forfeiture under the CAFRA. Accordingly, it has been determined that notice and public comment procedures are inapplicable and unnecessary in this case pursuant to 5 U.S.C. 553(b)(B), and pursuant to 5 U.S.C. 553(d)(1) and (d)(3), a delayed effective date is not required. Because this document is not subject to the requirements of 5 U.S.C. 553, as noted, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor do the interim amendments result in a ''significant regulatory action'' as specified in E.O. 12866.

## Paperwork Reduction Act

The collection of information contained in this interim rule has already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Number 1515–0052 (Petition for remission or mitigation of forfeitures and penalties incurred). This collection encompasses a claim for seized property in a non-judicial civil forfeiture proceeding. This rule does not present any material change to the existing approved information collection. An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, is appropriately revised to make reference to OMB Control Number 1515–0052.

## List of Subjects

*19 CFR Part 162*

Administrative practice and procedure, Customs duties and inspection, Drug traffic control, Imports, Inspection, Law enforcement, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Seizures and forfeitures.

*19 CFR Part 171*

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Seizures and forfeitures.

*19 CFR Part 178*

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

## Amendments to the Regulations

Parts 162, 171 and 178, Customs Regulations (19 CFR parts 162, 171 and 178), are amended as set forth below.

## PART 162—INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation for part 162 continues to read as follows, and a specific authority citation for §§ 162.91–162.96 is added to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

Sections 162.91 through 162.96 also issued under 18 U.S.C. 983.

2. Part 162 is amended by adding a new subpart H to read as follows:

## Subpart H—Civil Asset Forfeiture Reform Act

Sec.

162.91 Exemptions.
162.92 Notice of seizure.
162.93 Failure to issue notice of seizure.
162.94 Filing of a claim for seized property.
162.95 Release of seized property.
162.96 Remission of forfeitures and payment of fees, costs or interest.

## Subpart H—Civil Asset Forfeiture Reform Act

### § 162.91 Exemptions.

The provisions of this subpart will apply to all seizures of property for civil forfeiture made by Customs officers except for those seizures of property to be forfeited under the following statutes: The Tariff Act of 1930 or any other provision of law codified in title19,

United States Code; the Internal Revenue Code of 1986; the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*); the Trading with the Enemy Act (50 U.S.C. App. 1 *et seq.*); and section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).

**§ 162.92 Notice of seizure.**

(a) *Generally.* Customs will send written notice of seizure as provided in this section to all known interested parties as soon as practicable. Except as provided in paragraphs (b), (c) and (d) of this section, in no case may notice be sent more than 60 calendar days after the date of seizure. Any notice issued under this section will include all information that is required by § 162.31(a) and (b) of this part.

(b) *Seizure by state or local authorities.* In a case in which property is seized by a state or local law enforcement agency and turned over to Customs for the purpose of forfeiture under Federal law, notice will be sent not more than 90 calendar days after the date of seizure by the State or local law enforcement agency.

(c) *Identity or interest of party not determined.* If the identity or interest of a party is not determined until after the seizure or turnover, but it is determined before a declaration of forfeiture, notice will be sent to such interested party not later than 60 calendar days after the determination by Customs of the identity of the party or the party's interest.

(d) *Extensions by Customs.* (1) The Assistant Commissioner, Investigations, or his designee, may extend the period for sending notice under this section for a period not to exceed 30 calendar days, if it is determined that issuance of the notice within 60 calendar days of seizure may have an adverse result, including:

(i) Endangering the life or physical safety of an individual;

(ii) Flight from prosecution;

(iii) Destruction of or tampering with evidence;

(iv) Intimidation of potential witnesses; or

(v) Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(2) The period for sending notice of seizure as provided in paragraph (d)(1) of this section may not be further extended except by order of a court of competent jurisdiction as prescribed in paragraph (e) of this section.

(e) *Extensions by a court.* Upon motion by the Government, a court of competent jurisdiction may extend the period for sending notice for a period not to exceed 60 calendar days. This period may be further extended by the court for additional 60 calendar-day periods, as necessary, if the court determines, based on a written certification of the Assistant Commissioner, Investigations, or designee, that the conditions set forth in paragraph (d) of this section are present.

**§ 162.93 Failure to issue notice of seizure.**

If Customs does not send notice of a seizure of property in accordance with § 162.92 to the person from whom the property was seized, and no extension of time is granted, Customs will return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. Customs is not, however, required to return contraband or other property that the person may not legally possess.

**§ 162.94 Filing of a claim for seized property.**

(a) *Generally.* In lieu of filing a petition for relief in accordance with part 171 of this chapter, any person claiming property seized by Customs in a non-judicial civil forfeiture proceeding may file a claim with the appropriate Fines, Penalties, and Forfeitures Officer.

(b) *When filed.* Unless the Fines, Penalties, and Forfeitures Officer provides additional time to the person filing a claim for seized property pursuant to paragraph (a) of this section, the claim must be filed within 35 calendar days after the date the notice of seizure is mailed. If the notice of seizure is not received, a claim may be filed not later than 30 calendar days after the date of final publication of notice of seizure and intent to forfeit the property.

(c) *Form of claim.* The claim must be in writing but need not be made in any particular form.

(d) *Content of claim.* The claim must:

(1) Identify the specific property being claimed;

(2) State the claimant's interest in the property (and provide customary documentary evidence of such interest, if available) and state that the claim is not frivolous; and

(3) Be made under oath, subject to penalty of perjury.

(e) *Effect of claim.* Not later than 90 calendar days after a claim has been filed, the Government will file an appropriate complaint for forfeiture, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

**§ 162.95 Release of seized property.**

(a) *Generally.* Except as provided in paragraph (b) of this section, a claimant to seized property under 18 U.S.C. 983(a) is entitled to immediate release of the property if:

(1) The claimant has a possessory interest in the property;

(2) The claimant has sufficient ties to the community to provide assurance that the property will be available at the time of trial;

(3) The continued possession of the property by Customs pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing an individual from working, or leaving an individual homeless; and

(4) The claimant's likely hardship from the continued possession by Customs of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceedings.

(b) *Exceptions.* Immediate release of seized property under paragraph (a) of this section will not apply if the seized property:

(1) Is contraband, currency or other monetary instrument, or electronic funds, unless, in the case of currency, other monetary instrument or electronic funds, such property comprises the assets of a legitimate business;

(2) Is to be used as evidence of a violation of the law;

(3) By reason of design or other characteristic, is particularly suited for use in illegal activities; or

(4) Is likely to be used to commit additional criminal acts if returned to the claimant.

(c) *Request for release.* A claimant seeking release of property under this section must request possession of the property from the Fines, Penalties, and Forfeitures Officer who issued the notice of seizure. The request need not be made in any particular form, but must be in writing and set forth the basis on which the requirements of paragraph (a) of this section have been met. The request may be filed at any time during which the property remains under seizure.

(d) *Granting request for release.* The Fines, Penalties, and Forfeitures Officer may release the property if it is determined to be appropriate under paragraphs (a) through (c) of this section.

(e) *Denial of or failure to act on request for release.* If the Fines, Penalties, and Forfeitures Officer denies the request for release or fails to make a decision on the request by the 15th

calendar day after the date the request is received by Customs, the claimant may file a petition in the district court in which the complaint has been filed, or, if no complaint has been filed, in the U.S. district court in which the seizure warrant was issued or in the U.S. district court for the district in which the property was seized.

**§ 162.96 Remission of forfeitures and payment of fees, costs or interest.**

When a person elects to petition for relief before, or in lieu of, filing a claim under § 162.94, any seizure subject to forfeiture under this subpart may be remitted or mitigated pursuant to the provisions of 19 U.S.C. 1618 or 31 U.S.C. 5321(c), as applicable. Any person who accepts a remission or mitigation decision will not be considered to have substantially prevailed in a civil forfeiture proceeding for purposes of collection of any fees, costs or interest from the Government.

## PART 171—FINES, PENALTIES AND FORFEITURES

1. The authority citation for part 171 is revised to read as follows:

**Authority:** 18 U.S.C. 983; 19 U.S.C. 66, 1592, 1593a, 1618, 1624; 22 U.S.C. 401; 31 U.S.C. 5321; 46 U.S.C. App. 320.

Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614; 21 U.S.C. 881 note.

2. Part 171 is amended by adding a new § 171.24 to read as follows:

**§ 171.24 Remission of forfeitures and payment of fees, costs or interest.**

Any seizure subject to forfeiture may be remitted or mitigated pursuant to the provisions of 19 U.S.C. 1618 or 31 U.S.C. 5321, as applicable. Any person who accepts a remission or mitigation decision will not be considered to have substantially prevailed in a civil forfeiture proceeding for purposes of collection of any fees, costs or interest from the Government.

**§ 171.52 [Amended]**

3. In § 171.51(b)(7) and 171.52(a), the reference to ''49 U.S.C. App. 782'' is removed and, in its place, a reference to ''49 U.S.C. 80303'' is added.

## PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding the following in appropriate numerical sequence according to the section number under the columns indicated:

**§ 178.2 Listing of OMB control numbers.**

| 19 CFR Section | Description | OMB Control No. |
|---|---|---|
| * * * | * * * | * |
| §§ 162.94, 162.95(c) | Petition for remission or mitigation of forefeitures and penalties incurred | 1515–0052 |
| * * * | * * * | * |
| § 171.11 | Petition for remission or mitigation of forfeitures and penalties incurred | 1515–0052 |
| * * * | * * * | * |

Approved: August 24, 2000.

**Raymond W. Kelly,**

*Commissioner of Customs.*

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00–31882 Filed 12–13–00; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF STATE

## 22 CFR Part 22

**[Public Notice 3503]**

## Schedule of Fees for Consular Services

**AGENCY:** Department of State.

**ACTION:** Interim rule; stay of regulation.

**SUMMARY:** The Department of State is staying the amendment of the schedule of fees for the affidavit of support processing fee published in the **Federal Register** of September 7, 2000 (65 FR 54148–54150).

**DATES:** Effective December 14, 2000, Item 61 of 22 CFR 22.1 is stayed until January 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Susan Abeyta, Office of the Executive Director, Bureau of Consular Affairs, Department of State, SA–1, 10th Floor, 2401 E Street, NW., Washington DC 20522–0111; telex (202) 663–2499; e-mail address *abeytask@state.gov.*

**SUPPLEMENTARY INFORMATION:** On September 7, 2000, (65 FR 54148–54150) the Department published a rule adding a new item, Item 61, to the Schedule of Fees for consular services. Item 61 calls for a fee of $50.00 for review of a newly-required Affidavit of Support, Form I–864, when submitted in support of an application for immigration to the United States. The rule established October 1, 2000, as the effective date for collection of this new fee. For technical reasons, the Department was unable to begin this program on that date. This rule applies to posts designated for this purpose by the Deputy Assistant Secretary for Visa Services.

### List of Subjects in 22 CFR Part 22

Schedule of Fees for Consular Services.

22 CFR Part 22 is amended as follows:

## PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

1. The authority citation for Part 22 continues to read:

**Authority:** 8 U.S.C. 1153 note, 1151, 1151 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 Y,/s,/c, 9701; E.O. 10718; 22 FR 4632, 3 CFR 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR 1966–1970 Comp., p. 570.

**§ 22.1 [Amended]**

2. Stay § 22.1, Item 61 until January 1, 2001.

Dated: November 27, 2000.

**Bonnie R. Cohen,**

*Under Secretary for Management.*

[FR Doc. 00–31740 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–06–P

## DEPARTMENT OF STATE

## 22 CFR Part 42

**[Public Notice 3505]**

## Immigrant Visas; Change in the Schedule of Fees for Consular Service

**AGENCY:** Department of State.

**ACTION:** Final Rule, with a request for comments.

**SUMMARY:** The Department of State is amending the immigrant visa regulations to reference a change in the Schedule of Fees for Consular Services which added a fee under Item 61 for assistance in the preparation of a required Affidavit of Support.

**DATES:** Effective January 1, 2001. Comments must be submitted by February 12, 2001.

**ADDRESSES:** Interested persons are invited to submit comments in duplicate to the Chief, Legislation and Regulations Division, Visa Services, Department of State, 20520–0106 or e-mail odomhe@state.gov.

**FOR FURTHER INFORMATION CONTACT:** H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, D.C. 20520–0106, (202) 663–1204, e-mail odom*he@state.gov*, or fax at (202) 663–3898.

**SUPPLEMENTARY INFORMATION:** On March 13, 2000, the Department of State published a Proposed Rule (65 FR 13253), establishing a fee of $50.00 for the review of, and assistance rendered in connection with, the proper preparation of a required Affidavit of Support. Those services will be rendered in the United States at the National Visa Center and through a call center available to all affiants. That rule was made final on September 7, 2000, (65 FR 54148–54150).

This rule amends the immigrant visa regulation pertaining to the Affidavit of Support (22 CFR 40.41(b)), with respect to applicants from certain designated posts, to require the payment of that fee prior to the consular officer's assessment of the sufficiency of the affidavit. The Deputy Assistant Secretary for Visa Services shall designate such posts by public notice from time to time, until it becomes applicable worldwide.

### Regulatory Analysis and Notices

### Administrative Procedure Act

The Department is publishing this rule as an final rule, with a 60-day provision for post-promulgation public comments, based on the ''good cause'' exceptions set forth at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). The fee under reference has been the subject of both a proposed and a final rule, which will be effective on the same date as this rule. The imposition of such a fee is authorized by law.

### Regulatory Flexibility Act

Pursuant to § 605 of the Regulatory Flexibility Act, the Department has assessed the potential impact of this rule, and the Assistant Secretary for Consular Affairs hereby certifies that is not expected to have a significant economic impact on a substantial number of small entities.

### Unfunded Mandates Reform Act of 1995

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

### Small Business Regulatory Enforcement Fairness Act of 1996

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

### Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section (6)(a)(3)(A).

### Executive Order 131332

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

### Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

### List of Subjects in 22 CFR Part 40

Aliens, Immigrants, Nonimmigrants, Visas, Ineligibilities

## PART 40—REGULATIONS PERTAINING TO BOTH NONIMMIGRANTS AND IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for part 40 is as follows:

**Authority:** 8 U.S.C. 1104

2. Revise § 40.41(b) to read as follows:

**§ 40.41 Public Charge**

* * * * *

(b) *Affidavit of support.* Any alien seeking an immigrant visa under INA 201(b)(2), 203(a), or 203(b), based upon a petition filed by a relative of the alien (or in the case of a petition filed under INA 203(b) by an entity in which a relative has a significant ownership interest), shall be required to present to the consular officer an affidavit of support (AOS) on a form that complies with terms and conditions established by the Attorney General. Petitioners for applicants at a post designated by the Deputy Assistant Secretary for Visa Services for initial review of and assistance with such an AOS will be charged a fee for such review and assistance pursuant to Item 61 of the Schedule of Fees for Consular Services (22 CFR 22.1).

* * * * *

Dated: November 29, 2000.

**Maura Harty,**

*Acting Assistant Secretary for Consular Affairs.*

[FR Doc. 00–31742 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–06–P

## DEPARTMENT OF STATE

## 22 CFR Part 42

**[Public Notice 3504]**

## Change in Procedures for Payment of Certain Immigrant Visa Fees

**AGENCY:** Department of State.

**ACTION:** Interim rule; stay of regulation.

**SUMMARY:** The Department of State is staying the recent regulation pertaining to a change in procedures for the

payment of certain immigrant visa fees, published in the **Federal Register** of September 8, 2000 (65 FR 54412).

**DATES:** Effective December 14, 2000, 22 CFR 42.71(b) is stayed until January 1, 2001, and § 42.71(c) is added until January 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** H. Edward Odom, Chief, Legislation and Regulations Division, Visa Services, Department of State, Washington, DC 20520–0106, (202) 663–1204, e-mail *odomhe@state.gov*, or fax at (202) 663–3898.

**SUPPLEMENTARY INFORMATION:** On September 8, 2000, (65 FR 54412–12) the Department published a rule which, among other things, changed the procedure for and the timing of the payment of the application processing fee by immigrant visa applicants at certain consular posts. At the time the rule was sent to the **Federal Register** it was intended to be effective upon publication. For technical reasons, it could not be implemented as intended on the date published in the **Federal Register**.

**List of Subjects in 22 CFR Part 42**

Aliens, Immigrants, Passports and visas.

22 CFR Part 42 is amended as follows:

## PART 42—VISAS; DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for Part 42 continues to read:

**Authority:** 8 U.S.C. 1104.

2. In § 42.71 stay paragraph (b) until January 1, 2001, and add paragraph (c) until that date to read as follows:

**§ 42.71 Authority to issue visas; visa fees.**

* * * * *

(c) Immigrant visa fees. Fees are prescribed by the Secretary of State for the execution of an application for, and the issuance of, an immigrant visa. The application fee shall be collected prior to the visa interview and execution of the application. The issuance fee shall be collected after completion of the visa interview and prior to issuance of the visa. A fee receipt shall be issued for each fee. A fee collected for the application for or issuance of an immigrant visa is refundable only if the principal officer at a post or the officer in charge of a consular section determines that the visa was issued in error or could not be used as a result of action by the U.S. Government over which the alien had no control and for which the alien was not responsible.

Dated: November 28, 2000.

**Maura Harty,**

*Acting Assistant Secretary for Consular Affairs.*

[FR Doc. 00–31741 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–06–P

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## DEPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Part 4

**[T.D. ATF–433; Ref. Notice No. 883]**

**RIN 1512–AC03**

## Addition of a New Grape Variety Name for American Wines (99R–142P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Treasury decision, final rule.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is adding a new name, ''Dornfelder'', to the list of prime grape variety names for use in designating American wines. Dornfelder is a red variety, developed in Germany in 1955, currently grown commercially in the United States.

**EFFECTIVE DATE:** Effective February 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Berry, Bureau of Alcohol, Tobacco and Firearms, 111 W. Huron Street, Room 219, Buffalo, NY 14202–2301, (716) 551–4048.

**SUPPLEMENTARY INFORMATION:**

### 1. Background on Grape Variety Names

Under 27 CFR 4.23(b), a wine bottler may use a grape variety name as the designation of a wine if not less than 75 percent of the wine (51 percent in some circumstances) is derived from that grape variety. The wine must also be labeled with an appellation of origin. Under § 4.23(d), a bottler may use two or more grape variety names as the designation of a wine if all varieties are listed on the brand label and the percentage of the wine derived from each grape variety is shown on the label.

Treasury Decision ATF–370 (61 FR 522), January 8, 1996, adopted a list of grape variety names that ATF has determined to be appropriate for use in designating American wines. The list of prime grape names and their synonyms appears at § 4.91, while additional alternative grape names temporarily authorized for use are listed at § 4.92.

*How May New Varieties Be Added to the List of Prime Grape Names?*

Under § 4.93 any interested person may petition ATF to include additional grape varieties in the list of prime grape names. Information with a petition should provide evidence of the following:

- Acceptance of the new grape variety;
- The validity of the name for identifying the grape variety;
- Information that the variety is used or will be used in winemaking; and
- Information that the variety is grown and used in the United States.

For the approval of names of new grape varieties, the petition may include:

- A reference to the publication of the name of the variety in a scientific or professional journal of horticulture or a published report by a professional, scientific or winegrowers' organization;
- A reference to a plant patent, if patented; and
- Information about the commercial potential of the variety such as the acreage planted or market studies.

Section 4.93 also places certain restrictions on grape names that will be approved. A name will not be approved:

- If it has previously been used for a different grape variety;
- If it contains a term or name found to be misleading under § 4.39; or
- If a name of a new grape variety contains the term ''Riesling.''

The Director reserves the authority to disapprove the name of a grape variety developed in the United States if the name contains words of geographical significance, place names, or foreign words that are misleading under § 4.39.

### 2. Dornfelder Rulemaking

Petition

ATF received a petition proposing to add the name ''Dornfelder'' to the list of prime grape variety names approved for the designation of American wines. Mr. John Weygandt and Ms. Alice Weygandt of Stargazers Vineyard in Coatesville, Pennsylvania, submitted the petition.

According to information submitted by the petitioners, Dornfelder is a red variety, developed in Germany in 1955. It is a crossing of Helfenstein (a crossing of Fruhburgunder and Trollinger) and Heroldrebe (a crossing of Portugieser and Limberger). According to Jancis Robinson's Vines, Grapes and Wines (First American Edition 1986), Dornfelder is * * * perhaps Germany's most promising 'new' red crossing.'' The name ''Dornfelder'' is derived from Imanuel Dornfeld, founding father of the Wurttemberg viticultural school during

the mid-19th century. ''Dornfelder'' was approved as a varietal name under German wine regulations in 1980.

In the United States, the breeders have obtained plant variety protection through the Plant Variety Protection Act, 7 U.S.C. Chapter 57, until 2009. The petitioners planted 600 vines of this variety in 1997, which will bear a commercial crop in 2000. In addition, three other growers in the states of Virginia, Pennsylvania, and Michigan have planted this variety. Dornfelder plants have been offered for sale by American Nursery, located in California and Virginia, since 1996.

*Notice No. 883*

In Notice 883, published March 9, 2000, ATF proposed to add the name ''Dornfelder'' to the list of approved prime names in § 4.91. No comments were received. Because sufficient evidence was provided to satisfy the requirements under § 4.93, ATF is amending § 4.91 to include ''Dornfelder'' in the list of approved prime names for grape varieties.

**3. Regulatory Analyses and Notices**

*Does the Paperwork Reduction Act Apply to This Final Rule?*

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

*How Does the Regulatory Flexibility Act Apply to This Final Rule?*

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will permit the use of the grape varietal name Dornfelder. No negative impact on small entities is expected. No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

*Is This a Significant Regulatory Action as Defined by Executive Order 12866?*

This is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

**4. Drafting Information**

The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco, and Firearms.

**List of Subjects in 27 CFR Part 4**

Advertising, Consumer Protection, Customs duties and inspections, Imports, Labeling, Packaging and containers, and Wine.

**Authority and Issuance**

Accordingly, 27 CFR part 4, Labeling and Advertising of Wine, is amended as follows:

**Paragraph 1.** The authority citation for part 4 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. 2.** Section 4.91 is amended by adding the name ''Dornfelder,'' in alphabetical order, to the list of prime grape names, to read as follows:

**§ 4.91 List of approved prime names.**

* * * * *

*Dornfelder*

* * * * *

**Bradley A. Buckles,**

*Director.*

Approved: August 11, 2000.

**John P. Simpson,**

*Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 00–31486 Filed 12–13–00; 8:45 am]

BILLING CODE 4810–31–P

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## DEPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco and Firearms

## 27 CFR Part 9

**[T.D. ATF–434; Re: Notice No. 874]**

**RIN 1512–AA07**

## Applegate Valley Viticultural Area [99R–112P]

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Final rule, Treasury decision.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) is establishing a viticultural area located within the State of Oregon, to be known as ''Applegate Valley.'' The petition for this viticultural area was filed by Mr. Barnard E. Smith, President, The Academy of Wine of Oregon Inc. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

**EFFECTIVE DATE:** February 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Tim DeVanney, Regulations Division, (202–927–8210), Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas (AVAs). The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692), which added a new part 9 to 27 CFR, providing for the listing of approved AVAs. Section 4.25a(e)(1), title 27, CFR, defines an AVA as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an AVA. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

**Petition**

ATF has received a petition from Mr. Barnard E. Smith, President, The Academy of Wine of Oregon Inc., proposing to establish a viticultural area within the State of Oregon, to be known as ''Applegate Valley.'' The viticultural area is located entirely within the Rogue Valley AVA. The viticultural area is in Josephine and Jackson Counties. Mr. Smith believes that Applegate Valley is a widely known name for the petitioned area, that the area is well defined, and

that the area is distinguished from other areas by its soil and climate.

The Applegate Valley has been a grape-growing region since 1870 when A. H. Carson began planting 30 acres of grapes along North Applegate Road. There are now 23 vineyards in the valley. In the original petition, Mr. Smith noted there were six bonded wineries and 235 acres of grapes in the proposed area. Since the publication of the notice, the petitioner amended his statement regarding the number of bonded wineries: there are four bonded wineries in the Applegate Valley. One commentor provided an acreage update by stating that there are now over 340 acres that have been planted to grapes within the Applegate Valley.

**Notice of Proposed Rulemaking**

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 874, in the **Federal Register** on May 6, 1999 [64 FR 24308], proposing the establishment of the Applegate Valley viticultural area. The notice requested comments from interested persons by July 6, 1999.

**Name Evidence**

ATF found that usage of the name Applegate Valley is well established. There are many businesses, organizations and at least one community event (the Applegate Valley Harvest Festival), that employ the use of this name. The Applegate River was named for one or more of the Applegate brothers who explored the area in 1846. The U.S.G.S. map used to show the boundaries of the area (Medford, Oregon; California 1955, Revised 1976, (NK 10–5), scale 1:250,000) uses the name Applegate River and shows the town of Applegate within the Applegate Valley viticultural area. The following are evidence of Applegate Valley's name recognition.

- ''The Wine Appellations of Oregon'' map published by the Oregon Wine Marketing Coalition shows the Applegate Valley and mentions it in its notes.
- The Oxford Companion to Wine (first edition) mentions the Applegate Valley on page 693.
- The Oregon Winegrape Growers' Guide devotes several paragraphs to a discussion of the Applegate Valley as one of Oregon's grape-growing areas.
- Treasury Decision ATF–310 (The Rogue Valley Viticultural Area) refers to the Applegate Valley within the Rogue Valley viticultural area.

**Geographical Features**

*Evidence of Boundaries and Topography*

The boundaries of the viticultural area are within Jackson and Josephine Counties in the State of Oregon. The area is entirely within the Rogue Valley viticultural area. The Rogue Valley viticultural area has three distinct subregions: Applegate Valley and two other valleys that have not been designated as AVAs, Illinois Valley and Bear Creek Valley. The Illinois Valley lies to the west of the Applegate Valley and Bear Creek Valley lies directly to the east of the AVA.

The Applegate Valley is approximately 50 miles long, running from its southeast origins near the California border, in a generally northwest direction, to where it joins the Rogue River, just west of Grants Pass.

Applegate Valley is surrounded by the Siskiyou Mountains. The Siskiyou Mountains are believed to have been created in the Jurassic period by up-thrusts of the ocean floor as a plate forced its way under the continental shelf. To Applegate Valley's east and south is the Rogue River National Forest. To its west is the Siskiyou National Forest. Both of the National Forests' boundaries have been identified by the U.S. Forest Service and were used to identify the boundaries of the Applegate Valley AVA where appropriate. A portion of the western boundaries, and most of the northern boundaries, are established by straight-line segments drawn between prominent physical features of the terrain, mostly mountaintops. The boundaries of the Applegate Valley AVA are more particularly discussed in § 9.165(c) of the regulations, as identified at the end of this Treasury Decision.

*Soil*

The petitioner submitted a soil analysis listing the principal soil series from Applegate Valley, Bear Creek Valley and Illinois Valley vineyards. As indicated earlier, these three subregions are located in the Rogue Valley viticultural area. The principal soil series from vineyards located in each of these subregions are: (1) Applegate Valley: Central Point, Cove, Kerby, Manita, Ruch and Shefflein; (2) Bear Creek Valley: Agate-Winlow Complex, Brockman, Carney, Central Point, Coleman, Darrow, Evans, Holland, Medford, Provig-Agate Complex, Ruch, Selmac, Shefflein, Vannoy and Wapato; (3) Illinois Valley: Brockman, Cornutt-Dubakella Complex, Foehlin, Kerby, Pollard and Takilma. Based on this soil analysis, the Applegate Valley and Bear Creek Valley vineyards have three principal soil series in common: Central Point, Ruch and Shefflein. It is also apparent that Illinois Valley and Applegate Valley vineyards have one principal soil series in common, Kerby.

Soil types in the Applegate Valley are generally granite in origin as opposed to the volcanic origin of the Cascade Mountains to the east. Most of the Applegate Valley vineyards are planted on stream terraces or alluvial fans providing deep well-drained soils. The leaching of the more basic soil components found in the Illinois Valley have left the soil slightly more acidic than the soils in the Applegate Valley. The soils to the east of Applegate Valley near Bear Creek Valley tend to be less acidic than the soils in the Applegate Valley. Applegate Valley soils have a pH of between 6.1 and 6.5. In The Oregon Winegrape Growers' Guide, Ken Browning writes that a pH of 6.0 to 6.5 is ideal for desirable microbiological activity, nutrient availability, and nutrient balance.

*Climate*

The natural geographic boundaries of the Applegate Valley provide for its distinct climate in terms of rainfall, degree-days and temperature. Specifically, the Siskiyou Mountains separate the Applegate Valley's western side from the Illinois Valley and its eastern side from Bear Creek Valley. This further accentuates climatic differences between the three valleys, coupled with a lessening of the marine influence, when moving from a west to east direction.

According to The Oregon Winegrape Growers' Guide, ''As one moves from west to east, or from the Illinois River Valley including Selma to the Applegate Valley and into the Rogue Valley, good grape-growing sites generally become warmer due to the lessening of the marine air influence.'' The Oregon Winegrape Growers' Guide goes on to point out that earlier ripening varieties such as Pinot noir, Early Muscat, and Gewurztraminer, do well in the Illinois Valley. In contrast, the Applegate Valley with its Region II temperature range can ripen Cabernet Sauvignon, Merlot, and Chardonnay two to three weeks earlier than is possible in the Illinois Valley.

As mentioned earlier, Applegate Valley AVA is located in Jackson and Josephine Counties. The USDA Natural Resources Conservation Service, National Water and Climate Center, has climate data for Jackson and Josephine Counties, which is available from the USDA web site at *http://wcc.nrcs.*

*usda.gov/water/climate/*. Temperature and precipitation differences in Applegate Valley and surrounding areas are illustrated by the data collected during 1961 through 1990 at five weather stations. The Ruch weather station is located inside the Applegate Valley AVA boundaries and data from that site is used to approximate the climate conditions of this viticultural area. The four other weather stations located outside the AVA, are: (1) Cave Junction, located in the Illinois Valley, in Josephine County, which is in close proximity to the AVA's southwest boundaries; (2) Grants Pass, in Josephine County, which is in close proximity the AVA's northwest boundaries; (3) Medford, located in the Bear Creek Valley in Jackson County, which is in close proximity to the AVA's northeast boundaries; and (4) Ashland, also in Jackson County, which is in close proximity to the AVA's southeast boundaries.

Climatological statistics are as follows: Cave Junction (Illinois Valley) has an average annual precipitation of 59.57 inches. Average annual precipitation declines steadily, when proceeding in a generally eastern direction: starting with Grants Pass at 30.89 inches, into Applegate Valley at Ruch with 26.01 inches, then Medford, in Bear Creek Valley, with 20.56 inches and finally, Ashland reporting 19.26 inches. This illustrates the following precipitation differences when comparing each of the four weather sites with the Ruch (Applegate Valley) site: Cave Junction had the highest precipitation with 33.56 inches more than Ruch; Grants Pass had 4.9 inches more; Medford had 5.5 inches less; and Ashland with 6.8 inches less than Ruch. This shows that Applegate Valley has a distinct and measurable climatic difference from its surrounding areas in terms of average annual precipitation.

The growing degree-days records (from the same source as the precipitation records presented above) provide another climatic difference between the Applegate Valley and the surrounding areas. A growing degree-day is defined as a unit of heat available for plant growth. It is calculated by taking the average daily temperature (adding the maximum and minimum daily temperatures, then dividing by two) and subtracting the temperature below which growth is minimal for the principal crops in the area. The temperature threshold used for determining minimal growth was 40 degrees Fahrenheit. The temperature data places the average yearly degree-days at the Ruch site (Applegate Valley) at 5108. The average yearly degree-days, beginning with the stations outside of the Applegate Valley boundaries are as follows: Southwest at Cave Junction (Illinois Valley) registers 5008 degree-days; northwest at Grants Pass reported 5689; northeast at Medford (Bear Creek Valley) measured 5086, and southeast at Ashland had 4836. In comparing the degree-days of Ruch (Applegate Valley) with the four others, it is clear that a measurable difference in degree-days exists between Applegate Valley and the surrounding areas: The largest temperature variation was at Grants Pass, which had 583 more degree-days than Applegate Valley, and the smallest difference was at Medford (Bear Creek Valley), which had 20 degree-days less than Applegate Valley.

**Comments on Notice of Proposed Rulemaking**

ATF received 28 letters of comment in response to Notice No. 874. Of the 28 comments ATF received, 22 (with a total of 27 signatures) favored creating the Applegate Valley viticultural area; six (with a total of seven signatures) were opposed. The petitioner submitted additional supporting documentation about soil and climate for areas within and outside of the viticultural area, which was included in the rulemaking record. This information included soil maps, precipitation and temperature records. All of these comments were given careful consideration in the preparation of the final rule.

Commentors who supported the establishment of an Applegate Valley AVA confirmed that Applegate Valley has distinct weather and growing conditions. One respondent, Mr. Robert Kerivan, President of Bridgeview Vineyards, stated that the Applegate Valley is known for Bordeaux style grapes—merlot, syrah and cabernet sauvignon—specifically due to its warmer climate. Four of the commentors specifically noted the distinct soils of Applegate Valley along with six who cited the unique geographic features of the AVA. Climate was the most common basis for support with 16 commentors in favor of Applegate Valley's AVA approval.

The respondents opposed to establishing Applegate Valley viticultural area challenge the existence of significant differences between Applegate Valley and the surrounding Rogue Valley viticultural area. The majority of the opposition based their objection on the overall similarity of the climate and soils of the Rogue Valley viticultural area and the Applegate Valley. One commentor noted that the different soils of the Rogue Valley viticultural area are ''a jigsaw puzzle of soils which occur repeatedly in all parts of the region.'' Opponents want the Rogue Valley left as one area. Three of the six opposing commentors expressed concerns about the fragmenting of the Rogue Valley viticultural area. Two of these commentors stated that there should not be an Applegate Valley AVA since the quality of the wine is not distinct from those produced in the surrounding areas. Yet, both commentors describe the wine from Applegate Valley as ''bland'' and ''brash.'' One of the commentors voiced concerns about having ''a noticeable negative financial impact on the other established wineries and growers'' outside the Applegate Valley AVA.

**ATF's Decision**

ATF believes that the evidence supports the establishment of an Applegate Valley AVA. While ATF agrees there are similarities associated with Applegate Valley and the surrounding Rogue Valley, we believe that the confluence of distinctions, in soil, climate and name recognition, are sufficient to demarcate the Applegate Valley as an AVA. As evidenced above, the petition clearly satisfies the criteria in 27 CFR 4.25(a)(e)(2) with respect to name recognition, boundaries and geographical features. As set forth above, Applegate Valley is also recognized as having a distinct climate from the areas that surround it.

The Applegate Valley is encompassed by the Rogue Valley and, therefore, is considered a sub-appellation of the Rogue Valley. (A sub-appellation is the smaller delimited grape-growing region that is bounded by the larger delimited grape-growing region.) As with many sub-appellations, the similarities are implicitly recognized by the approval of the primary appellation. Rogue Valley, the primary appellation, and Applegate Valley, the sub-appellation, are not exceptions to this situation.

Marketing materials for Rogue Valley wineries, along with viticultural reference books, cite the Applegate Valley as a distinct sub-appellation. Ted Jordan Meredith, in his book Northwest Wine Companion, specifically describes the Applegate Valley as being ''one of the warmest grape-growing areas in western Oregon * * *''. A web page titled TOUR WINE COUNTRY by The Oregon Pinot Noir Club (http://www.oregonpinotnoir.com/Merchant/tourrgsm.htm) states that Rogue Valley has three distinct sub-appellations. Of these three areas, ''the Applegate Valley with a warmer climate is known for Cabernet Sauvignon, Cabernet franc, and Merlot.'' Another web site, WINES NORTHWEST—A GUIDE TO THE

WINE COUNTRY OF THE PACIFIC NORTHWEST (*http://www.winesnw.com/rogue.html*), mentions Applegate Valley as the smallest of Rogue Valley's sub regions. They state that Applegate Valley is ''drier and warmer than the Illinois Valley subregion to its west, yet not as warm and dry as Bear Creek Valley to the east.''

With respect to concerns about breaking up the Rogue Valley, as previously stated, Rogue Valley AVA encompasses Applegate Valley. In accordance with ATF regulations, an overlapping area is entitled to more than one viticultural designation. Wine that meets the criteria described in 27 CFR 4.25a(e)(4), may be labeled with Rogue Valley or Applegate Valley or with both viticultural areas as the appellation(s) of origin. Therefore, ATF does not view this as a fragmentation of the existing Rogue Valley, but as an option for wineries to provide consumers with more specific information about the origin of the wine.

Moreover, to the extent certain commentors opposed the establishment of the Applegate Valley AVA on the basis that the wine made from grapes produced in that area is not distinct or that the establishment of the Applegate Valley AVA will present an adverse financial impact on the area, these concerns are not criteria for denying a petition to establish an AVA under 27 CFR 4.27a(e)(2). Moreover, approval of an AVA does not, in any manner, constitute the endorsement of a particular wine. Rather, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area.

## Boundary

The boundaries of the Applegate Valley viticultural area may be found on one U.S.G.S. map titled ''Medford, Oregon; California'' (NK 10–5) scale 1:250,000 (1955, revised 1976). The boundaries are described in § 9.165.

## Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

## Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

## Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)) and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

## Drafting Information

The principal author of this document is Tim DeVanney, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

## List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

## Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

# PART 9—AMERICAN VITICULTURAL AREAS

**Paragraph 1.** The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205.

**Par. 2.** In subpart C is amended by adding § 9.165 to read as follows:

## Subpart C—Approved American Viticultural Areas

* * * * *

### § 9.165 Applegate Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Applegate Valley.''

(b) *Approved maps.* The appropriate map for determining the boundaries of the Applegate Valley viticultural area is one U.S.G.S. map titled ''Medford, Oregon; California'' (NK 10–5) scale 1:250,000 (1955, revised 1976).

(c) *Boundaries.* The Applegate Valley viticultural area is located in the State of Oregon within Jackson and Josephine Counties, and entirely within the existing Rogue Valley viticultural area. The boundaries are as follows:

(1) Beginning at the confluence of the Applegate River with the Rogue River approximately 5 miles west of Grants Pass, the boundary proceeds due west to the boundary of the Siskiyou National Forest north of Dutcher Creek;

(2) Then in a straight line in a southerly and westerly direction along the boundary of the Siskiyou National Forest to Highway 199;

(3) Then in a straight line easterly to the peak of Roundtop Mountain (4693 feet);

(4) Then in a straight line easterly and southerly to the peak of Mungers Butte;

(5) Then in a straight line southerly and westerly to Holcomb Peak;

(6) Then in a generally southeasterly direction along the eastern boundary of the Siskiyou National Forest until it joins the northern boundary of the Rogue River National Forest;

(7) Then easterly along the northern boundary of the Rogue River National forest to a point due south of the peak of Bald Mountain;

(8) Then due north to the peak of Bald Mountain (5635 feet);

(9) Then in a straight-line northerly and westerly to the lookout tower on Anderson Butte;

(10) Then in a straight line northerly and westerly to the peak of an unnamed mountain with an elevation of 3181 feet;

(11) Then in a straight line northerly and westerly to the peak of Timber Mountain;

(12) Then in a straight line westerly and southerly to the middle peak of Billy Mountain;

(13) Then, northerly and westerly by straight lines connecting a series of five unnamed peaks with elevations of approximately 3600, 4000, 3800, 3400, and 3800 feet, respectively;

(14) Then in a straight line northerly and easterly to Grants Pass Peak;

(15) Then in a straight line westerly to Jerome Prairie;

(16) Then in a straight line northwesterly to the confluence of the Applegate River and the Rogue River and the point of the beginning.

Dated: October 16, 2000.

**Bradley A. Buckles,**

*Director.*

Approved: November 1, 2000.

**John P. Simpson,**

*Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 00–31595 Filed 12–13–00; 8:45 am]

BILLING CODE 4810–31–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[VA122 & 124–5055; FLR–6919]**

## Approval and Promulgation of Air Quality Implementation Plans; Virginia; Source-Specific Permits to Reduce $NO_X$ Emissions in the Metropolitan Washington, DC Ozone Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving two State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia. the intended effect of this action is to approve permits issued by the Commonwealth of Virginia for the Potomac Electric Power Company (PEPCO), Potomac River Generating Station and the Virginia Power (VP), Possum Point Generating Station. These permits were submitted as State Implementation Plan (SIP) revisions on September 19, 2000, September 26, 2000, and October 24, 2000, by the Virginia Department of Environmental Quality (VADEQ). These permits impose conditions which reduce nitrogen oxides ($NO_X$) emissions from these two facilities during the ozone season (May 1–September 30) of each year. The resulting $NO_X$ emission reductions are strengthening measures for the Metropolitan Washington, DC ozone nonattainment area's attainment plan and are necessary for full approval of the attainment demonstration SIP for this ozone nonattainment area.

**EFFECTIVE DATE:** This final rule is effective on January 16, 2001.

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

**FOR FURTHER INFORMATION CONTACT:** Michael Ioff at (215) 814–2166 or by e-mail at *ioff.mike@epamail.epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

On October 19, 2000 (65 FR 62666), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. The NPR proposed to approve, as revisions to the Virginia SIP, two permits issued by the Commonwealth. One permit was issued for PEPCO's Potomac River Generating Station and the other for VP's Possum Point Generating Station. That NPR provided for a public comment period ending on November 9, 2000. On November 9, 2000 (65 FR 67319), EPA published a notice extending the comment period to November 20, 2000. The requirements of the permits and EPA's rationale for approving them as SIP revisions were provided in the NPR and will not be restated here. EPA received no comments on its proposed action to approve these permits.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regualt5eed entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 101.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enorce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * *'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. in addition, citizen enforcement under section 304 of the clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

### II. Final Action

EPA is approving permits issued by the commonwealth of Virginia to PEPCO's Potomac river Generating Station and to VP's Possum point Generating Station as revisions to the Virginia SIP. EPA is amending the chart found at 40 CFR section 52.2420(d) to reflect its approval action.

### III. Administrative Requirements

*A. General Requirements*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the

Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

*C. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 12, 2001. 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 to approve two permits issued by the Commonwealth of Virginia to PEPCO's Potomac River Generating Station and to VP's Possum Point Generating Station may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

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

Dated: December 1, 2000.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart VV—Virginia

1. In § 52.2420, the table in paragraph (d) is amended by adding the entires for ''Potomac Electric Power Company (PEPCO)—Potomac River Generating Station (Permit to Operate)'' and ''Virginia Power (VP)—Possum Point Generating Station (Permit to Operate)'' at the end of the table to read as follows:

**§ 52.2420 Identification of plan.**

* * * * *

(d) * * *

EPA-APPROVED VIRGINIA SOURCE-SPECIFIC REQUIREMENTS

| Source name | Permit/order or registration number | State effective date | EPA approval date | 40 CFR part 52 citation |
|---|---|---|---|---|
| * * * | * | * | * | * |
| Potomac Electric Power Company (PEPCO)—Potomac River Generating Station (Permit to Operate). | Registration No. 70228. | 9/18/00 | 12/14/00 | 52.2420(d). |
| Virginia Power (VP)—Possum Point Generating Station (Permit to Operate). | Registration No. 70225. | 9/26/00 | 12/14/00 | 52.2420(d). |

[FR Doc. 00–31727 Filed 12–13–00; 8:45 am]
BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 70

**[VI002; FRL–6916–9]**

## Clean Air Act Final Full Approval of Operating Permits Program: The U.S. Virgin Islands

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final full approval.

**SUMMARY:** The EPA is promulgating full approval of the operating permits program submitted by the U.S. Virgin Islands for the purpose of complying with Federal requirements which mandate that States develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

**EFFECTIVE DATE:** This program will be effective January 16, 2001.

**ADDRESSES:** Copies of the State's submittal and other supporting information used in developing the final full approval as well as the Technical Support Document are available for inspection during normal business hours at the following locations:

EPA Region II, 290 Broadway, 25th Floor, New York, New York 10007–1866, Attention: Steven C. Riva.

EPA Region II, Caribbean Field Office, Centro Europa Building, Suite 417, 1492 Ponce de Leon Avenue, Stop 22, San Juan, Puerto Rico 00907–4127, Attention: John Aponte.

The U. S. Virgin Islands Department of Planning and Natural Resources (VIDPNR), Division of Environmental Protection, Building 111, Apartment 14A, Water Gut Homes, Christainsted, St. Croix, U.S. Virgin Islands 00820. Attention: Hollis Griffin.

**FOR FURTHER INFORMATION CONTACT:** Umesh Dholakia, Permitting Section, at the above EPA office in New York or at telephone number (212) 637–4023. John Aponte of the Caribbean Environmental Protection Division can be reached at (787) 729–6951, extension 279.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Purpose

Title V of the Clean Air Act (''the Act''), 42 U.S.C. 7661–7661(f), and its implementing regulations at 40 Code of Federal Regulations (CFR) part 70 required that States develop and submit operating permit programs to the EPA by November 15, 1993, and that the EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act, 42 U.S.C. 7502 and 40 CFR part 70, which together outline criteria for approval or disapproval. If a state did not have an approved program by two years after the November 15, 1993 date, EPA was required to establish and implement a Federal program.

On January 25, 1996, the EPA proposed full approval of the Operating Permits Program submitted for the Virgin Islands (see 61 FR 2216) requiring that the VIDPNR correct the wording errors in its legislation before full approval could be finalized. No comment was received on the proposed full approval document. Because the wording errors were not corrected, EPA subsequently issued a Final Interim Approval on July 31, 1996, rather than a full approval. EPA also reiterated the requirements for a full final approval (see 61 FR 39882). Since all the defects in the Virgin Island's program have been corrected, the EPA is taking the direct final action in this notice to promulgate full approval of the Operating Permits Program for the Virgin Islands.

### II. Final Action and Implications

*A. Analysis of State Submission*

On January 25, 1996, the EPA proposed full approval of VIDPNR's Title V Operating Permits Program (see 61 FR 2216). The proposed full approval required that the VIDPNR correct the wording errors in its legislation prior to receiving final approval. On July 31, 1996 the Virgin Islands was given interim approval because it had not corrected the wording errors in its legislation (see 61 FR 39882). The Virgin Islands has corrected those errors in legislative changes promulgated on December 22, 1999. These changes were signed by the Governor at Act No. 6338 on January 3, 2000. The program elements discussed in the proposal document are unchanged from the analysis in the Final Full Approval document and continue to fully meet the requirements of 40 CFR part 70.

*B. Options for Approval/Disapproval*

The EPA is promulgating full approval of the Operating Permits Program submitted to the EPA by the VIDPNR on November 18, 1993 with supplemental packages through August 25, 2000. Among other things, the VIDPNR has demonstrated that the program will be adequate to meet the minimum elements of a State operating permits program as specified in 40 CFR part 70.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5), 42 U.S.C. 7412(l)(5), requirements for approval of a program for delegation of section 112 standards as promulgated by the EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, an expeditious compliance schedule, and adequate enforcement ability, which are also requirements under part 70. In a letter dated May 30, 1995, VIDPNR requested delegation through 112(l) of all existing 112 standards and all future 112 standards for both part 70 and non-part 70 sources and infrastructure programs. In the letter, VIDPNR demonstrated that they have sufficient legal authorities, adequate resources, the capability for automatic delegation of future standards, and adequate enforcement ability for implementation of section 112 of the Act for both part 70 sources and non-part 70 sources. Therefore, the EPA is also promulgating full approval under section 112(l)(5), 42 U.S.C. 7412(1)950, and 40 CFR 63.91 to the Virgin Islands for its program mechanism for receiving delegation of all existing and future section 112(d) standards for both part 70 and non-part 70 sources, and section 112 infrastructure programs that are unchanged from Federal rules as promulgated.

### III. Administrative Requirements

*A. Docket*

Copies of the State's submittal and other information relied upon for the final full approval are contained in the docket maintained at the EPA Regional Offices in New York and Puerto Rico and at VIDPNR. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final full approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

*B. Executive Order 12866*

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

*C. Executive Order 13132*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has

federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

EPA has concluded that this final rule may have federal implications. For example, under the authority of section 505 of the Act, 42 U.S.C. 7661(d), EPA may object to a permit issued under the VI's Title V Operating Permits Program. Should the VI fail to revise the permit based upon EPA's objection, EPA has the authority under this section of the Act to issue a federal permit for the facility under 40 CFR part 71. However, it will not impose direct compliance costs on State or local governments, nor will it preempt State law. Thus, the requirements of sections 6(b) and Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds. Therefore, section 6(c) of the Executive Order does not apply to this rule.

Consistent with EPA policy, EPA nonetheless consulted closely with the Governor of the VI and his staff early and throughout the process of developing the VI's regulations to permit them to have meaningful and timely input in the development of its Title V Operating Permits Program. EPA worked closely with the Governor's legal staff in drafting the legislation and regulations for this program and in enacting legislation to correct the typographical errors in the original legislation.

*D. 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 Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not establish a further health or risk-based standard because it approves state rules which implement a previously promulgated health or safety-based standard.

*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 action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*F. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment 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 part 70 approvals under section 502 of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this approval does not create any new requirements, EPA certifies 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 a Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning State Plans on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*G. 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 costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

*H. 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 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).

*I. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be in the United States Court of Appeals for the appropriate circuit by February 12, 2001. 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 70**

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

Dated: December 4, 2000.

**Jeanne M. Fox,**

*Regional Administrator, Region 2.*

Title 40, chapter I, part 70 of the Code of Federal Regulations is to be amended as follows:

## PART 70—[AMENDED]

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

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

2. Appendix A to part 70 is amended by revising entry (a) for the Virgin Islands to read as follows:

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

* * * * *

Virgin Islands

(a) The Virgin Islands Department of Natural Resources submitted an operating permits program on November 18, 1993 with supplements through August 25, 2000; full approval effective on January 16, 2001.

[FR Doc. 00–31899 Filed 12–13–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–301081; FRL–6755–7]**

**RIN 2070–AB78**

## Modified Styrene-Acrylic Acid and/or Methacrylic Acid Polymers; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of a group of polymers, modified styrene-acrylic acid and/or methacrylic acid polymers, when used as inert ingredients in or on growing crops, when applied to raw agricultural commodities (RAC) after harvest, or to animals. Uniqema submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of modified styrene-acrylic acid and/or methacrylic acid polymers.

**DATES:** This regulation is effective December 14, 2000. Objections and requests for hearings, identified by docket control number OPP–301081,must be received by EPA on or before February 12, 2001.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–301081 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Indira Gairola, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6379 and e-mail address: gairola.indira@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of potentiallyaffected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

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

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' ''Regulations and Proposed Rules.'' and then look up the entry for this document under the '' **Federal Register** —Environmental Documents.'' You can also go directly to the**Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number OPP–301081. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson

Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the **Federal Register** of September 6, 2000 (65 FR 54022) (FRL–6739–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 0E6197) by Uniqema, 900 Uniqema Boulevard, New Castle, DE 19720. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(c), and (e) be amended by establishing an exemption from the requirement of a tolerance for residues of a group of polymers modified styrene-acrylic acid and/or methacrylic acid polymers.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...'' and specifies factors EPA is to consider in establishing an exemption.

## III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert '' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

## IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b). The following exclusion criteria for identifying these low risk polymers are described in 40 CFR 723.250(d).

1. The modified styrene-acrylic acid and/or methacrylic acid polymers are not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymers do contain as an integral part of their compostion the atomic elements carbon, hydrogen, and oxygen.

3. The polymers do not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymers are neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymers are manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6.The polymers are not water absorbing polymers with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the modified styrene-acrylic acid and/or methacrylic acid polymers, also meet as required the following exemption criteria specified in 40 CFR 723.250 (e).

7. The polymers' number average molecular weight (MW) of 1,200 is greater than 1,000 and less than 10,000 daltons. The polymers contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymers do not contain any reactive functional groups.

Thus, modified styrene-acrylic acid and/or methacrylic acid polymers meet all the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the above criteria, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to modified styrene-acrylic acid and/or methacrylic acid polymers.

## V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that modified styrene-acrylic acid and/or methacrylic acid polymers could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of modified styrene-acrylic acid and/or methacrylic acid polymers is 1,200 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Additionally, since the polymers are not water-absorbing, it is expected that respirable fractions would be cleared from the lungs. Since [modified styrene-acrylic acid and/or methacrylic acid polymers] conform to

the criteria that identify low risk polymers, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

## VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' The Agency has not made any conclusions as to whether or not modified styrene-acrylic acid and/or methacrylic acid polymers share a common mechanism of toxicity with any other chemicals. However, modified styrene-acrylic acid and/or methacrylic acid polymers conform to the criteria that identify low risk polymers. Due to the expected lack of toxicity based on the above conformance, the Agency has determined that a cumulative risk assessment is not necessary.

## VII. Determination of Safety for U.S. Population

Based on the conformance to the criteria used to identify a low risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population from aggregate exposure to residues of modified styrene-acrylic acid and/or methacrylic acid polymers.

## VIII. Determination of Safety for Infants and Children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin safety will be safe for infants and children. Due to the expected low toxicity of modified styrene-acrylic acid and/or methacrylic acid polymers, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

## IX. Other Considerations

### *A. Endocrine Disruptors*

There is no available evidence that modified styrene-acrylic acid and/or methacrylic acid are endocrine disruptors.

### *B. Existing Exemptions from a Tolerance*

There are no existing tolerance exemptions for modified styrene acrylic acid and/or methacrylic acid polymers.

### *C. Analytical Enforcement Methodology*

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

### *D. International Tolerances*

The Agency is not aware of any country requiring tolerance for modified styrene-acrylic acid and/or methacrylic acid polymers] nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

## X. Conclusion

Accordingly, EPA finds that exempting residues of modified styrene-acrylic acid and/or methacrylic acid polymers from the requirement of a tolerance will be safe. Since EPA is exempting a group of polymers, it is not possible to identify in this final rule by CAS Reg. No., all polymers that could be included in this group. Those considering the use of a specific polymer that is exempted under this group must document in writing to the Agency the fact that a particular polymer (including CAS Reg. No.) falls under the exemption for modified styrene-acrylic acid and/or methacrylic acid polymers.

## XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–301081 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 12, 2001.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail thefee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact

James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–301081, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket @epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601*et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have '' substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

## XIII. 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 this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 1, 2000.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

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

2. In § 180.1001 the tables in paragraphs (c) and (e) are amended by adding alphabetically the following inert ingredient to read as follows:

### § 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

| Inertingredients | Limits | Uses |
|---|---|---|
| * * * | * * | * * |
| Styrene, copolymers with acrylic acid and/or methacrylic acid, with none and/or one or more of the following monomers: acrylamidopropyl methyl sulfonic acid, methallyl sulfonic acid, 3-sulfopropyl acrylate, 3-sulfopropyl methacrylate, hydroxypropyl methacrylate, hydroxypropyl acrylate, hydroxyethyl methacrylate, and/or hydroxy-ethyl acrylate; and its sodium, potassium, ammonium, monoethanolamine, and triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu) of 1,200. | Notto exceed 25% informulated product | Carriers, adhesives, binders, suspending and dispersing agents, related adjuvants in pesticide formulations |
| * * * | * * | * * |

* * * * *

(e) * * *

| Inertingredients | Limits | Uses |
|---|---|---|
| * * * | * * | * * |
| Styrene, copolymers with acrylic acid and/or methacrylic acid, with none and/or one or more of the following monomers: acrylamidopropyl methyl sulfonic acid, methallyl sulfonic acid, 3-sulfopropyl acrylate, 3-sulfopropyl methacrylate, hydroxypropyl methacrylate, hydroxypropyl acrylate, hydroxyethyl methacrylate, and/or hydroxy-ethyl acrylate; and its sodium, potassium, ammonium, monoethanolamine, and triethanolamine salts; the resulting polymer having a minimum number average molecular weight (in amu) of 1,200. | Notto exceed 25% informulated product | Carriers, adhesives, binders, suspending and dispersing agents, related adjuvants in pesticide formulations. |
| * * * | * * | * * |

[FR Doc. 00–31900 Filed 12–13–00; 8:45 am]
BILLING CODE 6560–50–S

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

**[Docket No. FEMA–7749]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Donna M. Dannels, Branch Chief, Policy, Assessment and Outreach Division, Mitigation Directorate, 500 C Street, SW., Room 411, Washington, DC 20472, (202) 646–3098.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of

the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

*National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

*Regulatory Flexibility Act.* The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

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

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

*Executive Order 12778, Civil Justice Reform.* This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

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

### § 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

64.6 LIST OF ELIGIBLE COMMUNITIES

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in special flood hazardous areas |
|---|---|---|---|---|
| **Region II** | | | | |
| New York: Brunswick, town of, Rensselaer County. | 361130 | January 14, 1993, Emerg., August 26, 1977, Reg., December 6, 2000. | 12–06–00 | 12–06–00 |
| **Region III** | | | | |
| Pennsylvania: New Kensington, city of, Westmoreland County. | 420891 | September 29, 1978, Emerg., June 14, 1973, Reg., December 6, 2000. | 12–06–00 | 12–06–00 |
| **Region IV** | | | | |
| Florida: Apopka, city of, Orange County. | 120180 | June 17, 1975, Emerg., September 29, 1978, Reg., December 6, 2000. | 12–06–00 | 12–06–00 |
| Eatonville, town of, Orange County. | 120182 | March 31, 1975, Emerg., Demember 01, 1978, Reg., December 6, 2000. | 12–06–00 | 12–06–00 |
| Maitland, city of, Orange County. | 120184 | October 10, 1974, Emerg., September 5, 1979, Reg., December 6, 2000. | 12–06–00 | 12–06–00 |
| Windermere, town of, Orange County. | 120381 | November 2, 1979, Emerg., December 18, 1984, Reg., December 6, 2000. | 12–06–00 | 12–06–00 |
| Winter Park, city of, Orange County. | 120188 | May 28, 1974, Emerg., November 15, 1979, Reg., December 6, 2000. | 12–06–00 | 12–06–00 |
| **Region X** | | | | |
| Washington: North Bonneville, city of, Skamania County. | 530256 | April 8, 1983, Emerg., May 28, 1984, Reg., December 6, 2000 ... | 12–06–00 | 12–06–00 |
| **Region I** | | | | |
| Massachusetts: Braintree, town of, Norfolk County. | 250233 | November 10, 1972, Emerg., June 1, 1978, Reg., December 6, 2000. | 12–06–00 | 12–06–00 |

64.6 LIST OF ELIGIBLE COMMUNITIES—Continued

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in special flood hazardous areas |
|---|---|---|---|---|
| **Region II** | | | | |
| New Jersey: Mantoloking, borough of, Ocean County. | 340383 | January 14, 1972, Emerg., September 30, 1977, Reg., December 6, 2000. | 12–06–00 | 12–06–00 |

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

Dated: December 6, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–31903 Filed 12–13–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 000331092-0315-02; I.D. 030100F]**

**RIN 0648-AM42**

## Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for the Scallop Fishery

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

**ACTION:** Final rule and application period.

**SUMMARY:** NMFS issues regulations to implement Amendment 4 to the Fishery Management Plan for the Scallop Fishery off Alaska (FMP), which creates a license limitation program (LLP) for the scallop fishery). NMFS also announces the application period for this program. The scallop LLP will limit the number of participants and reduce fishing capacity in the scallop fishery off Alaska. The scallop LLP is necessary to achieve the conservation and management goals for the scallop fishery and is intended to further the objectives of the FMP.

**DATES:** (1) Final rule: Effective on January 16, 2001; and (2) application period: Beginning January 16, 2001, and ending on February 12, 2001.

**ADDRESSES:** Applications are available from the Program Administrator, Restricted Access Management, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Philip Smith. Applications may be picked up in person from NMFS in the Federal Building, Room 713, Juneau, AK. Requests for applications may also be sent by facsimile to (907) 586–7354. Copies of Amendment 4 to the Scallop FMP, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809. Copies of the Final Regulatory Impact Review (FRFA) prepared for this action are available from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Sue Salveson. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Harrington, 907–586–7228, or gretchen.harrington@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under the FMP, management of all aspects of the scallop fishery, except limited access, is delegated to the State of Alaska (State). Federal regulations governing the scallop fishery appear at 50 CFR parts 600 and 679. State regulations governing the scallop fishery appear in the Alaska Administrative Code (AAC) at 5 AAC Chapter 38--Miscellaneous Shellfish.

State regulations establish guideline harvest levels for different scallop registration areas, fishing seasons, open and closed fishing areas, observer coverage requirements, bycatch limits, gear restrictions, and measures to limit processing efficiency (including a ban on the use of mechanical shucking machines and a limitation on crew size). The gear regulations limit vessels to using no more than two 15-ft (4.5-m) dredges, except in Cook Inlet (State Registration Area H) where vessels are limited to using a single 6-ft (1.8-m) scallop dredge.

The Council submitted Amendment 4 for Secretarial review, and a Notice of Availability of the amendment was published March 9, 2000 (65 FR 12500), for a 60-day comment period that ended May 8, 2000. A proposed rule to implement Amendment 4 was published April 21, 2000 (65 FR 21385), for a 45-day comment period that ended June 5, 2000. Eleven letters of comments were received concerning Amendment 4 and its implementing rule. NMFS approved Amendment 4 on June 8, 2000. A summary of comments received on Amendment 4 and its implementing rule and agency response to each comment are presented in the Responses to Comments later in this document.

### Management Background and Need for Action

The history of State and Federal management of the scallop fishery is described in the preamble to the rule proposed to implement Amendment 4 (April 21, 2000; 65 FR 21385). In summary, the scallop resource off Alaska has been commercially exploited for more than 30 years. Between 1969 and 1991, about 40 percent of the annual scallop harvest came from State waters. Since 1991, Alaska scallop harvests have increasingly occurred in Federal waters. The fishery has occurred almost exclusively in Federal waters in recent years, but some fishing in State waters occurs off Yakutat, Dutch Harbor, and Adak.

By 1992, fishery participants and management agencies developed growing concerns about excessive fishing capacity and exploitation in the scallop fishery. The Council was presented with information indicating that the stocks of weathervane scallops

were fully exploited and any increase in fishing effort could be detrimental to the stocks. This information raised conservation concerns because scallops are highly susceptible to local depletion and boom/bust cycles worldwide.

The Council began its consideration of Federal management of the scallop fishery in 1992. The Council determined that Federal action was necessary because existing State statutes precluded a State vessel moratorium and, at that time, the State did not have authority under the Magnuson-Stevens Act to restrict access in Federal waters.

On February 23, 1995, NMFS closed Federal waters off Alaska to fishing for scallops by emergency interim rule to address concerns about uncontrolled fishing for scallops by vessels fishing outside the jurisdiction of State regulations (60 FR 11054; March 1, 1995).

In July 1995, NMFS approved an FMP for the scallop fishery (60 FR 42070; August 15, 1995). The only management measure authorized and implemented under the FMP was an interim 1 year closure of Federal waters off Alaska to fishing for scallops that was intended to provide management agencies time to develop measures necessary to support a controlled fishery.

During 1995, the Council prepared Amendment 1 to the FMP to replace the interim closure with a joint State-Federal management regime. NMFS approved Amendment 1 on July 10, 1996 (61 FR 38099). Amendment 1 established a joint State-Federal management regime under which NMFS implemented Federal scallop regulations that duplicated most State scallop regulations. This joint State-Federal management regime was designed as a temporary measure to prevent unregulated fishing in Federal waters until changes in the Magnuson-Stevens Act enabled the Council to delegate management of the fishery to the State.

NMFS approved Amendment 2 to the FMP in March 1997. This amendment established a temporary moratorium on the entry of new vessels into the scallop fishery in Federal waters off Alaska. NMFS published a final rule implementing the moratorium on April 11, 1997 (62 FR 17749). A vessel owner had to have made a legal landing of scallops during 1991, 1992, or 1993, or during at least 4 separate years from 1980 through 1990 to qualify for a moratorium permit. This moratorium expired June 30, 2000. Eighteen vessel owners qualified for moratorium permits under the Federal vessel moratorium.

Changes made to the Magnuson-Stevens Act in 1996 provided the authority to delegate management responsibility for the scallop fishery in Federal waters to the State. The Council formalized this delegation with Amendment 3, which granted the State the authority to manage all aspects of the scallop fishery in Federal waters, except limited access, including the authority to regulate vessels not registered under the laws of the State. The final rule implementing Amendment 3 was published on July 17, 1998 (63 FR 38501).

**Development of the Scallop LLP**

The Council recommended Amendment 4 to the scallop FMP in February 1999. This amendment, approved by NMFS on June 8, 2000, establishes an LLP to replace the existing Federal moratorium program.

The Council's recommendation responded to extensive public testimony that the scallop fishery suffered from excessive harvesting capacity. In 1996, members of the scallop industry submitted a proposal to the Council for an LLP. Industry members proposed an LLP to limit access to the fishery because they believed that they would suffer economic hardship if latent capacity were activated. ''Latent'' capacity refers to fishing capacity that is not currently active in the fishery but is capable of entering the fishery. Public testimony indicated that the re-entry of latent capacity would adversely affect the economic viability of current participants (i.e., their average gross income from scallops landed would not at least equal their average costs of fishing for scallops).

Based on this information, the Council developed a problem statement and alternatives for analysis of an LLP to replace the vessel moratorium. The Council developed six alternatives and two options for the LLP. These alternatives ranged from no action, which result in open access to the scallop fishery, to programs that would issue between nine and 18 licenses. According to the official scallop LLP record, the Council's preferred alternative will yield a total of nine licenses. The options deal with area endorsements and vessel reconstruction and replacement. The Council's preferred options will: (1) allow all licenses to be statewide, but vessels that fished only in Cook Inlet in the qualifying period are limited to the existing gear restrictions for Cook Inlet; and (2) not allow increases in vessel length. The details of the alternatives and options can be found in the EA/RIR/FRFA (see **ADDRESSES**).

The Council's intent in adopting the most restrictive alternative was to create an LLP that will reduce the number of participants in the fishery and eliminate growth in harvesting capacity. The Council's goal was to reduce effort to approach a sustainable fishery with maximum net benefits to the Nation, as required by the Magnuson-Stevens Act.

**Operational Aspects of the Scallop LLP and Small Business Compliance Guide**

*1. General*

The LLP limits access to the commercial scallop fisheries in the exclusive economic zone (EEZ) off Alaska. A qualified person who applies as prescribed will receive a license(s) that authorizes that person to catch and retain scallops. Initial allocation of licenses will be based on the eligibility qualifications discussed below.

*2. Nature of Scallop LLP Licenses and Qualification Periods*

A scallop LLP license is a permit that grants the person named on the license (i.e., the license holder) the privilege of catching and retaining scallops in Federal waters off Alaska. Permanent scallop LLP licenses issued using criteria discussed below will be transferable to an eligible transferee(s), subject to NMFS approval. Each license will specify certain endorsements and limitations, including the name and address of the license holder and the maximum length overall (MLOA) of the vessel on which the license could be used. Some licenses will also specify limitations on scallop dredging gear that could be deployed from the vessel. A scallop LLP license represents a privilege (not a property right) that could be amended or revoked at any time without compensation.

NMFS will initially issue a scallop LLP license to an eligible applicant who held a State or Federal moratorium permit on February 8, 1999, and who used that permit to make the necessary legal landings of scallops during the qualifying period. The qualifying period runs from January 1, 1996, through October 9, 1998 (1996 was the first year of scallop fishing under the Federal scallop FMP and October 9, 1998, was the date of Council initial action on the scallop LLP). The necessary legal landings of scallops is at least one landing in each of any 2 calendar years during the qualifying period. A legal landing is defined at 50 CFR 679.2 as a landing in compliance with Federal and State commercial fishing regulations in effect at the time of the landing.

A license authorizes the license holder to catch and retain scallops in

Federal waters off Alaska. The license holder could be an individual or a corporate person consistent with the definition of ''Person'' at 50 CFR 679.2. The license holder is not required to be on-board a vessel when it is used to catch and retain scallops. However, the original scallop LLP license is required to be onboard the vessel when it is used to catch and retain scallops. Although a scallop LLP license will not be vessel-specific, the length overall of any vessel that is used to catch and retain scallops under the terms of the license will be constrained by the MLOA specified on the license. In addition, a license will specify any gear limitations. A permanent license also will be transferable, subject to NMFS review and approval of an application to transfer the license and the eligibility of the proposed transferee to receive a license by transfer.

The scallop LLP eligibility criteria that require an applicant to have held a moratorium permit and to have made legal landings of scallops during the scallop LLP qualifying period are designed to account for past and recent participation in the scallop fishery. Hence, persons who were eligible for a vessel moratorium permit but did not apply or receive one will not now be eligible for a scallop LLP license. Also, the LLP requirement to have the original scallop LLP license onboard while the vessel is used to catch and retain scallops would prevent a license holder from deploying more than one vessel at the same time for that purpose through copies of an original scallop LLP license.

*3. Gear Endorsements*

Most scallop LLP licenses will not have gear endorsements. However, persons who qualify for a scallop LLP license based on the legal landings of scallops harvested only from Cook Inlet (State Registration Area H) during the qualifying period will have a gear endorsement that limits the gear authorized by the license to a single 6-ft (1.8-m) dredge. A single 6-ft dredge is the maximum amount of gear authorized to catch and retain scallops in Cook Inlet. The purpose of this gear endorsement is to prevent expansion in overall fishing capacity of the scallop fleet. This purpose will be accomplished by not allowing operations in Cook Inlet to increase their fishing capacity outside of Cook Inlet beyond the level they used inside of Cook Inlet during the qualification period.

*4. Vessel Length*

The length overall or ''length overall'' of a vessel is defined at 50 CFR 679.2. Each scallop LLP license will specify the MLOA of a vessel that could be used under the authority of the license. A scallop LLP license could be used on any vessel equal to or less than the MLOA. The specified MLOA is equal to the length overall of the longest vessel used by the applicant to make legal scallop landings during the qualifying years with a valid moratorium permit. The purpose of the MLOA provision is to prevent expansion of harvesting capacity in the fishery, thus furthering the goals of the LLP.

*5. Harvest Requirements*

A legal landing is defined at 50 CFR 679.2 as a landing in compliance with Federal and State commercial fishing regulations in effect at the time of the landing. Only legal landings of scallops qualify the applicant for a scallop LLP license. To qualify for a scallop license, the applicant had to make one legal landing of scallops in each of any 2 calendar years during the period beginning January 1, 1996, through October 9, 1998, with a valid moratorium permit.

*6. Scallop LLP License Recipients*

A license will be issued only to an applicant meeting the eligibility criteria described above. In addition, an applicant must have been eligible on February 8, 1999, to document a fishing vessel under Chapter 121 of Title 46, U.S.C., to qualify for a scallop LLP license. Chapter 121 of Title 46, U.S.C., establishes citizenship requirements for documenting U.S. fishing vessels.

*7. Application Process for Scallop LLP Licenses*

A one-time application period for scallop LLP licenses will begin on January 16, 2001, and end on February 12, 2001. All applications for licenses must be submitted during this time period. Applications postmarked after the ending date for the application period will be denied.

Applications are available from NMFS Restricted Access Management, Alaska Region (see **ADDRESSES**). Also, NMFS will use the official records to identify qualified applicants and will notify these persons of the application period.

To evaluate and verify an applicant's eligibility claim, NMFS has compiled an official LLP record for the scallop LLP containing information on qualified persons who held moratorium permits and used the permits to participate in the scallop fishery during the qualifying period. The official scallop LLP record contains only complete and verifiable information that will be used for the purpose of determining eligibility for a license, including information on vessels that participated in the scallop fishery during the relevant time periods, vessel ownership, and the dates, location, and numbers of qualifying landings of scallops made by those vessels.

NMFS will compare the claims on the application with the official LLP record for all scallop LLP applications submitted during the application period. If the claims on the application are supported by the information in the official scallop LLP record, and those claims are sufficient to qualify the applicant for a license, the application will be approved and a license will be issued to the applicant. However, if the claims cannot be verified using information in the official scallop LLP record, the applicant will be notified and provided 60 days to submit information or evidence to support the unverified claims. For example, an applicant could provide State fish tickets to verify legal landings not found in the official scallop LLP record. Unsubstantiated or incompletely verified claims will not be accepted. If an applicant demonstrates that the claims submitted in the application are correct and sufficient to qualify the applicant for a license, NMFS will issue a license to the applicant at the conclusion of the evidentiary period.

If information in the application is not substantiated or verified at the conclusion of the 60-day evidentiary period, NMFS will issue an initial administrative determination (IAD) denying the permit, including the reasons why the application is not accepted. Applicants then will be provided with an opportunity to appeal that IAD to the NMFS Office of Administrative Appeals, under 50 CFR 679.43.

Pursuant to the license renewal provisions of 5 U.S.C. 558, NMFS will issue an interim (temporary, non-transferable) license to an applicant who was authorized to participate in the fishery in the year before the IAD is issued and who makes a credible claim to eligibility under the scallop LLP regulations. This interim permit will be issued at the same time an applicant is notified about the 60-day evidentiary period. This interim permit will authorize the applicant to catch and retain scallops and will be effective during administrative adjudication leading to a final agency action. Depending on the final agency action, the person will receive either a

permanent, transferable license, or no license at all.

*8. Transfer Process for Scallop LLP Licenses*

The transfer process for scallop LLP licenses will enable a license holder to request a transfer of an LLP license to any person (designated transferee) who meets the eligibility requirements. Eligibility requirements include (1) the designated transferee being eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C., (2) the parties to the transfer having no fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations, and (3) the transfer not causing the designated transferee to exceed a two-license limit for the scallop LLP (see ''Ownership Limit'' below).

A complete transfer application must be submitted to the Regional Administrator for approval before a transfer can occur. Application forms will be available from NMFS (RAM) on request (see **ADDRESSES**). NMFS will return incomplete applications to the applicant and will identify specific information that is necessary to make the application complete. Information that will be required in the transfer application includes (1) identification information for all parties to the transfer, (2) identification number of the license to be transferred, (3) declaration that the designated transferee is a U.S. citizen, (4) a copy of the contract or sales agreement for the transfer, (5) other information the Administrator, Alaska Region, NMFS (Regional Administrator) may require, and (6) the notarized signatures of the parties to the transfer.

This final rule also provides for a transfer pursuant to court order, operation of law, or the terms of a security agreement. This provision contemplates that some transfers might not be voluntarily requested by the license holder. Under those circumstances, the Regional Administrator will review the information in the transfer application or other document and determine whether the requested transfer conflicts with other provisions of the scallop LLP regulations.

*9. Ownership Limit*

An individual, corporation, partnership, or other legal entity is prohibited from holding more than two scallop licenses at one time. A person who holds two scallop licenses cannot receive an additional scallop license by transfer.

The two-license ownership limit is intended to prevent any person from obtaining an excessive share of harvest privileges in the scallop fishery as required by national standard 4 of the Magnuson-Stevens Act. The Council determined that holding more than two scallop LLP licenses would constitute an excessive share in the context of this relatively small fishery.

**Consistency With Section 303(b)(6) of the Magnuson-Stevens Act and a Fisheries Impact Statement**

The preamble of the proposed rule for the action (65 FR 21385; April 21, 2000) provides a complete discussion of the scallop LLP's consistency with section 303(b)(6) of the Magnuson-Stevens Act and a Fisheries Impact Statement for the scallop fishery.

**Response to Comments**

NMFS received 11 letters of comments concerning the proposed rule. Seven letters indicated unqualified approval of Amendment 4 and its implementing rule. Four letters indicated general approval for the scallop LLP but expressed concerns about specific provisions in the program. These concerns are summarized into the following three comments and responses.

*Comment 1:* License holders should have the ability to increase the length of their vessels.

*Response:* The primary objective of the scallop LLP is to rationalize the scallop fishery. As indicated in the analysis, the scallop fleet prior to implementation of limited access had grown beyond the size necessary to harvest the resource, both in number of vessels and in fishing capacity of those vessels. Such an overcapitalized fleet represents an unnecessarily large and unproductive share of the economy's capital investment base. This condition of overcapitalization prevents the achievement of optimum yield (OY) from the fishery to the extent that operating costs are significantly higher than necessary to harvest the resource. National standard 1 of the Magnuson-Stevens Act requires that conservation and management measures shall prevent overfishing of each stock of fish while achieving, on a continuing basis, the OY from each fishery for the United States. The Magnuson-Stevens Act also authorizes the Council to design a limited access program for a fishery to achieve OY. OY is defined as that amount of the resource that will provide the greatest overall benefit to the Nation. An overcapitalized fishery is antithetical to OY and providing the greatest overall benefit to the Nation because, as explained earlier, the economic rents in such a fishery are lower than those achievable, and overall capital costs in that fishery are higher than required.

To allow persons to increase the length of their vessels beyond the size previously used in scallop fishery would only exacerbate the current overcapitalization problem. An increase in the length of a vessel can increase the overall fishing capacity of that vessel. Such an increase would not be different than allowing more participants into the fishery. This is contrary to the primary objective of the scallop LLP, which is to rationalize the fishery by reducing capacity and participants, and thereby reducing overcapitalization to the greatest extent possible.

Establishing an MLOA based on the largest vessel used by the qualified applicant during the qualification period does not violate national standard 10 (safety concerns) of the Magnuson-Stevens Act. First, a person is not required to reduce the size of the vessel they chose to use in the fishery prior to implementation of the scallop LLP. Second, the incentive to fish during inclement weather to catch a portion of the resource before other participants do will be reduced because fewer participants will compete under the scallop LLP. Third, vessel replacements are possible. The MLOA requirement does not prohibit a person from replacing a derelict vessel with one that is within the size limits established by the MLOA

*Comment 2 :* The requirement that limits a vessel to using a single 6-ft (1.8-m) dredge in all areas if that vessel did not participate outside of Cook Inlet during the recent qualifying period is inconsistent with national standards and other Magnuson-Stevens Act provisions.

*Response:* The Council has the authority to recommend, and NMFS has the authority to approve, limited access systems, such as the scallop LLP, if the Council and NMFS consider criteria listed in 16 U.S.C. 1853(b)(6) and ensure that the assignment of fishing privileges among various U.S. fishermen is fair and equitable.

The Council, when it recommended the provision limiting the amount of gear used by certain vessels, used recent participation, a criterion in 16 U.S.C. 1853(b)(6), as a determining factor. The Council indicated that part of its rationale for this provision is the control of overcapitalization. Overcapitalization can have adverse impacts on the economics of a fishery, another criterion in 16 U.S.C. 1853(b)(6). An analysis of the various alternatives for a license

limitation program indicated that the break-even number of vessels for economic viability in this fishery is a maximum of nine vessels. Based on that information, the Council decided to choose the most restrictive alternative, allowing nine vessels into the fishery, and restricting those vessels to the gear used during the most recent participation period.

As in all limited access programs, the Council also considered the need to limit fishing capacity when it developed this provision. The method used to limit fishing capacity, by limiting a person's gear to the amount used in the recent participation period, is consistent with criteria specified in the Magnuson-Stevens Act. As all persons that are similarly situated are treated in the same manner, NMFS has determined that the gear limitation provision in the scallop LLP is consistent with the national standards specified in the Magnuson-Stevens Act and with other applicable law.

*Comment 3:* The scallop LLP should have included area endorsements.

*Response:* The Council considered including area endorsements as part of the scallop LLP. This option was considered to provide protection to the small boat fleet inside Cook Inlet from competition by larger outside vessels. The Council chose not to include area endorsements for three reasons. First, the season opening dates for Yakutat and Prince William Sound have been changed from January 1 to July 1. This provides additional fishing opportunities for vessels during the summer months, and reduces the incentives to large vessel operators to fish in Cook Inlet. Second, only a single 6-ft (1.8-m) dredge can be used in Cook Inlet. Fishing with a large vessel and crew under that gear restriction would not be economical. Third, the Cook Inlet (Kamishak) quota has remained very small relative to outside areas. This reduces the incentive to forego fishing in outside areas in favor of fishing in Cook Inlet. The Council decided that area endorsements were unnecessary because these three factors will keep the fleet from significantly deviating from traditional fishing patterns.

In this final rule, the definition of MLOA is revised slightly to clarify that the longest vessel authorized by a Federal or State Scallop Moratorium Permit and from which the eligible applicant made legal landings of scallops during the scallop LLP qualification period, will be used to determine the MLOA on the scallop LLP license. Also, the final rule lengthens the application period from 15 days to 30 days. Otherwise, this final rule makes no other changes to the proposed rule other than minor editorial changes.

**Classification**

The Administrator, Alaska Region, NMFS, determined that Amendment 4 to the FMP for the Scallop Fishery off Alaska is necessary for the conservation and management of the scallop fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Council prepared an EA/RIR/IRFA for the scallop LLP, which describes the management background, the purpose and need for action, the management alternatives, and the socio-economic impacts of the alternatives. It estimates the total number of small entities affected by this action, and analyzes the economic impact on those small entities as required by the Regulatory Flexibility Act.

NMFS prepared an FRFA based on the IRFA. The IRFA prepared for this action was made available for public review and comment. NMFS received no letters of public comment in response to the IRFA. The FRFA describes the economic impacts this rule will have on small entities. A summary of the FRFA follows.

NMFS considers the fishing operations that will be affected by this final rule to be small entities. The universe of small entities is composed of 18 operators who fished for scallops during the 1980-1998 period and that qualified for a moratorium permit.

NMFS considered six alternative for the scallop LLP. These alternatives ranged from no action, which would result in open access to the scallop fishery, to programs that would issue between nine and 18 licenses. According to the official scallop LLP record, the preferred alternative will yield a total of nine licenses. The options dealt with area endorsements and vessel construction and replacement. The preferred options will: (1) allow all licenses to be statewide, but vessels that fished only in Cook Inlet in the qualifying period are limited to the existing gear restrictions for Cook Inlet; and (2) not allow increases in vessel length. The FRFA details these alternatives and options.

In order to meet the primary objectives, the Council developed eligibility criteria that reduced the fleet, but granted harvesting privileges to those operations what were most dependent on the scallop fishery as evidenced through past and recent participation. The preferred alternative struck the appropriate balance by reducing the fleet enough so that excess capacity and capitalization will be less of a problem, but not reducing the fleet to the point of eliminating operations most dependent on the scallop resource.

The preferred alternative was chosen even though it would have a significant impact on a substantial number of small entities because it was the only alternative that fully met the requirements of the Magnuson-Stevens Act to achieve OY, reduce overcapitalization, and maximize economic benefits to the Nation. Reduction of capital and capacity were primary objectives of this action. Because NMFS is addressing the allocation of a limited resource, alternatives to minimize economic impacts on some small entities would necessarily result in increased impacts on others.

The Council's break-even analysis, contained in the EA/RIR/IRFA, indicated that a total of about six or seven vessels could participate full time in the Alaska statewide scallop fishery at the break-even level (not including Cook Inlet vessels). The Cook Inlet fishery appears to be fully capitalized, and perhaps overcapitalized at the current level of effort (three to four vessels). The break-even analysis showed that the current scallop fleet contained more vessels that necessary to harvest the resource efficiently and that open access has negative impacts on all members of the fleet.

Each alternative that reduces capacity in the fishery benefits the remaining fleet. However, by reducing capacity, some vessels are excluded from the fishery. The preferred alternative excludes nine vessels from the fishery, creating a fleet of nine vessels, which is the most restrictive alternative and closest to the break-even point.

NMFS concludes that the principal effect of this rule on small entities is that the LLP will significantly impact the vessels excluded from the fishery. The flexibility of open access will be reduced, limited economic opportunities for some non-qualifying fishermen. Non-qualifying fishermen will not be eligible for a license during the initial issuance because they do not meet the eligibility criteria. These fishermen may be eligible to obtain a license through transfer to participate in the scallop fishery.

The scallop LLP also inhibits the ability of new, small entities to enter the fishery because new entrants must purchase a license, thereby increasing the entry cost into the scallop fishery. Alternatively, small fishing firms owning non-qualifying vessels may experience a decrease in the value of their investments to the extent that the

vessel's opportunities have been limited.

The scallop LLP also affects small entities that only fished inside of Cook Inlet during the qualifying period by limiting the size and number of dredges those vessels could operate in areas outside of Cook Inlet to a single 6-ft (1.8-m) dredge. However, those small entities can use their licenses to harvest scallops statewide and will not be limited to harvesting scallops in Cook Inlet. The scallop LLP also affects the small entities that receive licenses by restricting their ability to increase vessel length.

The impact of license limitation is to restrict the opportunities of some vessel owners, yet offer a stabilized economic environment for affected small businesses that qualify for continued participation in the Alaska scallop fishery. The benefits accrue from preventing a further erosion of per-vessel net returns and operating efficiency.

NMFS considered measures to minimize the significant economic impact on small entities. NMFS concluded that alternative policies that would minimize adverse impacts on excluded small entities also would dilute or eliminate the benefits to the fleet as a whole of reduced fishing capacity under the LLP. Allowing one or two additional vessels to participate (relative to the preferred alternative) would reduce impacts on those one or two small entities. However, it also would reduce the beneficial effect of the LLP by reducing the average harvest of all vessels (all other small entities) in the fishery and their potential profitability by preventing attainment of the break-even fleet size. Hence, alternative measures that would reduce the impacts on small entities that are negatively affected would not achieve the objectives of this action.

The scallop LLP will reduce the adverse impacts on a substantial number of small entities resulting from open access. Generally, small entities included in the fishery under the LLP benefit, while those excluded will be adversely affected. Alternatives and options that perpetuate overcapitalization in the scallop fishery would have negative impacts on vessel owners, crew, and fishing communities. The LLP will help reduce overcapitalization of the fishery and the loss of income to current participants that would result from further overcapitalization. Issued licenses will have monetary value, and latent licenses (issued to vessels not currently fishing) if allowed, would likely be transferred to other vessels wishing to participate in the scallop fishery.

This final rule contains new recordkeeping and reporting requirements. All persons wishing to participate in the scallop fishery under the LLP would be required to submit to NMFS a completed application for a license. Also, all persons taking part in the transfer of a license would be required to submit an application for transfer of the license to NMFS. An applicant wishing to appeal an initial administrative determination on an application would submit in writing a concise statement of reasons why the determination should be reversed or modified. These collections of information are necessary to provide information to NMFS for the implementation and management of the LLP.

In summary, the scallop LLP will have economic impacts on vessels excluded from the scallop fishery. The flexibility of open access will be reduced, thereby limiting the economic opportunities for some non-qualifying fishermen. However, this reduced flexibility will be offset by increased stability and financial security for the remaining participants in the scallop fisheries. The increased economic stability and viability of the qualified applicants is the purpose of establishing this program and is consistent with the Magnuson-Stevens Act, which authorizes the establishment of limited access systems in order to achieve OY.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with, a collection of information subject to the requirement of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This final rule contains collection-of-information requirements subject to the PRA. These collection-of-information requirements have been approved by OMB and issued OMB control number 0648-0420, expiration date 07-31-2003. Public reporting burden for these collections of information are estimated to be an average of 2 hours per response for an application for initial issuance of a license, 1 hour per response for an application for transfer of a license, and 4 hours per response for an appeal of an initial administrative determination. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comment should be sent to the Regional Administrator (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 6, 2000.

**William T. Hogarth,**

*Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.*

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.1, paragraphs (j)(3) and (j)(4) are added to read as follows:

### § 679.1 Purpose and scope.

* * * * *

(j) * * *

(3) Regulations in this part implement the license limitation program for the commercial scallop fishery in the EEZ off Alaska.

(4) Regulations in this part govern the commercial fishing for scallops by vessels of the United States using authorized gear within the EEZ off Alaska.

* * * * *

3. In § 679.2, the definition for ''Scallop license'' is added in alphabetical order and the definitions ''Eligible applicant'', ''License holder'', ''Maximum LOA'', ''Official LLP record'', and ''Qualified Person'' are revised to read as follows:

### § 679.2 Definitions.

* * * * *

*Eligible applicant* means a qualified person who submitted an application

during the application period announced by NMFS and:

(1) For a groundfish license or crab species license, who owned a vessel on June 17, 1995, from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5), unless the fishing history of that vessel was transferred in conformance with the provisions in paragraph (2) of this definition; or

(2) For a groundfish license or crab species license, to whom the fishing history of a vessel from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5) has been transferred or retained by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained; or

(3) For a crab species license, who was an individual who held a State of Alaska permit for the Norton Sound king crab summer fishery in 1993 and 1994, and who made at least one harvest of red or blue king crab in the relevant area during the period specified in § 679.4(k)(5)(ii)(G), or a corporation that owned or leased a vessel on June 17, 1995, that made at least one harvest of red or blue king crab in the relevant area during the period in § 679.4(k)(5)(ii)(G), and that was operated by an individual who was an employee or a temporary contractor; or

(4) For a scallop license, who qualifies for a scallop license as specified at § 679.4(g)(2) of this part; or

(5) Who is an individual that can demonstrate eligibility pursuant to the provisions of the Rehabilitation Act of 1973 at 29 U.S.C. 794 (a).

* * * * *

*License holder* means the person who is named on a currently valid groundfish license, crab species license, or scallop license.

* * * * *

*Maximum LOA (MLOA)* means:

(1)*With respect to the scallop license limitation program,* the MLOA is equal to the length overall on February 8, 1999, of the longest vessel that was:

(i) Authorized by a Federal or State of Alaska Scallop Moratorium Permit to harvest scallops;

(ii) Used by the eligible applicant to make legal landings of scallops during the scallop LLP qualification period, as specified at § 679.4(g)(2)(iii) of this part.

(2) *With respect to the groundfish and crab species license limitation program*, the LOA of the vessel on June 24, 1992, unless the vessel was less than 125 ft (38.1 m) on June 24, 1992, then 1.2 times the LOA of the vessel on June 24, 1992, or 125 ft (38.1 m), whichever is less. However, if the vessel was under reconstruction on June 24, 1992, then the basis for the MLOA will be the LOA of the vessel on the date that reconstruction was completed and not June 24, 1992. The following exceptions apply regardless of how the MLOA was determined.

(i) If the vessel's LOA on June 17, 1995, was less than 60 ft (18.3 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was less than 60 ft (18.3 m), then the vessel's MLOA cannot exceed 59 ft (18 m).

(ii) If the vessel's LOA on June 17, 1995, was greater than or equal to 60 ft (18.3 m) but less than 125 ft (38.1 m), or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was greater than or equal to 60 ft (18.3 m) but less 125 ft (38.1 m), then the vessel's MLOA cannot exceed 124 ft (37.8 m).

(iii) If the vessel's LOA on June 17, 1995, was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on June 17, 1995, or if the vessel was under reconstruction on June 17, 1995, and the vessel's LOA on the date that reconstruction was completed was 125 ft (38.1 m) or greater, then the vessel's MLOA is the vessel's LOA on the date reconstruction was completed.

* * * * *

*Official License Limitation Program (LLP) record* means the information prepared by the Regional Administrator about vessels that were used to participate in the groundfish or crab fisheries during qualified periods for the groundfish and crab LLP specified at § 679.4(k) and in the scallop fisheries during the qualifying periods for the scallop LLP specified at § 679.4(g). Information in the official LLP record includes vessel ownership information, documented harvests made from vessels during the qualification periods, and vessel characteristics. The official LLP record is presumed to be correct for the purpose of determining eligibility for licenses. An applicant for a license under the LLP will have the burden of proving the validity of information submitted in an application that is inconsistent with the official LLP record.

* * * * *

*Qualified Person* means:

(1) *With respect to the IFQ program,* see IFQ Management Measures at § 679.40(a)(2).

(2) *With respect to the groundfish and crab species license limitation program,* a person who was eligible on June 17, 1995, to document a fishing vessel under Chapter 121, Title 46, U.S.C.

(3) *With respect to the scallop LLP,* a person who was eligible on February 8, 1999, to document a fishing vessel under Chapter 121, Title 46, U.S.C.

* * * * *

*Scallop license* means a license issued by NMFS that authorizes the license holder to catch and retain scallops pursuant to the conditions specified on the license.

* * * * *

4. In § 679.4, paragraph (g) is added to read as follows:

**§ 679.4 Permits.**

* * * * *

(g) *Scallop LLP*—(1) *General requirements*. In addition to the permit and licensing requirements prescribed in this part, each vessel within the EEZ off Alaska that is catching and retaining scallops, must have an original scallop LLP license on board at all times it is catching and retaining scallops. This scallop LLP license, issued by NMFS, authorizes the person named on the license to catch and retain scallops in compliance with regulations of the State of Alaska and only with a vessel that does not exceed the MLOA specified on the license and the gear designation specified on the license.

(2) *Qualifications for a scallop LLP license*. A scallop LLP license will be issued to an eligible applicant who:

(i) Is a qualified person;

(ii) Was named on a State of Alaska scallop moratorium permit or Federal scallop moratorium permit on February 8, 1999;

(iii) Used the moratorium permit held on February 8, 1999, to make legal landings of scallops in each of any 2 calendar years during the qualification period beginning January 1, 1996, through October 9, 1998; and

(iv) Submitted a complete application for a scallop license during the application period specified pursuant to paragraph (g)(4) of this section.

(3) *Scallop license conditions and endorsements.* A scallop license authorizes the license holder to catch and retain scallops only if the vessel length and gear used do not exceed the vessel length and gear endorsements specified on the license. These endorsements will be determined as follows.

(i) The MLOA specified on the scallop license is equal to the length overall on February 8, 1999, of the longest vessel that was authorized by a Federal or State of Alaska Scallop Moratorium Permit to harvest scallops and used by the eligible applicant to make legal landings of scallops during the scallop LLP qualification period, as specified at § 679.4(g)(2)(iii) of this part.

(ii) The gear specified on a scallop license will be restricted to a single 6-ft (1.8-m) dredge in all areas if the eligible applicant was a moratorium permit holder with a Scallop Registration Area H (Cook Inlet) endorsement and did not make a legal landing of scallops caught outside of Area H during the qualification period specified in paragraph (g)(2)(iii) of this section.

(4) *Application for a scallop license*—(i) *General.* The Regional Administrator will issue a scallop license to an applicant if a complete application is submitted by or on behalf of the applicant during the specified application period, and if that applicant meets all the criteria for eligibility in this part. An application that is postmarked or hand delivered after the ending date for the application period for the scallop LLP specified in paragraph § 679.4(g)(4)(ii) will be denied. An application form will be sent to the last known address of the person identified as an eligible applicant by the official LLP record. An application form may be requested from the Regional Administrator.

(ii) *Application Period.* January 16, 2001, through February 12, 2001.

(iii) *Contents of application.* To be complete, an application for a scallop license must be signed and dated by the applicant, or the individual representing the applicant, and contain the following information, as applicable:

(A) Scallop Moratorium Permit number under which legal landings of scallops were made during the qualification period specified in paragraph (g)(2)(iii) of this section;

(B) Name, business address, telephone number, FAX number, and social security number or tax ID number of the applicant, and whether the applicant is a U.S. citizen or a U.S. business;

(C) Name of the managing company, if any;

(D) Evidence of legal landings in the qualifying years and registration areas;

(E) For the vessel(s) being used as the basis for eligibility for a license, the name, state registration number (e.g., ADF&G number), the USCG documentation number, and valid evidence of the LOA on February 8, 1999, of the longest vessel used by the applicant during the qualification period specified in paragraph (g)(2)(iii) of this section.

(iv) *Successor–in–interest.* If an applicant is applying as the successor-in-interest to an eligible applicant, an application, to be complete, also must contain valid evidence proving the applicant's status as a successor-in-interest to that eligible applicant and:

(A) Valid evidence of the death of that eligible applicant at the time of application, if the eligible applicant was an individual; or

(B) Valid evidence that the eligible applicant is no longer in existence at the time of application, if the eligible applicant is not an individual.

(v) *Application evaluation.* The Regional Administrator will evaluate an application submitted during the specified application period and compare all claims in the application with the information in the official LLP record. Claims in the application that are consistent with information in the official LLP record will be accepted by the Regional Administrator. Inconsistent claims in the application, unless verified by evidence, will not be accepted. An applicant who submits inconsistent claims, or an applicant who fails to submit the information specified in paragraphs (g)(4)(iii) and (g)(4)(iv) of this section, will be provided a 60-day evidentiary period pursuant to paragraph (g)(4)(vii) of this section to submit the specified information, submit evidence to verify his or her inconsistent claims, or submit a revised application with claims consistent with information in the official LLP record. An applicant who submits claims that are inconsistent with information in the official LLP record has the burden of proving that the submitted claims are correct.

(vi) *Additional information or evidence.* The Regional Administrator will evaluate additional information or evidence to support an applicant's inconsistent claims submitted within the 60-day evidentiary period pursuant to paragraph (g)(4)(vii) of this section. If the Regional Administrator determines that the additional information or evidence meets the applicant's burden of proving that the inconsistent claims in his or her application are correct, the official LLP record will be amended and the information will be used in determining whether the applicant is eligible for a license. However, if the Regional Administrator determines that the additional information or evidence does not meet the applicant's burden of proving that the inconsistent claims in his or her application is correct, the applicant will be notified by an initial administrative determination, pursuant to paragraph (g)(4)(viii) of this section, that the applicant did not meet the burden of proof to change the information in the official LLP record.

(vii) *60-day evidentiary period.* The Regional Administrator will specify by letter a 60-day evidentiary period during which an applicant may provide additional information or evidence to support the claims made in his or her application, or to submit a revised application with claims consistent with information in the official LLP record, if the Regional Administrator determines that the applicant did not meet the burden of proving that the information on the application is correct through evidence provided with the application. Also, an applicant who fails to submit information as specified in paragraphs (g)(4)(iii) and (g)(4)(iv) of this section will have 60 days to provide that information. An applicant will be limited to one 60-day evidentiary period. Additional information or evidence, or a revised application, received after the 60-day evidentiary period specified in the letter has expired will not be considered for purposes of the initial administrative determination.

(viii) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to the applicant following the expiration of the 60-day evidentiary period if the Regional Administrator determines that the information or evidence provided by the applicant fails to support the applicant's claims and is insufficient to rebut the presumption that the official LLP record is correct, or if the additional information, evidence, or revised application is not provided within the time period specified in the letter that notifies the applicant of his or her 60-day evidentiary period. The IAD will indicate the deficiencies in the application, including any deficiencies with the information, the evidence submitted in support of the information, or the revised application. The IAD will also indicate which claims cannot be approved based on the available information or evidence. An applicant who receives an IAD may appeal pursuant to § 679.43. An applicant who avails himself or herself of the opportunity to appeal an IAD will not receive a transferable license until after the final resolution of that appeal in the applicant's favor.

(ix) *Issuance of a non-transferable license.* The Regional Administrator will issue a non-transferable license to the applicant at the same time notification is provided to the applicant of his or her 60-day evidentiary period if issuance is required by the license renewal

provisions of 5 U.S.C. 558. A non-transferable license authorizes a person to catch and retain scallops as specified on the non-transferable license, and will have the specific endorsements and designations based on the claims in his or her application. A non-transferable license will expire upon final agency action.

(5) *Transfer of a Scallop License*—(i) *General*. The Regional Administrator will approve the transfer of a scallop license if a complete transfer application is submitted to Restricted Access Management, Alaska Region, NMFS, and if the transfer meets all the eligibility criteria as specified in paragraph (g)(5)(ii) of this section. An application form may be requested from the Regional Administrator.

(ii) *Eligibility criteria for transfers*. A scallop license can be transferred if:

(A) The designated transferee is eligible to document a fishing vessel under Chapter 121, Title 46, U.S.C.;

(B) The parties to the transfer do not have any fines, civil penalties, other payments due and outstanding, or outstanding permit sanctions resulting from Federal fishing violations;

(C) The transfer will not cause the designated transferee to exceed the license limit in § 679.7(i); and

(D) The transfer does not violate any other provision specified in this part.

(iii) *Contents of transfer application*. To be complete, an application for a scallop license transfer must be signed by the licence holder and the designated transferee, or the individuals representing them, and contain the following information, as applicable:

(A) Name, business address, telephone number, FAX number, and social security number or tax ID number, of the license holder and of the designated transferee;

(B) License number and total price being paid for the license;

(C) Certification that the designated transferee is a U.S. citizen, or a U.S. corporation, partnership, or other association;

(D) A legible copy of a contract or sales agreement that specifies the license to be transferred, the license holder, the designated transferee, the monetary value or the terms of the license transfer; and

(E) Other information the Regional Administrator deems necessary for measuring program performance.

(iv) *Incomplete applications*. The Regional Administrator will return an incomplete transfer application to the applicant and identify any deficiencies if the Regional Administrator determines that the application does not meet all the criteria identified in paragraph (g)(5) of this section.

(v) *Transfer by court order, operation of law, or as part of a security agreement*. The Regional Administrator will transfer a scallop license based on a court order, operation of law, or a security agreement if the Regional Administrator determines that the transfer application is complete and the transfer will not violate any of the provisions of this section.

5. In § 679.7, paragraphs (i)(3) and (i)(7) are revised, and new paragraphs (i)(1(iv) and (i)(8) are added to read as follows:

**§ 679.7 Prohibitions.**

* * * * *

(i)*License Limitation Programs*—(1) *Number of licenses.** * *

(iv) Hold more than two scallop licenses in the name of that person at any time.

* * * * *

(3) Conduct directed fishing for crab species without an original valid crab license, except as provided in § 679.4(k)(2);

* * * * *

(7) Lease a groundfish, crab species, or scallop license; or

(8) Catch and retain scallops:

(i) Without an original valid scallop license on board;

(ii) Using a vessel with a MLOA greater than that specified on the scallop license; or

(iii) Using dredge gear contrary to a gear limitation specified on the scallop license.

* * * * *

6. In § 679.43, paragraphs (a) and (p) are revised to read as follows:

**§ 679.43 Determinations and appeals.**

(a) *General*. This section describes the procedure for appealing initial administrative determinations made under part 679 of this chapter.

* * * * *

(p) *Issuance of a non-transferable license*. A non-transferable license will be issued to a person upon acceptance of his or her appeal of an initial administrative determination denying an application for a license for license limitation groundfish, crab species under § 679.4(k) or scallops under § 679.4(g). This non-transferable license authorizes a person to conduct directed fishing for groundfish, crab species, or catch and retain scallops and will have specific endorsements and designations based on the person's claims in his or her application for a license. This non-transferable license expires upon the resolution of the appeal.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 000905252-0339-02; I.D. 080700D]**

**RIN 0648-AN98**

## Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Donation Program

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

**ACTION:** Final rule, permanent extension of the Pacific halibut donation program.

**SUMMARY:** NMFS issues a final rule that permanently extends the existing regulations that establish and govern the voluntary Pacific halibut donation program. Under this program, Pacific halibut that is taken incidentally in groundfish trawl fisheries off Alaska may be donated for consumption by economically disadvantaged individuals rather than discarded, as normally required. This action is necessary to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) (FMPs). The intended effect of this action is to reduce the amount of regulatory discards in the groundfish fisheries.

**DATES:** Effective January 1, 2001.

**ADDRESSES:** Copies of the regulatory impact review and environmental assessment prepared for this action may be obtained from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228. Comments regarding burden estimates for collection-of-information requirements should be sent to NMFS, Alaska Region, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer). Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to Sue Salveson, Assistant Regional Administrator, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries in the exclusive economic zone off Alaska are managed by NMFS under the Alaska groundfish FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the Alaska groundfish fisheries appear at 50 CFR parts 600 and 679. Fishing for Pacific halibut in waters in and off Alaska is governed by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea and by regulations adopted by the International Pacific Halibut Commission (IPHC) and approved by the Secretary of State of the United States pursuant to section 4 of the North Pacific Halibut Act (16 U.S.C. 773-773k). Regulations of the IPHC are published as annual management measures in the **Federal Register** each year pursuant to regulations at 50 CFR 300.62.

The Prohibited Species Donation (PSD) program regulations at 50 CFR 679.26 include provisions for the donation of those trawl-caught halibut that are delivered by catcher vessels to shoreside processors. A final rule published in the **Federal Register** (63 FR 32144, June 12, 1998) authorized voluntary distribution of halibut taken as bycatch in the groundfish trawl fishery to needy individuals by tax-exempt organizations through a NMFS-authorized distributor.

The program is limited to dead halibut landed by trawl catcher vessels to shoreside processors. Many of the halibut taken in the groundfish fisheries are discarded alive. However, dead halibut are sometimes landed shoreside by trawl catcher vessels because at-sea sorting of catch is not practicable. This action has no impact on the halibut resource because the groundfish fisheries are restricted by halibut bycatch mortality limits that require closure of specified fisheries when a limit has been reached. This final rule has no impact on target and non-target species of the groundfish fisheries harvested because it has no effect on harvest amounts or patterns. In 1998 and 1999, 21,196 lb (9,635 kg) and 6,190 lb (2,814 kg) of eviscerated halibut were donated through the PSD program, respectively. NMFS estimates that the halibut donation program provided 65,000 meals to economically disadvantaged individuals in the western Washington Puget Sound area in 1998. No violations of the halibut donation regulations have been reported or observed.

Without this final rule the halibut part of the PSD program would have expired on December 31, 2000. This sunset provision was advocated by the Council and the IPHC so that management agencies could assess the effectiveness of the halibut donation program, relative to the program's objectives, before the Council took action to extend the program beyond the year 2000.

At its June 2000 meeting, the Council requested NMFS to initiate rulemaking to permanently extend the halibut donation program. The Council also endorsed a recommendation by IPHC staff to review the program every 3 years and assess whether regulatory changes should be pursued to respond to any management or enforcement concerns that may arise in the future. With this rulemaking, NMFS permanently extends the existing halibut provisions of the PSD program. This action makes no other changes to the existing PSD program. NMFS, the Council, and the IPHC will conduct a periodic review of the program and the regulations could be revised in the future, if necessary, to respond to new concerns.

A proposed rule to permanently implement the Pacific halibut donation program was published in the **Federal Register** for a 15-day public review and comment period (65 FR 56860, September 20, 2000). No written comments were received during the comment period.

**Classification**

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final regulatory amendment is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable laws.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA (AA), finds for good cause under 5 U.S.C. 553(d)(3) that delaying the effectiveness of this final rule for 30 days would be contrary to the public interest. Such a delay would cause the Pacific halibut donation program to expire. The intent of this action is to have that program continue without interruption so that its benefits to economically disadvantaged individuals can continue. Further, the program is voluntary and no individual has to take any action because the program remains in effect. Accordingly, the AA is making the extension effective January 1, 2001.

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

The Regional Administrator determined that activities conducted pursuant to this rule will not affect endangered and threatened species or critical habitat under the Endangered Species Act (ESA).

Pursuant to section 7 of the ESA, NMFS has completed a consultation on the effects of the groundfish fishery on listed species. Reasonable and prudent alternatives have been implemented to mitigate the adverse impacts of the pollock fisheries on the western population of Steller sea lion and its critical habitat (65 FR 3892, January 25, 2000, and extended at 65 FR 36795, June 12, 2000). NMFS also completed consultations on the effects of the 2000 BSAI groundfish fisheries on listed species and on critical habitat. These consultations were completed December 23, 1999, and concluded that the proposed fisheries were not likely to cause jeopardy or adverse modification to designated critical habitat. However, in an order dated January 25, 2000, the District Court for the Western District of Washington (Court) concluded that NMFS must consult pursuant to section 7 of the ESA on the fishery management plans for the groundfish fisheries of the BSAI and GOA. *Greenpeace* v. *NMFS*, Civ. No. 98-49ZZ (W.D. Wash.). On August 7, 2000, the Court issued an injunction, effective August 8, 2000, prohibiting fishing for groundfish with trawl gear in the exclusive economic zone within Steller sea lion critical habitat west of 144° W. long. until NMFS issues a comprehensive biological opinion adequately analyzing the full scope of the FMPs. (*Greenpeace* v. *NMFS*, 106 F. Supp. 2d 1066 (W.D. Wash. 2000)). The critical habitat areas closed by the Court's injunction are defined in regulations codified at 50 CFR 226.202, and in Tables 1 and 2 to 50 CFR part 226. Pursuant to the ESA, NMFS published an interim final rule prohibiting fishing for groundfish with trawl gear in Steller sea lion critical habitat specified in the Court's injunction (65 FR 49766, August 15, 2000). This interim final rule was effective August 9, 2000, and will remain in effect until the Court orders otherwise. NMFS has developed a comprehensive biological opinion that evaluates the effects of the FMPs on endangered and threatened species and their critical habitat as required by the Court.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reducation Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains collection-of-information requirements subject to the PRA. These collections of this information have been approved under OMB control number 0648-0316. Public reporting burden (per individual) for these collections of information, including both salmon and halibut donations, is estimated to average as follows: 40 hours every 3 years per application and 40 hours per year for completing a list of vessels and processors for a NMFS authorized distributor; 9 hours per year (0.1 hrs for 90 processing days) for vessel and processor labeling and product tracking documentation; and 15 minutes per year for vessels/processor documentation. The estimated response times listed include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Send comments regarding this burden estimate, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to NMFS, Alaska Region (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 8, 2000.

**William T. Hogarth,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U. S. C. 1540(f).

2. In § 679.26, paragraphs (a)(2) and (b)(3)(iv) are revised to read as follows:

### § 679.26 Prohibited Species Donation Program (PSD).

(a) * * *

(2) Halibut delivered by catcher vessels using trawl gear to shoreside processors.

(b) * * *

(3) * * *

(iv) *Effective period.* A PSD permit issued for salmon or halibut remains in effect for a 3-year period after the selection notice is published in the **Federal Register** unless suspended or revoked. A PSD permit issued to an authorized distributor may be renewed following the application procedures in this section.

* * * * *

[FR Doc. 00–31917 Filed 12–13–00; 8:45 am]

BILLING CODE: 3510–22–S

# Proposed Rules

Federal Register
Vol. 65, No. 241
Thursday, December 14, 2000

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

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–CE–69–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; SOCATA—Groupe Aerospatiale Model TBM 700 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA—Groupe Aerospatiale (SOCATA) Model TBM 700 airplanes. The proposed AD would require you to install a thermal protection sleeve on the propeller governor flexible cable. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to prevent loss of propeller control because of hardening or blocking of the control cable, which could result in the inability to control propeller pitch and inability to feather the propeller. Such failure could lead to loss of airplane control.

**DATES:** The Federal Aviation Administration (FAA) must receive any comments on this proposed rule by January 19, 2001.

**ADDRESSES:** Send three copies of your comments to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–69–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may read comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

You may get service information that applies to the proposed AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: (33) (0)5.62.41.73.00; facsimile: (33) (0)5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 894–1160; facsimile: (954) 964–4191. You may read this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

*How Do I Comment on the Proposed AD?*

We invite your comments on the proposed rule. You may send whatever written data, views, or arguments you choose. You need to include the rule's docket number and send your comments in triplicate to the address specified under the caption **ADDRESSES.** We will consider all comments received by the closing date specified above, before acting on the proposed rule. We may change the proposals contained in this action in light of the comments received.

*Are there Any Specific Portions of the Proposed AD I Should Pay Attention To?*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might require a change to the proposed rule. You may look at all comments we receive. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

We are re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on the ease of understanding this document, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.faa.gov/language/.

*How Can I Be Sure FAA Receives My Comment?*

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2000–CE–69–AD.'' We will date stamp and mail the postcard back to you.

### Discussion

*What Events Have Caused This Proposed AD?*

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA that an unsafe condition may exist on certain SOCATA Model TBM 700 airplanes. The DGAC reports five occurrences on civilian and military Socata model TBM 700 airplanes where there was damage to the internal sleeve of the flexible propeller control cable. This damage was because of thermal conduction generated by the turboprop left hand exhaust nozzle.

*What Are the Consequences if the Condition Is Not Corrected?*

The actions specified by the proposed AD are intended to prevent loss of propeller control because of hardening or blocking of the control cable. This could result in the inability to control propeller pitch and inability to feather the propeller. Such failure could lead to loss of airplane control.

*Is There Service Information That Applies to this Subject?*

SOCATA has issued Service Bulletin SB 70–084, dated September 2000.

*What Are the Provisions of This Service Bulletin?*

The service bulletin includes procedures for the installation of a thermal protection sleeve on the propeller governor flexible cable.

*What Action Did the DGAC Take?*

The DGAC classified this service bulletin as mandatory and issued French AD Number 2000–430(A), dated November 15, 2000, to ensure the continued airworthiness of these airplanes in France.

*Was This in Accordance With the Bilateral Airworthiness Agreement?*

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

**The FAA's Determination and an Explanation of the Provisions of the Proposed AD**

*What Has FAA Decided?*

The FAA has examined the findings of the DGAC; reviewed all available information, including the service information referenced above; and determined that:

—the unsafe condition referenced in this document exists or could develop on other SOCATA Model TBM 700 airplanes of the same type design;

—the actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

*What Would the Proposed AD Require?*

This proposed AD would require you to incorporate the actions in the previously referenced service bulletin.

**Cost Impact**

*How Many Airplanes Would the Proposed AD Impact?*

We estimate that the proposed AD affects 80 airplanes in the U.S. registry.

*What Would Be the Cost Impact of the Proposed AD on Owners or Operators of the Affected Airplanes?*

We estimate the following costs to do the proposed modification:

| Labor Cost | Parts Cost | Total Cost Per Airplane | Total Cost on U.S. Operators |
|---|---|---|---|
| 2 workhours × $60 per hour = $120. | $40 | $120 + $40 = $160 | $160 × 80 = $12,800 |

**Compliance Time of the Proposed AD**

*What Would Be the Compliance Time of the Proposed AD?*

The compliance time of this proposed AD would be within the next 100 hours time-in-service (TIS) after the effective date of the proposed AD or within the next 3 calendar months after the effective date of this proposed AD, whichever occurs first.

*Why Is the Compliance Time of the Proposed AD Presented in Both Hours TIS and Calendar Time?*

The affected airplanes are used in general aviation operations. Those operators may accumulate 100 hours TIS on the airplane in less than 3 months and many owners have numerous affected airplanes. We have determined that the dual compliance time:

—gives all owners/operators of the affected airplanes adequate time to schedule and do the actions in this proposed AD; and

—ensures that the unsafe condition referenced in this AD will be corrected within a reasonable time period without inadvertently grounding any of the affected airplanes.

*What Are the Differences Between the French AD and the Proposed AD?*

The French AD requires the modification at the next scheduled inspection and at the latest before December 21, 2000. We propose a requirement that you install the thermal protection sleeve within the next 100 hours time-in-service (TIS), or within the next three calendar months, whichever occurs first.

We cannot legally enforce a compliance time of at the next scheduled inspection. We believe that a compliance time of 100 hours TIS or within the next three months, whichever occurs first, will give the owners or operators of the affected airplanes enough time to have the proposed actions accomplished without compromising the safety of the airplanes.

**Regulatory Impact**

*Would This Proposed AD Impact Various Entities?*

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

*Would This Proposed AD Involve a Significant Rule or Regulatory Action?*

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

**SOCATA—Groupe Aerospatiale:** Docket No. 2000–CE–69–AD

(a) *What airplanes are affected by this AD?* This AD affects Model TBM 700 airplanes, serial numbers 1 thru 156, and 158 thru 163; that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended

to prevent loss of propeller control because of hardening or blocking of the control cable, which could result in the inability to control propeller pitch and inability to feather the propeller. Such failure could lead to loss of airplane control.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must do the following, unless already accomplished:

| Actions | Compliance | Procedures |
|---|---|---|
| Install a thermal protection sleee on the propeller control cable. | Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 3 calendar months after the effective date of this AD, whichever occurs first, unless already done. | Do this installation following the ACCOMPLISHMENT INSTRUCTIONS of Socata Service Bulletin SB 70–084, dated September 2000, and the applicable maintenance manual. |

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Small Airplane Directorate, approves your alternative. Send your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

**Note 1:** This AD applies to each airplane identified in paragraph (a) of this AD, 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 (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 you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64016; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. You may look at these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

**Note 2:** The subject of this AD is addressed in French AD 2000–430(A), dated November 15, 2000.

Issued in Kansas City, Missouri, on December 7, 2000.

**Larry E. Werth,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–31892 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Office of Inspector General

## 42 CFR Part 1001

## Solicitation of New Safe Harbors and Special Fraud Alerts

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice of intent to develop regulations.

**SUMMARY:** In accordance with section 205 of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, this annual notice solicits proposals and recommendations for developing new and modifying existing safe harbor provisions under the Federal and State health care programs' anti-kickback statute, as well as developing new OIG Special Fraud Alerts.

**DATES:** To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on February 12, 2001.

**ADDRESSES:** Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–51–N, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–51–N. 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 5541 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Joel Schaer, (202) 619–0089, OIG Regulations Officer.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. The OIG Safe Harbor Provisions*

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce business reimbursed under the Federal or State health care programs. The offense is classified as a felony, and is punishable by fines of up to $25,000 and imprisonment for up to 5 years. The OIG may also impose administrative sanctions or exclude violators from the Federal or State health care programs.

The types of remuneration covered specifically include kickbacks, bribes, and rebates, whether made directly or indirectly, overtly or covertly, or in cash or in kind. In addition, prohibited conduct includes not only remuneration intended to induce referrals of patients, but remuneration intended to induce the arranging for or the purchasing, leasing or ordering of any good, facility, service, or item paid for by Federal or State health care programs.

Since the statute on its face is so broad, concern has been expressed for many years that some relatively innocuous commercial arrangements are technically covered by the statute and are, therefore, subject to criminal prosecution. As a response to the above concern, the Medicare and Medicaid Patient and Program Protection Act of 1987, section 14 of Public Law 100–93, specifically required the development and promulgation of regulations, the so-called ''safe harbor'' provisions, designed to specify various payment and business practices which, although potentially capable of inducing referrals of business under the Federal and State health care programs, would not be treated as criminal offenses under the

anti-kickback statute (section 1128B(b) of the Act; 42 U.S.C. 1320a–7b(b)) and would not serve as a basis for a program exclusion under section 1128(b)(7) of the Act; 42 U.S.C. 1320a–7(b)(7). The OIG safe harbor provisions have been developed ''to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements'' (56 FR 35952, July 29, 1991). Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement action under the anti-kickback statute or program exclusion authority.

To date, the OIG has developed and codified in 42 CFR 1001.952 a total of 21 final safe harbors that describe practices that are sheltered from liability. The OIG is also currently developing a final safe harbor rule addressing ambulance restocking arrangements.

*B. OIG Special Fraud Alerts*

In addition, the OIG has also periodically issued Special Fraud Alerts to give continuing guidance to health care providers with respect to practices the OIG regards as unlawful. These Special Fraud Alerts serve to notify the health care industry that the OIG has become aware of certain abusive practices that the OIG plans to pursue and prosecute, or to bring civil and administrative action, as appropriate. The Special Fraud Alerts also serve as a tool to encourage industry compliance by giving providers an opportunity to examine their own practices. The OIG Special Fraud Alerts are intended for extensive distribution directly to the health care provider community, as well as those charged with administering the Medicare and Medicaid programs.

In developing these Special Fraud Alerts, the OIG has relied on a number of sources and has consulted directly with experts in the subject field, including those within the OIG, other agencies of the Department, other Federal and State agencies, and those in the health care industry. To date, ten individual Special Fraud Alerts have been issued by the OIG and subsequently reprinted in the **Federal Register**.[1]

[1] See 59 FR 65372 (December 19, 1994); 60 FR 40847 (August 10, 1995); 61 FR 30623 (June 17, 1996); 63 FR 20415 (April 24, 1998); and 64 FR 1813 (January 12, 1999). The OIG has also issued three Special Advisory Bulletins—64 FR 37985 (July 14, 1999); 64 FR 52791 (September 30, 1999); and 64 FR 61353 (November 10, 1999).

*C. Section 205 of Public Law 104–191*

Section 205 of Public Law 104–191 requires the Department to develop and publish an annual notice in the **Federal Register** formally soliciting proposals for modifying existing safe harbors to the anti-kickback statute and for developing new safe harbors and Special Fraud Alerts.

In developing safe harbors for a criminal statute, the OIG is compelled to engage in a complete and thorough review of the range of factual circumstances that may fall within the proposed safe harbor subject area so as to uncover all potential opportunities for fraud and abuse. Only then can the OIG determine, in consultation with the Department of Justice, whether it can effectively develop regulatory limitations and controls that will permit beneficial and innocuous arrangements within a subject area while, at the same time, protecting the Federal health care programs and their beneficiaries from abusive practices.

**II. Solicitation of Additional New Recommendations and Proposals**

In accordance with the requirements of section 205 of Public Law 104–191, the OIG is continuing to study safe harbor and Special Fraud Alert proposals submitted in response to the annual solicitations. Some of those suggestions have been addressed in the safe harbor rulemakings published on November 19, 1999 (64 FR 63504 and 64 FR 63518) or are already under development. The OIG last published a **Federal Register** solicitation notice for developing new safe harbors and Special Fraud Alerts on December 10, 1999 (64 FR 69217). The OIG received 17 timely-filed responses from a cross-section of organizations, associations and other interested parties. In response to that and previously-issued **Federal Register** solicitation notices, a status report of the public comments received for new and modified safe harbors is set forth in Appendix G to the OIG's Semiannual Report covering the period April 1, 2000 through September, 30, 2000.[2] OIG is currently taking the recommendations listed in the appendix under advisement and is not seeking additional public comment on those proposals at this time. Rather, this notice seeks additional recommendations from affected provider, practitioner, supplier and beneficiary representatives regarding the development of proposed or modified safe harbor regulations and new Special Fraud Alerts beyond those summarized in the appendix to the OIG Semiannual Report referenced above.

[2] The OIG Semiannual Report can be accessed through the OIG web site at http://www.dhhs.gov/oig/semann/index.htm.

*Criteria for modifying and establishing safe harbor provisions*

In accordance with the statute, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would effect an increase or decrease in—

- Access to health care services;
- The quality of care services;
- Patient freedom of choice among health care providers;
- Competition among health care providers;
- The cost to Federal health care programs;
- The potential overutilization of the health care services; and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will also take into consideration the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may vary based on their decisions whether to (1) order a health care item or service, or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

*Criteria for Developing Special Fraud Alerts*

In determining whether to issue additional Special Fraud Alerts, we will also consider whether, and to what extent, those practices that would be identified in new Special Fraud Alerts may result in any of the consequences set forth above, and the volume and frequency of the conduct that would be identified in these Special Fraud Alerts.

A detailed explanation of justifications or empirical data supporting the suggestion, and sent to the address indicated above, would prove helpful in our considering and drafting new or modified safe harbor regulations and Special Fraud Alerts.

Dated: December 7, 2000.

**June Gibbs Brown,**

*Inspector General.*

[FR Doc. 00–31808 Filed 12–13–00; 8:45 am]

BILLING CODE 4152–01–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration (NOAA)**

**50 CFR Part 679**

**[Docket No. 001108316-0316-01; I.D. 060600B]**

**RIN 0648-AK50**

## Fisheries of the Exclusive Economic Zone Off Alaska; Improved Individual Fishing Quota Program

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule to amend regulations implementing the Individual Fishing Quota (IFQ) Program for the Pacific halibut and sablefish fixed gear fisheries in and off Alaska. NMFS has identified parts of the program that need further refinement or correction for effective management of the affected fixed gear fisheries. This action is intended to effect those refinements and is necessary to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) with respect to the IFQ fisheries.

**DATES:** Comments must be received by January 16, 2001.

**ADDRESSES:** Comments must be sent to Sue Salveson, Assistant Administrator for the Sustainable Fisheries Division, Alaska Region, NMFS, Room 453, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel. Copies of the Regulatory Impact Review may be obtained from the same address. Send comments on any ambiguity or unnecessary complexity arising from the language used in this proposed rule to the Administrator, Alaska Region, P.O. Box 21668, Juneau, AK, 99802-1668.

**FOR FURTHER INFORMATION CONTACT:** James Hale, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

### Background

Regulations codified at 50 Part CFR 679 implement the IFQ Program, a limited access system for management of the Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fixed gear fisheries in and off Alaska, under the authority of the Northern Pacific Halibut Act (Halibut Act) with respect to halibut and the Magnuson-Stevens Act with respect to sablefish. Further information on the rationale for and implementation of the IFQ Program is contained in the preamble to the final rule implementing the IFQ Program published in the **Federal Register**, November 9, 1993 (58 FR 59375).

NMFS' continuing assessment of the IFQ Program's responsiveness to conservation and management goals for Pacific halibut and sablefish fisheries has produced two ''omnibus'' packages of IFQ regulatory reforms since the inception of the program (60 FR 22307, May 5, 1995; 61 FR 41523, August 9, 1996). This proposed action, the third such ''omnibus'' package of regulatory changes to the IFQ Program, would amend various portions of the program's implementing regulations that require further refinement. These changes are necessary: To promote the ability of fishermen to conduct efficient IFQ fishing operations, while complying with IFQ Program requirements; to improve NMFS' ability to efficiently administer the program; and to improve the clarity and consistency of IFQ Program regulations.

This proposed action would make the following changes to the IFQ Program: (1) In § 679.1 *Purpose and scope*, add explicit reference to the Northern Pacific Halibut Act (Halibut Act), under which regulations in this part regarding the Pacific halibut fishery were developed, and in § 679.1(d) revise ''IFQ management plan'' to read ''IFQ management measures'' to prevent any inference that the IFQ Program is itself a ''fishery management plan'' as that term is used in the Magnuson-Stevens Act; (2) clarify the requirements for IFQ fishermen participating in open access sablefish fisheries in Alaska State waters; (3) revise nomenclature to reflect organizational changes in NMFS' Restricted Access Management (RAM) division; (4) revise the definition of an IFQ landing to include vessels that are removed from the water and put on trailers; (5) delete the reference to an ''accompanying statement'' establishing IFQ balances; (6) exempt lingcod fishermen using dinglebar gear from the IFQ 6-hour prior notice of landing and 12-hour landing window requirements; (7) add gear type to information required on a completed IFQ landing report; (8) clarify which registered buyer, in landings involving multiple registered buyers, is responsible for compliance with shipment report requirements; (9) make minor corrections to errors arising from the consolidation of regulations; (10) modify the existing survivorship transfer provisions to allow for the temporary transfer of a deceased QS holder's QS and IFQ to a designated beneficiary, and revise a paragraph on an IFQ leasing provision that expired in 1998; (11) require annual updates on the status of corporations and partnerships; (12) allow the electronic submission of appeals to initial administrative decisions; and (13) clarify reporting requirements for purposes of the Paperwork Reduction Act. A discussion of and justification for each of the proposed measures follows.

*Referencing the Halibut Act in § 679.1, Purpose and scope*

The IFQ Program is a limited access system for two separate fisheries: (1) The fixed gear sablefish fishery, which NMFS manages under the authority of the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs), and (2) the Pacific halibut fishery, which NMFS manages under the authority of the Halibut Act. In § 679.1, *Purpose and scope*, an explicit reference to the Halibut Act as the authorizing statute for regulations in part 679 pertaining to halibut would be added. Further, the reference to ''IFQ management plan'' at § 679.1(d) would be revised to read ''IFQ management measures'' to prevent the inference that the IFQ Program is itself a ''fishery management plan'' as that term is used in the Magnuson-Stevens Act.

*IFQ Fishermen and Open Access Sablefish Fisheries in Alaska State Waters*

Section 679.1(d)(1)(i)(B) identifies vessels required to observe IFQ regulations when participating in such fisheries as vessels on which ''such fishing is conducted by persons who have been issued permits under § 679.4.'' For clarity, the citation to § 679.4 would be replaced by descriptions of such permits: sablefish QS and IFQ permits, and sablefish IFQ cards. Section 679.1(d)(l)(i)(B) also would be revised to read ''persons who hold'' rather than ''persons who have been issued'' such permits. The current language could be read to require IFQ sablefish fishermen who have been issued such permits at any time in the past to comply with all IFQ regulations when participating in an open access sablefish fishery in Alaska State waters. The regulation was not intended to affect the activities of fishermen who have participated in the IFQ Program in the past but have since divested themselves of all QS or IFQ holdings. As revised, the paragraph would pertain only to those fishermen who currently hold sablefish QS or IFQ or who are

current participants in the program as sablefish IFQ cardholders or hired skippers.

*Nomenclature Change*

To comport with organizational changes within NMFS, the definition of ''Chief, RAM Division'' in § 679.2 *Definitions* would be changed to read ''*Program Administrator RAM*, means the Program Administrator of Restricted Access Management, Alaska Region, NMFS.'' All subsequent references to ''Chief, RAM Division'' in 50 CFR 679 also would be revised to read ''Program Administrator, RAM.''

*Trailering of Vessels*

As defined in § 679.2, the term ''IFQ landing'' does not include the ''trailering'' of vessels (i.e., removing a vessel from the water, loading the vessel onto a trailer, and conveying it elsewhere other than dockside for the offloading of IFQ harvests and production of an IFQ landing report). Such practices inhibit NMFS' ability to monitor IFQ landings to ensure proper accounting of harvests against IFQ balances. Therefore, the definition of an IFQ landing—''the unloading or transferring of any IFQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish''—would be revised to include ''the removal from the water of a vessel carrying any IFQ halibut, IFQ sablefish, or products thereof.''

**Accompanying Statement**

The reference to ''the most recent accompanying statement specifying the amount of each species that may be harvested during the current IFQ fishing season'' would be deleted from § 679.4(d)(1)(i). While such an accompanying statement was originally projected as part of the IFQ permit, NMFS currently issues no such accompanying statement, because the IFQ card itself is sufficient to establish a fisherman's IFQ balance.

**Delivery of IFQ Halibut Bycatch by Lingcod Fishermen Using Dinglebar Gear**

Lingcod dinglebar fishermen who hold halibut IFQ are required to keep and offload any halibut bycatch incidental to lingcod harvests. Consequently, such lingcod fishermen who take small amounts of halibut bycatch must comply with the IFQ Program's 6-hour prior notice of landing and 12-hour landing window requirements before they can offload their lingcod harvests.

Because these requirements may contribute to the illegal discard of IFQ halibut bycatch in the lingcod dinglebar fishery, NMFS believes lingcod fishermen should be exempted from the 6-hour prior notice requirement and the 12-hour landing window when landing 500 lb (0.227 metric tons (mt)) or less of IFQ halibut bycatch concurrently with legal lingcod landings harvested with dinglebar gear. IFQ landing reports for such landings would still be required as currently prescribed. NMFS believes that 500 lbs (0.227 mt) is large enough to cover halibut bycatch in the lingcod dinglebar fishery but not so large as to jeopardize the effective monitoring of IFQ landings.

To effect this exemption, paragraph 679.5(l)(1)(iv) and (2)(iv)(A)(2) would be revised to exempt lingcod fishermen, and a definition of the term ''dinglebar gear'' would be added to the definitions of authorized fishing gear in § 679.2. ''*Dinglebar gear*'' would be defined to mean ''one or more lines retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.'' The definition of the term ''troll gear'' would also be amended to include dinglebar gear.

*Information on Gear Type in Landing Report*

Paragraph 679.5(l)(2)(vi) would be revised to add gear type to information required on a completed IFQ landing report. NMFS needs to be apprised of gear type used in making landings of IFQ species to effectively manage the IFQ Program, which is limited to fixed gear. Also, certain exemptions from IFQ recordkeeping and reporting requirements are based on gear-type and require that NMFS be able to determine at the time of landing the gear type used to harvest IFQ species. For instance, salmon fishermen, who typically use troll gear, are exempt from the prior notice of landing and 12-hour landing window when landing 500 lb (0.227 mt) or less of halibut bycatch with legal salmon landings. Also, as discussed earlier, rulemaking would extend a similar exemption to lingcod fishermen using dinglebar gear. NMFS needs to be provided with information on gear type in IFQ landing reports for purposes of distinguishing such exempted landings from potential violations of IFQ recordkeeping and reporting requirements.

*Registered Buyer Responsible for Shipment Report*

Paragraph 679.5(l)(3)(i)(A) would be revised to specify, for IFQ landings that involve more than one registered buyer, which registered buyer is responsible for ensuring compliance with shipment report requirements. Paragraph 679.5(l)(3)(ii) would be revised to specify that by signing an IFQ Landing Report and thereby taking responsibility for an IFQ Landing, a registered buyer also assumes responsibility for completing and submitting to NMFS all shipment reports for IFQ harvests landed under that landing report. Current regulations do not sufficiently assign responsibility for proper compliance with shipment report regulations, and other persons who hold registered buyer permits may be involved in a landing but not in the shipping of IFQ harvests from the point of landing to other destinations. This proposed change would assign the responsibility for compliance with shipment report requirements to the registered buyer who signs the IFQ landing report for those harvests being shipped.

*Prohibitions*

The general prohibition at § 679.7(f)(14) would be revised to prohibit the violation of any provision of the IFQ and Community Development Quota (CDQ) regulations incorporated into §§ 679.4 *Permits*, 679.5 *Recordkeeping and reporting*, and subparts C and D of 50 CFR part 679. Prior to the consolidation of the regulations governing fisheries in the exclusive economic zone off Alaska into 50 CFR part 679, which was required by the President's Regulatory Reform Initiative (61 FR 31228, June 19, 1996), all IFQ and CDQ regulations were in a single subpart. The general prohibition formerly referred to this subpart. With the consolidation of regulations, IFQ and CDQ regulations pertaining to permits and to recordkeeping and reporting were catalogued under subparts dealing separately with those respective subjects. Section 679.7(f)(14) would be revised to refer again to all regulations pertaining to the IFQ and CDQ programs.

**Expanding Survivorship Transfer Provisions**

Paragraph 679.41(k)(2) would be revised to expand the existing survivorship transfer provisions to include a family member designated as a beneficiary to whom the survivorship transfer privileges would extend in the absence of a surviving spouse. The IFQ Program restricts the transfer of category B, C, or D quota share (QS) and resulting IFQ to prevent excessive consolidation of QS and ensure that QS continues to be held by professional fishermen, rather than being acquired by

investment speculators. In 1996, NMFS amended the regulations to allow for a temporary transfer of QS to surviving spouses of deceased QS holders (61 FR 41523; August 9, 1996). Under this provision, upon the death of an individual who holds QS or IFQ, a surviving spouse may request to receive for 3 years all QS and IFQ held by the decedent, unless a contrary intent was expressed in a will that is probated. This provision was consistent with the Council's intent for the IFQ Program, as evidenced by sections 14.4.7.1.4(5) and 4.4.1.1.4(5), respectively, of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs), which state:

> The Secretary may, by regulation, designate exceptions to [the transfer provisions] to be employed in cases of personal injury or extreme personal emergency which allows the transfer of [IFQ resulting from QS assigned to vessel categories B, C, or D] for limited periods of time.

In June 1997, the Council recommended that the transfer privileges be extended to any heirs of the deceased, so that other members of a deceased QS holder's immediate family may benefit for a certain period of time from the deceased's commercial fishing interests with regard to the IFQ Program. NMFS subsequently published a proposed rule to implement the Council's recommendation in the **Federal Register** on November 6, 1997 (62 FR 60060). Following the publication of this proposed rule and upon further analysis, NMFS recognized that the proposed action would not provide transfer privileges for an emergency situation and would require an FMP amendment not authorized by the Council. Therefore, NMFS withdrew the proposed rule by publishing a notice to that effect in the **Federal Register** (63 FR 13161, March 18, 1998), which provides further explanation of the rationale for the withdrawal of the rule. Upon the withdrawal of the proposed rule, the Council requested that the analysis be amended with a new alternative that would effect the intent of the proposed action—to extend the benefit of the surviving spouse privilege to families of deceased QS holders who have no surviving spouse—in a manner consistent with the FMPs' emergency transfer provisions.

This proposed action would allow QS holders to provide NMFS with the name of an immediate family member to be the beneficiary of the survivorship transfer privileges in the absence of a surviving spouse. The designated beneficiary would be granted the ability to fish or to transfer the deceased QS holder's IFQ for the remainder of any current IFQ season and to fish or transfer the total annual allocations of IFQ deriving from the deceased QS holder's QS by right of survivorship for a period of 3 years from the date of the deceased QS holder's death or until the QS is awarded to a legal heir, whichever comes first.

This action also would correct an erroneous citation in the regulations implementing the survivorship transfer privilege at § 679.41(k)(2). The survivorship transfer provisions exempt those who receive emergency transfers of a deceased QS holder's QS from the prohibition on leasing of IFQ derived from B, C, or D category QS. The citation is intended to refer to the leasing prohibition, which stands at § 679.41(h)(2). The existing citation would be revised to cite the correct paragraph. Also, the paragraph cited, 679.41(h)(2), prohibits leasing of more than 10-percent of a QS holder's total annual IFQ. That 10 percent leasing provision expired on January 2, 1998, after which date a QS holder may not transfer any IFQ resulting from B, C, or D category QS separately from the originating QS. Therefore, § 679.41(h)(2) would be revised to read: ''IFQ resulting from category B, C, or D QS may not be transferred separately from its originating QS, except as provided in paragraph (k) of this section.''

**Annual Updates on the Status of Corporations and Partnerships**

A paragraph (5) would be added to § 679.42(j) requiring corporations and partnerships holding QS to provide annual updates to NMFS/Restricted Access Management on the status of the corporation or partnership identifying all current shareholders or partners and affirming the entity's continuing existence as a corporation or partnership. Current IFQ regulations require collectively held QS to be transferred to a qualified individual upon any change in a corporation or partnership. Corporations or partnerships that have been issued QS but have either been dissolved or have acquired additional shareholders or partners are not eligible to fish the IFQ resulting from that QS. To ensure that such corporations and partnerships are not erroneously issued annual IFQ resulting from the collectively held QS, they would be required to provide the updates.

*Electronic Submission of Appeals*

Paragraph 679.43(c) would be revised to allow facsimile submission of appeals of initial administrative determinations made to the Office of Administrative Appeals. Current regulations that prohibit the filing of appeals by facsimile unnecessarily inhibit the transmission of timely appeals and would therefore be removed. Also, the address to which appeals must be sent would be changed from the Regional Administrator's office to the Office of Administrative Appeals.

*Information Requirements*

The regulations pertaining to certain IFQ forms and reports would be revised to clearly identify all of the data elements required of the public in these collections of information. Such clarification is necessary to assure that all collections of information for the IFQ Program are authorized by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995. The pertinent collections of information are: (1) the Request for QS Application at 50 CFR 679.40(a)(6)(i); (2) the IFQ Landing Report at 50 CFR 679.5(l)(2); (3) the IFQ Vessel Clearance Report at 679.5(l)(5)(i); (4) the IFQ Transshipment Authorization Request at 679.5(l)(4); and (5) the Corporation Eligibility Notice at 679.43(c).

**Classification**

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to the PRA. These requirements are either new or revisions to collection-of-information requirement approved by OMB under OMB control number 0648-0272. These requirements have been submitted to OMB for approval. Public reporting burden per response for these collections of information is estimated to average as follows: 0.5 hours for individuals and 1 hour for corporations or partnership filling out a Request for QS Application; 0.2 hours for an IFQ landing report; 0.2 hours for an IFQ vessel clearance report; 2 hours for the identification of ownership interest form; 0.3 hours for an IFQ shipment report; 0.2 hours for an IFQ transshipment authorization request; 0.5 hours for the Designated Beneficiary form; 2 hours for the Application for

Transfer of QS/IFQ; and 4 hours for the Letter of Appeal, including in all cases the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are invited on (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through use of automated collection techniques or other forms of information technology. Send comments on these or other aspects of the information collections to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

NMFS prepared an initial regulatory flexibility analysis to describe this proposed rule's economic effects on small entities. This proposed action would impact all QS holders in the IFQ Program, as well as seafood processors and transporters. The majority of catcher vessels harvesting IFQ halibut and IFQ sablefish meet the definition of a small entity under the RFA. As of the end of the 1998 IFQ season, 3,795 persons held halibut QS and 919 held sablefish QS. Persons who buy IFQ harvests from IFQ fishermen must possess Registered Buyers permits, and as of the end of the 1998 season, Registered Buyer permits were held by 859 businesses, including restaurants, processors, retailers, brokers, tenders, and catcher/processors. In addition, families of deceased QS holders would be impacted beneficially by the proposed extension of temporary transfer privileges to other surviving members of a deceased QS's family in addition to surviving spouses.

This proposed action comprises only minor regulatory changes, adjustments, clarifications, and corrections necessary to refine NMFS' ability to manage the program effectively and to improve the clarity and consistency of the program's implementing regulations. Seven of the proposed changes are intended to clarify aspects of the regulations and would impose little change in the way small businesses conduct their businesses under the IFQ Program, except to avoid any potential confusion due to inexact regulatory language.

The other six changes contained in this proposed action may have greater impact on small businesses operating under the IFQ Program, but these impacts too would either be beneficial or impose relatively minor changes in recordkeeping and reporting requirements. Changes in the program's collection-of-information requirements have been discussed above.

These changes are expected to have minimal economic impacts on small entities. NMFS has not identified alternatives that would further minimize these impacts.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising form the language used in this proposed rule. Such comments should be addressed to the Alaska Regional Administrator (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 679**

Fisheries, Reporting and recordkeeping requirements.

Dated: December 6, 2000

**William T. Hogarth**

*Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended to read as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773, *et seq.*

2. In part 679, all references to ''Chief, RAM Division'' are removed and ''Program Administrator, RAM'' is added in its place.

3. In § 679.1, the first sentence of the introductory paragraph, the introductory text to paragraph (d), and paragraph (d)(1)(i)(B) are revised to read as follows:

### § 679.1 Purpose and scope.

Regulations in this part were developed by the Council under the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. * * *

* * * * *

(d) *IFQ Program for sablefish and halibut.* The IFQ management measures for the commercial fisheries that use fixed gear to harvest sablefish and halibut (see subparts A, B, D, and E of this part).

(1) * * *

(i) * * *

(B) Using fixed gear in waters of the State of Alaska adjacent to the BSAI and the GOA, provided that aboard such vessels are persons who currently hold quota shares, Individual Fishing Quota permits, or Individual Fishing Quota cards.

* * * * *

4. In § 679.2, the definition of ''Chief, RAM Division'' is removed, the definition of ''IFQ landing'' is revised, the definition of ''Program Administrator, RAM'' is added, and, under the definition of ''Authorized fishing gear'', paragraphs (1) through (15) are redesignated as paragraphs (2) through (16), newly designated paragraph (16) is revised, and a new paragraph (1) is added to read as follows:

### § 679.2 Definitions.

* * * * *

*Authorized fishing gear* * * *

(1) *Dinglebar gear* means one or more lines retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

* * * * *

(16) *Troll gear* means one or more lines with hooks or lures attached drawn through the water behind a moving vessel. This gear type includes hand troll and power troll gear and dinglebar gear.

* * * * *

*IFQ landing* means the unloading or transferring of any IFQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish or the removal from the water of a vessel containing IFQ halibut, IFQ sablefish, or products thereof.

* * * * *

*Program Administrator, RAM* means the Program Administrator of Restricted Access Management Program, Alaska Region, NMFS.

* * * * *

5. In § 679.4, paragraph (d)(1)(i) is revised to read as follows:

### § 679.4 Permits.

* * * * *

(d) *IFQ*—(1) * * *

(i) *IFQ permit.* A copy of an IFQ permit that specifies the IFQ regulatory area and vessel category in which IFQ

halibut or IFQ sablefish may be harvested by the IFQ permit holder; and

* * * * *

6. In § 679.5(l), paragraphs (l)(1)(iv), (l)(2)(iv)(A)(2), (l)(2)(vi), (l)(3)(i)(A), (l)(3)(ii), (l)(4), and (l)(5)(i) are revised to read as follows:

**§ 679.5 Recordkeeping and reporting.**

* * * * *

(l) * * *

(1) * * *

(iv) *Exemption.* The operator of a category B, C, or D vessel, as defined at § 679.40(a)(5), making an IFQ landing of IFQ halibut of 500 lb (0.227 mt) or less of weight determined pursuant to § 679.42(c)(2) is exempt from the prior notice of landing required by this section when such landings of IFQ halibut are made concurrent with legal landings of lingcod harvested with dinglebar gear or with legal landings of salmon.

* * * * *

(2) * * *

(iv) * * *

(A) * * *

(*2*) IFQ halibut of 500 lb (0.227 mt) or less of IFQ weight determined pursuant to § 679.42(c)(2) is landed concurrently with a legal landing of lingcod harvested with dinglebar gear or a legal landing of salmon by a category B, C, or D vessel, as defined at § 679.40(a)(5).

* * * * *

(vi) *Information required.* The registered buyer must enter accurate information contained in a complete IFQ landing report as follows: Date, time, and location of the IFQ landing; name and permit number of the IFQ card holder and registered buyer; the harvesting vessel's ADF&G number; gear type reported by cardholder; the Alaska State fish ticket number(s) for the landing; the ADF&G statistical area of harvest reported by the IFQ cardholder; if ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest reported by the IFQ cardholder; for each ADF&G statistical area of harvest reported by the IFQ cardholder, the product code landed and initial accurate scale weight made at the time offloading commences for IFQ species sold and retained.

(3) * * *

(i) * * *

(A) Complete a written shipment report for each shipment or transfer of IFQ halibut and IFQ sablefish for which the Registered Buyer submitted a landing report before the fish leave the landing site.

* * * * *

(ii) *Information required.* A shipment report must specify the following: Whether the report is a revised report; species and product type being shipped; number of shipping units and unit weight; fish product weight; names of the shipper and receiver; names and addresses of the consignee and consignor; mode of transportation; intended route; and signature of the responsible registered buyer's representative.

* * * * *

(4) *Transshipment authorization.* No person may transship processed IFQ halibut or IFQ sablefish between vessels without authorization by a clearing officer. Authorization from a clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence. Requests for authorization must specify the date and location of the transshipment; names and ADF&G numbers of vessels delivering and receiving the transshipment; product destination; registered buyers' names and permit numbers; IFQ permit numbers; species, regulatory areas, product types and codes, number of units, and unit weight of IFQ harvests being transshipped; time and date of the request; and name and contact numbers for the person making the request.

(5) * * *

(i) *Applicability.* The vessel operator who makes an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must obtain prelanding written clearance of the vessel from a clearing officer and provide the following information: date, time, and location of clearance; vessel name and ADF&G and IPHC numbers; homeport; Federal Fisheries Permit number; IFQ permit numbers; registered buyer permit number; IFQ cardholder name; date, time, and location of landing; areas fished and estimated weight of harvests by species; and registered buyer's signature.

* * * * *

7. In § 679.7, paragraph (f)(14) is revised to read as follows:

**§ 679.7 Prohibitions.**

* * * * *

(f) *IFQ fisheries.** * *

(14) Violate any other provision under this part.

* * * * *

8. In § 679.40, paragraph (a)(6)(i) is revised to read as follows:

**§ 679.40 Sablefish and halibut QS.**

* * * * *

(a) * * *

(6) * * *

(i) *Application form.* The Application period for QS ended on July 15, 1994. As of that date, the Request for QS Application form replaces the QS Application form as the means by which the Administrator, RAM, reviews and makes initial administrative determinations on requests for initial allocations of QS. A Request for QS Application must contain the following: Information identifying the individual, representative of a deceased fisherman's estate, corporation or partnership, or dissolved corporation or partnership making the request; contact numbers; vessel identification, length overall, and purchase date; and information on any vessel leasing arrangement pertinent to the claim of eligibility.

* * * * *

9. In § 679.41, paragraphs (h)(2) and (k) are revised to read as follows:

**§ 679.41 Transfer of quota shares and IFQ.**

* * * * *

(h) *Transfer of IFQ.** * *

(2) IFQ resulting from category B, C, or D QS may not be transferred separately from its originating QS, except as provided in paragraph (k) of this section.

* * * * *

(k) *Survivorship transfer privileges.*—(1) On the death of an individual who holds QS or IFQ, the surviving spouse or, in the absence of a surviving spouse, a beneficiary designated pursuant to paragraph (k)(2) of this section, receives all QS and IFQ held by the decedent by right of survivorship, unless a contrary intent was expressed by the decedent in a will. The Regional Administrator will approve an Application for Transfer to the surviving spouse or designated beneficiary when sufficient evidence has been provided to verify the death of the individual.

(2) QS holders may provide the Regional Administrator with the name of a designated beneficiary from the QS holder's immediate family to receive survivorship transfer privileges in the event of the QS holder's death and in the absence of a surviving spouse.

(3) The Regional Administrator will approve, for 3 calendar years following the date of death of an individual, an Application for Transfer of IFQ from the surviving spouse or, in the absence of a surviving spouse, from a beneficiary from the QS holder's immediate family designated pursuant to paragraph (k)(2) of this section to a person eligible to receive IFQ under the provisions of this section, notwithstanding the limitations on transfers of IFQ in paragraph (h)(2) of this section.

10. In § 679.42, paragraph (j)(6) is added to read as follows:

**§ 679.42 Limitations on the use of QS and IFQ.**

* * * * *

(j) * * *

(6) A corporation or partnership, except for a publicly held corporation, that receives an initial allocation of QS assigned to categories B, C, or D must provide annual updates to the Regional Administrator identifying all current shareholders or partners and affirming the entity's continuing existence as a corporation or partnership.

* * * * *

11. In § 679.43, paragraph (c) is revised to read as follows:

**§ 679.43 Determinations and appeals.**

* * * * *

(c) *Submission of appeals.* Appeals must be in writing and must be submitted to the Office of Administrative Appeals, P. O. Box 21668, Juneau, AK 99802 or delivered to Federal Building, 709 West 9th St., Room 801, Juneau, Alaska. Appeals may be transmitted by facsimile to (907) 586-9361. Additional information about appeals may be obtained by calling (907) 586-7258, and by accessing Office of Administrative Appeals section of the NMFS Alaska Region website http://www.fakr.noaa.gov.

* * * * *

[FR Doc. 00–31625 Filed 12–13–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 001114320-0320-01; I.D. 080400B]**

**RIN 0648-AN01**

## Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Recordkeeping and Reporting Requirements; Alaska Commercial Operator's Annual Report

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule to require groundfish motherships and catcher/processors to submit to the State of Alaska, Department of Fish & Game (ADF&G), an annual Commercial Operator's Annual Report (COAR). The COAR provides information on exvessel and first wholesale values for statewide finfish and shellfish products. The State of Alaska currently requires shoreside processors to submit this information to ADF&G. This proposed rule is necessary to extend these requirements to all groundfish processing sectors off Alaska in order to provide for equivalent annual product value information and for a consistent time series of information. This proposed rule is intended to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Comments must be received by January 16, 2001.

**ADDRESSES:** Comments on the proposed rule may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or delivered to Federal Building, Fourth Floor, 709 West 9th Street, Juneau, Alaska, and marked Attn: Lori Gravel. Hand- or courier-delivered comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. Send comments on the collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

Send comments on any ambiguity or unnecessary complexity arising from the language used in this proposed rule to the Administrator, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, 907-586-7228 or patsy.bearden@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

### Background

NMFS manages fishing for groundfish by U.S. vessels in the exclusive economic zone (EEZ) off Alaska in accordance with the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI). The North Pacific Fishery Management Council (Council) prepared the FMPs under authority of the Magnuson-Stevens Act. Regulations implementing the FMPs at 50 CFR part 679 and subpart H of 50 CFR part 600 govern fishing by U.S. vessels. Recordkeeping and reporting requirements appear at 50 CFR 679.5.

Catcher/processors and motherships operating in the EEZ off Alaska represent a significant part of the total capacity of groundfish processors in the BSAI and GOA and account for a substantial part of the total landings each year, but currently are not required to supply groundfish product value information. In February 1999, the Council requested that NMFS collect exvessel and first wholesale value data for fish and shellfish products from motherships and catcher/processors through the COAR. Currently, shoreside processors and stationary floating processors are required to submit the COAR annually under title 5 of the Alaska Administrative Code (AAC), chapter 39.130. The information submitted in the COAR is protected by Alaska State confidentiality statute AS 16.05.815.

NMFS proposes to require federally permitted motherships and catcher/processors to complete and submit the Alaska COAR on an annual basis. Combining these data from motherships and catcher/processors with the information from shoreside processors and stationary floating processors would yield equivalent annual product value information for all processing sectors and would provide a consistent time series of information. NMFS could use this information to more efficiently manage groundfish resources. NMFS and the State of Alaska would coordinate the use of the information generated by the COAR.

The expected result of expanding the COAR's collection of information would be an enhanced socioeconomic database that NMFS could use to more accurately measure economic and socioeconomic impacts and to prepare economic analyses of proposed or existing management measures. It would provide detailed (and consistent) data on production, prices, and product forms that NMFS would use to respond to requests for economic information from Federal and state management agencies, the fishing industry, and the general public. NMFS would also use the COAR data in analyses it prepares in compliance with the mandates of Executive Order 12866, the Magnuson-Stevens Act, including national standards 2, 4, 7 and 8, the American Fisheries Act (to monitor and report to Congress on the effects and efficacy of the new groundfish management programs), and the Regulatory Flexibility Act.

Additionally, the database would be used in the annual NMFS Stock Assessment and Fishery Evaluation documents for the groundfish fisheries of the BSAI and GOA, in annual Federal publications on the value of U.S. commercial fisheries, and in periodic reports that describe the fisheries.

The information would be collected annually on COAR paper application forms from all catcher/processors and motherships issued a Federal Fisheries permit to conduct fishing activities in the EEZ of the BSAI or GOA. ADF&G would provide the COAR forms to each mothership and catcher/processor on an annual basis to record information from the previous year. The motherships and catcher/processors would submit the COAR the following April to ADF&G, Juneau, AK. Each mothership or catcher/processor would be required to complete and submit one or more pages of the COAR to ADF&G for computer data entry. Only one COAR would be required from a vessel that functions both as a mothership and as a catcher/processor during a given year. A certification page would be submitted to indicate that no receipt or production of groundfish took place for that year, and that no other COAR pages would be required. Information from motherships and catcher/processors would be verified using the NMFS weekly production report data base. Information from processors that operate in state waters and shore-based processors would be verified using the ADF&G fish ticket data base.

About 58 percent of the motherships and catcher/processors that would be affected by this proposed rule are already voluntarily complying with the COAR requirement. In 1998, approximately 96 motherships and 237 catcher/processors were issued Federal Fisheries Permits, for a total of 333 at-sea processors. In 1998, based on weekly production report data, 35 motherships and 99 catcher/processors were active. Because 32 of the motherships also functioned as catcher/processors, a more accurate estimate of at-sea processors is 102. A total of 59 at-sea processors complied voluntarily with the 1998 State's data collection requirement and submitted a COAR to ADF&G, leaving approximately 43 processors that did not voluntarily submit the report.

This proposed rule would revise regulations at § 679.2 by adding a definition of COAR and at § 679.5 by adding a new paragraph (p) that sets forth requirements on completing and submitting the C OAR. Finally, several tables would be amended or added to part 679, specifically:

*Table 1—Product Codes* would be amended by removing code 96 and replacing it with two new codes, codes 88 and 89. Code 96 was established as a category for fish that were in any way adulterated. However, regulations require different handling of fish dependent on the type of adulteration. Therefore code 96, the ''discard, decomposed'' category, would be split into code 88 for flea-infested or parasite-infested fish, and code 89 for previously discarded or decomposed fish.

*Table 14—Ports of landing, including CDQ and IFQ primary ports.* Table 14, which currently lists CDQ and IFQ primary port codes, would be amended by creating three separate subtables (a, b, c) that show geographic subdivisions with the appropriate NMFS and ADF&G codes for each port of landing. The ADF&G developed alpha codes to designate ports in its computer database, while NMFS developed numerical codes to designate ports in its database. The ADF&G fish ticket program uses the alpha codes. The CDQ and IFQ programs use the NMFS numerical codes for ports of landing, and the IFQ program uses the NMFS numerical codes in the card-swipe terminal. With the advent of the NMFS shoreside processor electronic logbook and electronic weekly production reports, that use the numerical codes and this proposed expansion of the COAR that uses the alpha codes, NMFS proposes combining in one table both sets of codes in addition to the coordinates for those ports identified by NMFS as primary ports for the IFQ program. Table 14a would present the NMFS codes and the ADF&G codes for ports of landing in Alaska. Table 14b would present the NMFS codes and the ADF&G codes for ports of landing in California, Oregon, and Canada. Table 14c would present the NMFS codes and the ADF&G codes for ports of landing in Washington.

*Table 15—Gear Codes, descriptions, and use.* Table 15 (which currently describes gear codes and descriptions used with the IFQ Program on the card-swipe terminal plus ADF&G gear codes used on fish tickets) would be expanded to include all ADF&G gear codes. In addition, NMFS and ADF&G have agreed upon uniform definitions of gear types where differences existed. While ADF&G developed numeric codes to designate gear type in its computer database, NMFS developed alpha codes to designate gear type in its database. The CDQ and IFQ programs use the ADF&G numeric codes for gear type, and the IFQ program uses the ADF&G numeric codes for gear type in the card-swipe terminal. In addition, the NMFS logbook system uses whole words to describe a fewer number of gear types (e.g., trawl, jig). With the advent of the NMFS groundfish electronic weekly production reports (which use the alpha codes), the NMFS shoreside processor electronic logbook (which uses the whole words and both the numeric and alpha codes), and this proposed expansion of the COAR (which uses the numeric codes), NMFS proposes to combine in one table, all references to gear types used by either NMFS or ADF&G and to indicate where they are used.

*Table 16—Area Codes and descriptions for use with ADF&G COAR.* Table 16 would be added to present ADF&G area codes that are used in the COAR. The State of Alaska developed two major systems over a period of about 25 years: the fish ticket system and the COAR. ADF&G defines registration areas for fish tickets as geographic areas for a species where fisheries are managed by the State, meaning that a person must be registered with the State (permitted) to fish in that area for that species. ADF&G registration areas are described in State of Alaska regulations with specific latitude and longitude coordinates, but geographic areas are not necessarily consistent between species. The COAR defines areas generally, often in terms of prominent features or the location of a processing plant. State of Alaska regulations do not describe the COAR areas. NMFS describes areas first by management area (Bering Sea, Aleutian Islands, Gulf of Alaska) and then by reporting area. NMFS's data collection for all species uses the NMFS area designations (a Federal reporting area often contains State waters). The COAR describes federal waters as: FB for Federal waters, Bering Sea and Aleutian Islands; FG for Federal waters, Gulf of Alaska, and means waters outside of 3 miles in its 200-mile limit. Because the COAR requests information from both ADF&G registration areas and Federal management areas, NMFS proposes to combine in one table, all references to areas used by either ADF&G registration areas or ADF&G COAR. ADF&G is currently working on revising the COAR area descriptions to correspond to ADF&G registration areas. Table 16 would be referenced when completing the COAR to describe areas where products were processed and where products were purchased.

*Table 17—COAR Process Codes.* Table 17 would be added to present ADF&G codes that describe processes that are used in the COAR.

*Table 18—COAR Buying and Production Forms.* Table 18 would be added to present the ADF&G buying and production reporting forms that make up the COAR. A separate form is used for each species/gear combination, and for reporting buying of fish or production of fish products.

## Classification

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This proposed rule contains collection-of-information requirements subject to the PRA. The proposed collection with this rulemaking has been submitted to OMB for review and approval. The estimated response times for the COAR requirements are estimated to range from 0.5 hr to 16 hr, at an average of 8 hr per year.

Public comment is sought regarding this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection to NMFS and OMB (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows.

It is difficult to project how many of the firms that will be affected will fall into different size classes. NMFS has attempted to determine the numbers of BSAI and GOA groundfish catcher-processing operations that may be called small on the basis of U.S. Small Business Administration (SBA) guidelines for fishing firms. These guidelines use a $3,000,000 gross revenue threshold to separate small from large operations. These also require that the $3,000,000 threshold consider income to all affiliated operations in its application to any one firm.

NMFS reporting suggests that 70 of the 91 catcher-processors operating in 1999 were small vessels and that 21 were large. These totals changed significantly from 1997 when 58 of the catcher-processors were small and 58 were large. Three of the six motherships grossed more than $3,000,000 in 1999.

These NMFS reports are believed to overstate the numbers of small catcher-processors and motherships and to understate the numbers of large catcher-processors and motherships (with respect to the SBA definitions) for the following reasons: (1) a vessel's earnings from other fisheries and activities were not included, (2) a vessel owner's earnings from other sources (i.e., another vessel) were not included, (3) the ex-vessel value of a delivery by a catcher-vessel to an at-sea processor was included only when a fish ticket with value data was submitted for the delivery, (4) vessel specific fish ticket landings weight and value data are used to estimate ex-vessel value for catcher vessels but such data are not available for all deliveries to inshore processors, (5) these estimates do not take account of affiliation relationships that may exist between an individual vessel and other fishing or processing operations.

In 1999 there were 91 catcher-processors and six motherships (that did not also function as catcher processors) in the at-sea processing sector. In 1998, 59 out of 102 at-sea processors, or 58%, filed COAR reports in the absence of this regulation and 43, or 42%, did not. If the percentages were similar in 1999, 41 firms would not file COAR reports in the absence of this regulatory change.

It is estimated that completion of the COAR report takes 15 minutes of overhead time, and an additional 15 minutes for each species and product combination produced by the firm. Weekly Processor Reports for 1999 indicate that vessels were producing an average of 15 species and product combinations. The COAR report will increase the number of species and product combinations to be considered. For the purposes of this analysis, it is assumed that this will increase the number of species and product combinations by 50%, to 23. This means that it may take 360 minutes, or 6 hours, to fill out each COAR report.

It is estimated to cost $50/hour to complete these forms. This implies that the cost for completing a COAR report would be $300 if it took 6 hours. If regulatory change requires 41 vessels to begin to fill out these reports, the total annual additional compliance cost for all at-sea processors would be $12,300.

While it is hard to project the numbers of firms of different sizes that will be affected by this rule, it seems likely, on the basis of the considerations described in the cost discussion of this section, that this requirement will not have a substantial impact on the cash flow, or the profitability, of either large or small groundfish at-sea processors.

As noted above, the total annual industry cost of this rule is estimated to be about $12,300. In addition there will be some start-up expenses. The average cost for an individual vessel is estimated to be about $300. It has been estimated that in 1999 groundfish catcher-processors produced a processed value of about $469.6 million (this catcher-processor gross combined with an estimated 1999 mothership gross of $22.8 million, gave a total at-sea processor gross of $492.4 million). This is an average of $5.16 million for each catcher-processor operation. As noted above, only 21 operations grossed more than $3 million so the distribution of harvest values is highly skewed. Nevertheless, it seems unlikely that even smaller catcher processors will find their cash flow or profitability significantly negatively impacted.

Based on the above description, NMFS has determined that this action would not have a ''significant impact'' as NMFS has interpreted that term to mean that it would have disproportionate or profitability impacts. The proposed requirement would not place affected entities at a significant competitive disadvantage relative to large entities, and would not significantly reduce profit for the regulated entity. Therefore, a regulatory flexibility analysis was not prepared.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule. Such comments should be sent to the Alaska Regional Administrator (see **ADDRESSES**).

## List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 1, 2000

**William T. Hogarth,**

*Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. Section 679.2 is amended by adding the definition for ''Commercial Operator's Annual Report (COAR).''

### § 679.2 Definitions.

* * * * *

*Commercial Operator's Annual Report (COAR)* means the annual report of information on exvessel and first wholesale values for fish and shellfish required under Title 5 of the Alaska Administrative Code, chapter 39.130 (see § 679.5(o)).

* * * * *

3. Section 679.5 is amended by adding paragraph (p) to read as follows:

### § 679.5 Recordkeeping and reporting.

* * * * *

(p) *Commercial Operator's Annual Report (COAR)*—(1) *Requirement.* The owner of a mothership or catcher/processor must annually complete and submit to ADF&G the appropriate Forms

A through M and COAR certification page for each year in which the mothership or catcher/processor was issued a Federal Fisheries permit. The owner of a mothership must include all fish received and processed during the year, including fish received from an associated buying station. The ADF&G COAR is further described under Alaska Administrative Code (5 AAC 39.130) (see § 679.3(b)(2)).

(2) *Time limit and submittal of COAR.* The owner of a mothership or catcher/processor must submit to ADF&G the appropriate Forms A through M and COAR certification page by April 1 of the year following the year of issuance of a Federal Fisheries permit to the following address: Alaska Department of Fish & Game, Division of Commercial Fisheries, Attn: COAR, P.O. Box 25526, Juneau, Alaska 99802-5526

(3) *Information required, certification page.* The owner of a mothership or catcher/processor must:

(i) Enter the company name and address, including street, city, state, and zip code; also seasonal mailing address, if applicable.

(ii) Enter the vessel name and ADF&G processor code.

(iii) Check YES or NO to indicate whether fishing activity occurred conducted during the appropriate year.

(iv) If response to paragraph (o)(3)(iii) of this section is YES, complete the applicable forms of the COAR (see table 18 to this part) and complete and sign the certification page.

(v) If response to paragraph (o)(3)(iii) of this section is NO, complete and sign only the certification page.

(vi) Sign and enter printed or typed name, e-mail address, title, telephone number, and FAX number of owner.

(vii) Enter printed or typed name, e-mail address, and telephone number of alternate contact.

(4) *Buying forms (exvessel), Forms A(1-3), C(1-2), E, G, I(1-2), K, and M.*—(i) *Requirement.* If the mothership was the first purchaser of raw fish, the owner must record and submit the appropriate COAR buying forms (A(1-3), C(1-2), E, G, I(1-2), K, and M) for all information for each species purchased during the applicable year.

(ii) *Buying information required.* The owner of the mothership must record the following information on the appropriate COAR buying forms:

(A) Species name and code (see table 2 to this part).

(B) Area purchased (see table 16 to this part).

(C) Gear code (see table 15 to this part).

(D) Delivery code (form G only) (see table 1 to this part).

(E) Total pounds (to the nearest lb) purchased from fishermen.

(F) Total amount paid to fishermen, including all post- season adjustments and/or bonuses and any credit received by fishermen for gas expenses, ice, delivery premiums, and other miscellaneous expenses.

(G) Price per pound. If additional adjustments would be made after this report has been filed, the owner must check the ''$ not final'' box, and submit Form M when these adjustments are paid. Do not include fish purchased from another processor.

(5) *Wholesale production forms, Forms B(1-6), D, F, H, J(1-2), and K).* For purposes of this paragraph, the total wholesale value is the amount that the processor receives for the finished product (free on board pricing mothership or catcher/processor). For products finished but not yet sold (still held in inventory), calculate the estimated value using the average price received to date for that product.

(i) *Requirement*—(A) *Mothership.* The owner of a mothership must record and submit the appropriate COAR production forms (B(1-6), D, F, H, J(1-2), and K) for all production for each species during the applicable year:

(*1*) That were purchased from fishermen on the grounds and/or dockside, including both processed and unprocessed seafood.

(*2*) That were then either processed on the mothership or exported out of the State of Alaska.

(B) *Catcher/processor.* The owner of a catcher/processor must record and submit the appropriate COAR production forms (B(1-6), D, F, H, J(1-2), and K) for each species harvested during the applicable year that were then either processed on the vessel or exported out of the State of Alaska.

(ii) *Information required, non-canned production.*

(A) Enter area of processing (see table 16 to this part). List production of Canadian-harvested fish separately.

(B) Processed product. Processed product must be described by entering three codes:

(*1*) Process prefix code (see table 17 to this part).

(*2*) Process suffix code (see table 17 to this part).

(*3*) Product code (see table 1 to this part).

(C) Total net weight. Enter total weight in pounds of the finished product.

(D) Total value($). Enter the total wholesale value of the finished product.

(E) Enter price per pound of the finished product.

(iii) *Information required, canned production.* Complete an entry for each can size produced:

(A) Enter area of processing (see table 16 to this part).

(B) Process 51 or 52. Enter conventional canned code (51) or smoked, conventional canned code (52).

(C) Total value($). Enter the total wholesale value of the finished product.

(D) Enter price per pound of the finished product.

(E) Enter can size in ounces, to the hundredth of an ounce.

(F) Enter number of cans per case.

(G) Enter number of cases.

(6) *Custom production forms, Form L(1-2)*—(i) *Requirement.* The owner of a mothership or catcher/processor must record and submit COAR production form L(1-2) for each species in which custom production was done by the mothership or catcher/processor for another processor and for each species in which custom production was done for the mothership or catcher/processor by another processor.

(ii) *Custom-production by mothership or catcher/processor for another processor.* If the mothership or catcher/processor custom-processed fish or shellfish for another processor during the applicable year, the owner of the mothership or catcher/processor must list the processor name and ADF&G processor code (if known) to describe that processor, but must not include any of that production in production form L(1-2).

(iii) *Custom-production by another processor for mothership or catcher/processor.* If a processor custom-processed fish or shellfish for the mothership or catcher/processor during the applicable year, the owner of the mothership or catcher/processor must use a separate page to list each processor and must include the following information.

(A) *Custom fresh/frozen miscellaneous production.* The owner of a mothership or catcher/processor must list the following information to describe production intended for wholesale/retail market and that are not frozen for canning later:

(*1*) Species name and code (see table 2 to this part).

(*2*) Area of processing (see table 16 to this part).

(*3*) Processed product. Processed product must be entered using three codes:

(*i*) Process prefix code (see table 17 to this part).

(*ii*) Process suffix code (see table 17 to this part).

(*iii*) Product code (see table 1 to this part).

(*4*) Total net weight. Enter total weight in pounds of the finished product.

(*5*) Total wholesale value($). Enter the total wholesale value of the finished product.

(B) *Custom canned production*. The owner of a mothership or catcher/processor must list the following information to describe each can size produced in custom canned production:

(*1*) Species name and code (see table 2 to this part).

(*2*) Area of processing (see table 16 to this part).

(*3*) Process 51 or 52. Enter conventional canned code (51) or smoked, conventional canned code (52).

(*4*) Total wholesale value($). Enter the total wholesale value of the finished product.

(*5*) Can size in ounces, to the hundredth of an ounce.

(*6*) Number of cans per case.

(*7*) Number of cases.

(7) *Fish buying retro payments/post-season adjustments, Form M*—(i) *Requirement*. The owner of a mothership must record and submit COAR production Form M to describe additional adjustments and/or bonuses awarded to a fisherman, including credit received by fishermen for gas expenses, ice, delivery premiums, and other miscellaneous expenses.

(ii) *Information required*.

(A) Enter species name and code (see table 2 to this part).

(B) Enter area purchased (see table 16 to this part).

(C) Enter gear code (see table 16 to this part).

(D) Enter total pounds purchased from fisherman.

(E) Enter total amount paid to fishermen (base + adjustment).

4. In part 679, tables 1, 14 and 15 to part 679 are revised; tables 16, 17, and 18 to part 679 are added.

TABLE 1 TO PART 679.—PRODUCT AND DELIVERY CODES (THESE CODES DESCRIBE THE CONDITION OF THE FISH AT THE POINT IT IS WEIGHED AND RECORDED)

| Product Description | Code |
|---|---|
| GENERAL USE CODES | |
| Belly flaps. Flesh in region of pelvic and pectoral fins and behind head. (ancillary only) | 19 |
| Bled only. Throat, or isthmus, slit to allow blood to drain. | 03 |
| Bled fish destined for fish meal (includes offsite production) DO NOT RECORD ON PTR. | 42 |
| Bones (if meal, report as 32) (ancillary only). | 39 |

TABLE 1 TO PART 679.—PRODUCT AND DELIVERY CODES (THESE CODES DESCRIBE THE CONDITION OF THE FISH AT THE POINT IT IS WEIGHED AND RECORDED)—Continued

| Product Description | Code |
|---|---|
| Butterfly, no backbone. Head removed, belly slit, viscera and most of backbone removed; fillets attached. | 37 |
| Cheeks. Muscles on sides of head (ancillary only) | 17 |
| Chins. Lower jaw (mandible), muscles, and flesh (ancillary only) | 18 |
| Fillets, deep-skin. Meat with skin, adjacent meat with silver lining, and ribs removed from sides of body behind head and in front of tail, resulting in thin fillets. | 24 |
| Fillets, skinless/boneless. Meat with both skin and ribs removed, from sides of body behind head and in front of tail. | 23 |
| Fillets with ribs, no skin. Meat with ribs with skin removed, from sides of body behind head and in front of tail. | 22 |
| Fillets with skin and ribs. Meat and skin with ribs attached, from sides of body behind head and in front of tail. | 20 |
| Fillets with skin, no ribs. Meat and skin with ribs removed, from sides of body behind head and in front of tail. | 21 |
| Fish meal. Meal from whole fish or fish parts; includes bone meal. | 32 |
| Fish oil. Rendered oil from whole fish or fish parts. Record only oil destined for sale and not oil stored or burned for fuel onboard. | 33 |
| Gutted, head on. Belly slit and viscera removed. | 04 |
| Head and gutted, with roe. | 06 |
| Headed and gutted, Western cut. | 07 |
| Head removed just in front of the collar bone, and viscera removed. | 07 |
| Headed and gutted, Eastern cut. Head removed just behind the collar bone, and viscera removed. | 08 |
| Headed and gutted, tail removed. Head removed usually in front of collar bone, and viscera and tail removed. | 10 |
| Heads. Heads only, regardless where severed from body (ancillary only). | 16 |
| Kirimi (Steak) Head removed either in front or behind the collar bone, viscera removed, and tail removed by cuts perpendicular to the spine, resulting in a steak. | 11 |
| Mantles, octopus or squid. Flesh after removal of viscera and arms. | 36 |
| Milt. (in sacs, or testes) (ancillary only). | 34 |
| Minced. Ground flesh. | 31 |
| Other retained product. If product is not listed on this table, enter code 97 and write a description with product recovery rate next to it in parentheses. | 97 |

TABLE 1 TO PART 679.—PRODUCT AND DELIVERY CODES (THESE CODES DESCRIBE THE CONDITION OF THE FISH AT THE POINT IT IS WEIGHED AND RECORDED)—Continued

| Product Description | Code |
|---|---|
| Pectoral girdle. Collar bone and associated bones, cartilage and flesh. | 15 |
| Roe. Eggs, either loose or in sacs, or skeins (ancillary only). | 14 |
| Salted and split. Head removed, belly slit, viscera removed, fillets cut from head to tail but remaining attached near tail. Product salted. | 12 |
| Stomachs. Includes all internal organs (ancillary only) | 35 |
| Surimi. Paste from fish flesh and additives | 30 |
| Whole fish/meal. Whole fish destined for meal (includes offsite production.) DO NOT RECORD ON PTR. | 41 |
| Whole fish/food fish. | 01 |
| Whole fish/bait. Processed for bait. Sold | 02 |
| Wings. On skates, side fins are cut off next to body. | 13 |
| DISCARD/DISPOSITION CODES | |
| Whole fish/donated prohibited species. Number of Pacific salmon or Pacific halibut, otherwise required to be discarded, that is donated to charity under a NMFS-authorized program. | 86 |
| Whole fish/onboard bait. Whole fish used as bait on board vessel. Not sold. | 92 |
| Whole fish/damaged. Whole fish damaged by observer's sampling procedures. | 93 |
| Whole fish/personal use, consumption. Fish or fish products eaten on board or taken off the vessel for personal use. Not sold or utilized as bait | 95 |
| Whole fish, discard, at sea. Whole groundfish and prohibited species discarded by catcher vessels, Catcher/Processors, Motherships, or Vessel Buying Stations delivering to Motherships. DO NOT RECORD ON PTR. | 98 |
| Whole fish, discard, infested. Flea-infested fish, parasite-infested fish | 88 |
| Whole fish, discard, decomposed. Decomposed or previously discarded fish | 89 |
| Whole fish, discard, onshore. Discard after delivery and before processing by Shoreside Processors and Buying Stations delivering to Shoreside Processors and in-plant discard of whole ground-fish and prohibited species during processing. DO NOT RECORD ON PTR. | 99 |
| PRODUCT DESIGNATION CODES | |
| Ancillary product means a product, such as meal, heads, internal organs, pectoral girdles, or any other product that may be made from the same fish as the primary product. | A |
| Primary product means a product, such as fillets, made from each fish, with the highest recovery rate. | P |

TABLE 1 TO PART 679.—PRODUCT AND DELIVERY CODES (THESE CODES DESCRIBE THE CONDITION OF THE FISH AT THE POINT IT IS WEIGHED AND RECORDED)—Continued

| Product Description | Code |
|---|---|
| Reprocessed or rehandled product means a product, such as meal, that results from processing a previously reported product or from rehandling a previously reported product. | R |
| IFQ CODES Reserved for use with IFQ fish products | |
| Gutted, head off. Belly slit and viscera removed. Pacific halibut only. | 05 |

TABLE 1 TO PART 679.—PRODUCT AND DELIVERY CODES (THESE CODES DESCRIBE THE CONDITION OF THE FISH AT THE POINT IT IS WEIGHED AND RECORDED)—Continued

| Product Description | Code |
|---|---|
| Gutted, head on. Belly slit and viscera removed. Pacific halibut and sablefish. | 04 |
| Whole fish/food fish with ice & slime. Sablefish only. | 51 |
| Bled only with ice & slime. Throat or isthmus slit to allow blood to drain. Sablefish only. | 53 |

TABLE 1 TO PART 679.—PRODUCT AND DELIVERY CODES (THESE CODES DESCRIBE THE CONDITION OF THE FISH AT THE POINT IT IS WEIGHED AND RECORDED)—Continued

| Product Description | Code |
|---|---|
| Gutted, head on, with ice & slime. Belly slit and viscera removed. Pacific halibut and sablefish. | 54 |
| Gutted, head off, with ice & slime. Belly slit and viscera removed. Pacific halibut only. | 55 |
| Headed and gutted, Western cut, with ice & slime. Sablefish only. | 57 |
| Headed and gutted, Eastern cut, with ice & slime. Sablefish only. | 58 |

TABLE 14A TO PART 679.—PORT OF LANDING CODES, ALASKA, INCLUDING CDQ AND IFQ PRIMARY PORTS

| Port Name | NMFS Code | ADF & G Code | CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5(l)(5)(vi)) | | |
|---|---|---|---|---|---|
| | | | CDQ/ IFQ | North Latitude | West Longitude |
| Adak | 186 | ADA | | | |
| Akutan | 101 | AKU | X | 54°08′05″ | 165°46′20″ |
| Akutan Bay | 102 | | | | |
| Alitak | 103 | ALI | | | |
| Anchor Point | 104 | | | | |
| Anchorage | 105 | ANC | | | |
| Angoon | 106 | ANC | | | |
| Aniak | | ANI | | | |
| Anvik | | ANV | | | |
| Atka | 107 | ATK | | | |
| Auka Bay | 108 | | | | |
| Baranof Warm Springs | 109 | | | | |
| Beaver Inlet | 110 | | | | |
| Bethel | | | | | |
| Captains Bay | 112 | | | | |
| Chignik | 113 | CHG | | | |
| Chinitna Bay | 114 | | | | |
| Cordova | 115 | COR | X | 60°33′00″ | 145°45′00″ |
| Craig | 116 | CRG | X | 55°28′30″ | 133°09′00″ |
| Dillingham | 117 | DIL | | | |
| Douglas | 118 | | | | |
| Dutch Harbor | 119 | | | | |
| Dutch Harbor/Unalaska | | | X | 53°53′27″ | 166°32′05″ |
| Edna Bay | 121 | | | | |
| Egegik | 122 | EGE | | | |
| Ekuk | | EKU | | | |
| Elfin Cove | 123 | ELF | | | |
| Emmonak | | EMM | | | |
| False Pass | 125 | | | | |
| Fairbanks | | FBK | | | |
| Galena | | GAL | | | |
| Glacier Bay | | GLB | | | |
| Glennalen | | GLN | | | |
| Gustavus | 127 | GUS | | | |
| Haines | 128 | HNS | | | |
| Halibut Cove | 130 | | | | |
| Hollis | 131 | | | | |
| Homer | 132 | HOM | X | 59°38′40″ | 151°33′00″ |
| Hoonah | 133 | HNH | | | |
| Hydaburg | 128 | HNS | | | |
| Hyder | 134 | HDR | | | |
| Ikatan Bay | 135 | | | | |
| Juneau | 136 | JNU | | | |
| Kake | 137 | KAK | | | |
| Kaltag | | KAL | | | |
| Kasilof | 138 | KAS | | | |

TABLE 14A TO PART 679.—PORT OF LANDING CODES, ALASKA, INCLUDING CDQ AND IFQ PRIMARY PORTS—Continued

| Port Name | NMFS Code | ADF & G Code | CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5(l)(5)(vi)) | | |
|---|---|---|---|---|---|
| | | | CDQ/ IFQ | North Latitude | West Longitude |
| Kenai | 139 | KEN | | | |
| Kenai River | 140 | | | | |
| Ketchikan | 141 | KTN | X | 55°20'30″ | 131°38'45″ |
| King Cove | 142 | KCO | X | 55°03'20″ | 162°19'00″ |
| King Salmon | 143 | KNG | | | |
| Kipnuk | 144 | | | | |
| Klawock | 145 | KLA | | | |
| Kotzebue | | KOT | | | |
| La Conner | | LAC | | | |
| Mekoryuk | 147 | | | | |
| Metlakatla | 148 | MET | | | |
| Moser Bay | | MOS | | | |
| Naknek | 149 | NAK | | | |
| Nenana | | NEN | | | |
| Nikiski (or Nikishka) | 150 | NIK | | | |
| Ninilchik | 151 | NIN | | | |
| Nome | 152 | NOM | | | |
| Nunivak Island | | NUN | | | |
| Old Harbor | 153 | OLD | | | |
| Other/Unknown | 499 | UNK | | | |
| Pelican | 155 | PEL | X | 57°57'30″ | 136°13'30″ |
| Petersburg | 156 | PBG | X | 56°48'10″ | 132°58'00″ |
| Point Baker | 157 | | | | |
| Port Alexander | 158 | PAL | | | |
| Port Bailey | 159 | PTB | | | |
| Port Graham | 160 | GRM | | | |
| Port Lions | | LIO | | | |
| Port Moller | | MOL | | | |
| Port Protection | 161 | | | | |
| Resurrection Bay | 163 | | | | |
| Sand Point | 164 | SPT | X | 55°20'15″ | 160°30'00″ |
| Savoonga | 165 | | | | |
| Seldonia | 166 | SEL | | | |
| Seward | 167 | SEW | X | 60°06'30″ | 149°26'30″ |
| Sitka | 168 | SIT | X | 57°03' | 135°20' |
| Skagway | 169 | SKG | | | |
| Soldotna | | SOL | | | |
| St. George | 170 | STG | | | |
| St. Lawrence | 171 | | | | |
| St. Mary | | STM | | | |
| St. Paul | 172 | STP | X | 57°07'20″ | 170°16'30″ |
| Tee Hrbor | 173 | | | | |
| Tenakee Spring | 174 | TEN | | | |
| Thorne Bay | 175 | | | | |
| Togiak | 176 | TOG | | | |
| Toksook Bay | 177 | | | | |
| Tununak | 178 | | | | |
| Ugadaga Bay | 179 | | | | |
| Ugashik | | UGA | | | |
| Unalakleet | | UNA | | | |
| Unalaska | 180 | | | | |
| Valdez | 181 | VAL | | | |
| Wasilla | | WAS | | | |
| Whittier | 183 | WHT | | | |
| Wrangell | 184 | WRN | | | |
| Yakutat | 185 | YAK | ..... | 59°33' | 139°44' |

TABLE 14B TO PART 679.—PORT OF LANDING CODES: CALIFORNIA, OREGON, CANADA INCLUDING CDQ AND IFQ PRIMARY PORTS

| Port Name | NMFS Code | ADF&G Code | CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5(l)(5)(vi)) | | |
|---|---|---|---|---|---|
| | | | CDQ/ IFQ | North Latitude | West Longitude |
| CALIFORNIA | | | | | |
| Eureka | 500 | EUR | | | |
| Fort Bragg | 501 | | | | |
| Other | 599 | | | | |
| OREGON | | | | | |
| Astoria | 600 | AST | | | |
| Lincoln City | 602 | | | | |
| Newport | 603 | NPT | | | |
| Olympia | | OLY | | | |
| Portland | | POR | | | |
| Warrenton | 604 | | | | |
| Other | 699 | | | | |
| CANADA | | | | | |
| Port Edward | 800 | | | | |
| Port Hardy | 801 | | | | |
| Prince Rupert | 802 | PRU | | | |
| Other | 899 | | | | |

TABLE 14C TO PART 679.—WASHINGTON PORT OF LANDING CODES INCLUDING CDQ AND IFQ PRIMARY PORTS

| Port Name | NMFS Code | AD&G Code | CDQ/IFQ Primary Ports for Vessel Clearance (X indicates an authorized IFQ port; see § 679.5(l)(5)(vi)) | | |
|---|---|---|---|---|---|
| | | | CDQ/IFQ | North Latitude | West Longitude |
| Anacortes | 700 | ANA | | | |
| Belluvue | 701 | | | | |
| Bellingham | 702 | | X | 48°45'04″ | 122°30'02″ |
| Blaine | | BLA | | | |
| Edmond | 703 | | | | |
| Everett | 704 | | | | |
| Fox Island | 706 | | | | |
| Ilwaco | 707 | | | | |
| La Conner | 708 | LAC | | | |
| Mercer Island | 709 | | | | |
| Nagai Island | 710 | | | | |
| Port Orchard | 712 | | | | |
| Port Townsend | 713 | | | | |
| Rainier | 714 | | | | |
| Seattle | 715 | SEA | | | |
| Tacoma | | TAC | | | |
| Other | 799 | | | | |

TABLE 15 TO PART 679.—GEAR CODES, DESCRIPTIONS, AND USE (X INDICATES WHERE THIS CODE IS USED)

| Name of Gear | NMFS Logbooks and Forms | Electronic WPR & Check-in/out Code | Gear Code, Numeric | Use Numeric Code to Complete the Following: | | |
|---|---|---|---|---|---|---|
| | | | | Shoreside Electronic Logbook | IFQ Terminal and Forms | COAR Re port |
| Diving | | OTH | 11 | X | | X |
| Dredge | | OTH | 01 | X | | X |
| Dredge, hydro/mechanical | | OTH | 23 | X | | X |
| Fish wheel | | OTH | 08 | X | | |
| Gillnet, drift | | OTH | 03 | X | | X |
| Gillnet, herring | | OTH | 34 | X | | X |
| Gillnet, set | | OTH | 04 | X | | X |
| Gillnet, sunken | | OTH | 41 | X | | X |
| Hand line/jig/troll | | (1) | 05 | X | IFQ name: hand troll | X |
| Handpicked | | OTH | 12 | X | | X |
| Hatchery | | n/a | 77 | X | | X |

TABLE 15 TO PART 679.—GEAR CODES, DESCRIPTIONS, AND USE (X INDICATES WHERE THIS CODE IS USED)—Continued

| Name of Gear | NMFS Logbooks and Forms | Electronic WPR & Check-in/out Code | Gear Code, Numeric | Use Numeric Code to Complete the Following: | | |
|---|---|---|---|---|---|---|
| | | | | Shoreside Electronic Logbook | IFQ Terminal and Forms | COAR Re port |
| Hook-and-line | X | HAL | 61 | X | X | X |
| Jig, mechanical | | (1) | 26 | X | | X |
| Jig/Troll | X | JIG | (1) | (1) | | |
| Net, dip | | OTH | 13 | X | | X |
| Net, ring | | OTH | 10 | X | | X |
| Other/specify | X | OTH | 99 | X | | X |
| Pot | X | POT | 91 | X | X | X |
| Pound | X | OTH | 21 | X | | X |
| Seine, purse | | OTH | 01 | X | | X |
| Seine, beach | | OTH | 02 | X | | X |
| Shovel | | OTH | 18 | X | | X |
| Trap | | OTH | 90 | X | | X |
| Troll, dinglebar | | OTH | 25 | X | IFQ name: dinglebar troll | X |
| Troll, power gurdy | | (1) | 15 | X | | X |
| Trawl, beam | | (2) | 17 | X | | X |
| Trawl, double otter | | (2) | 27 | X | | X |
| Trawl, nonpelagic/bottom | X | NPT | 07 | X | | X |
| Trawl, pelagic/midwater | X | PTR | 47 | X | | X |
| Weir | | OTH | 14 | X | | X |

(1)Federal Authorized Gear JIG/TROLL. No numeric code is available because both jig and troll have a separate code number
(2)For logbooks, forms, electronic WPR, electroniccheck-in/out reports: all trawl gear must be reported as either nonpelagic or pelagic trawl

TABLE 16 TO PART 679.—AREA CODES AND DESCRIPTIONS FOR USE WITH STATE OF ALASKA ADF&G COMMERCIAL OPERATOR'S ANNUAL REPORT (COAR)

| COAR: Name (Code) | Species | ADF&G fisheries management areas | Area description in ADF&G regulations |
|---|---|---|---|
| Alaska Peninsula: | King Crab: | M | 5 AAC 34.500 |
| South Peninsula (MS) | AK Peninsula/Aleutian Islands Salmon | M | 5 AAC 12.100 |
| North Peninsula (MN) | Herring | M | (Aleutians) 5 AAC 09.100 (AK Peninsula) 5 AAC 27.600 |
| Atka-Amlia Islands (FB) (FG). | Salmon | n/a | 5 AAC 11.1010 |
| Bering Sea: | Bering Sea King Crab | Q | 5 AAC 34.900 |
| Pribilof Island (Q1) | Bering Sea/Kotzebue Herring | Q | 5 AAC 27.900 |
| St. Matthew Island Q2) | | | |
| St. Lawrence Island (Q4) | | | |
| Bristol Bay (T) | King Crab | T | 5 AAC 34.800 |
| | Salmon | T | 5 AAC 06.100 |
| | Herring | T | 5 AAC 27.800 |
| Chignik (L) | Groundfish | L | 5 AAC 28.500 |
| | Herring | L | 5 AAC 27.550 |
| | Salmon | L | 5 AAC 15.100 |
| Cook Inlet: | Groundfish | H | 5 AAC 28.300 |
| Lower Cook Inlet (HL) | Herring | H | 5 AAC 27.400 |
| Upper Cook Inlet (HU) | Cook Inlet Shrimp | H | 5 AAC 31.300 |
| | Outer Cook Inlet Shrimp | H | 5 AAC 31.400 |
| | Dungeness Crab | H | 5 AAC 32.300 |
| | King Crab | H | 5 AAC 34.300 |
| | Tanner Crab | H | 5 AAC 35.400 |
| | Miscellaneous Shellfish | H | 5 AAC 38.300 |
| | Salmon | H | 5 AAC 21.100 |
| Dutch Harbor (O) | Aleutian Islands King Crab | O | 5 AAC 34.600 |
| EEZ (Federal waters of BSAI and GOA) (FB) (FG). | Groundfish | n/a | n/a |

TABLE 16 TO PART 679.—AREA CODES AND DESCRIPTIONS FOR USE WITH STATE OF ALASKA ADF&G COMMERCIAL OPERATOR'S ANNUAL REPORT (COAR)—Continued

| COAR: Name (Code) | Species | ADF&G fisheries management areas | Area description in ADF&G regulations |
|---|---|---|---|
| Kodiak (western GOA) (K) | Groundfish | K | 5 AAC 28.400 |
| | Herring | K | 5 AAC 27.500 |
| | King Crab | K | 5 AAC 34.400 |
| | Salmon | K | 5 AAC 18.100 |
| | Shrimp | J | 5 AAC 31.500 |
| | Dungeness Crab | J | 5 AAC 32.400 |
| | Tanner Crab | J | 5 AAC 35.500 |
| | Miscellaneous Shellfish | J | 5 AAC 38.400 |
| Kotzebue (X) | Salmon | W | 5 AAC 03.100 |
| Kuskokwim: | Salmon | W | 5 AAC 07.100 |
| Kuskokwim River/Bay (W1) | Herring | W | 5 AAC 27.870 |
| Security Cove (W2) | | | |
| Goodnews Bay (W3) | | | |
| Nelson Island (W4) | | | |
| Ninivak Island (W5) | | | |
| Cape Avinof (W6) | | | |
| Norton Sound (Z) | Norton Sound-Port Clarence Salmon | Z | 5 AAC 04.100 |
| | Norton Sound-Port Clarence King Crab | | |
| Prince William Sound (E) | Groundfish | E | 5 AAC 28.200 |
| | Herring | E | 5 AAC 27.300 |
| | Shrimp | E | 5 AAC 31.200 |
| | Dungeness Crab | E | 5 AAC 32.200 |
| | King Crab | E | 5 AAC 34.200 |
| | Tanner Crab | E | 5 AAC 35.300 |
| | Miscellaneous Shellfish | E | 5 AAC 38.200 |
| | Salmon | | 5 AAC 24.100 |
| Southeast: | Groundfish | A | 5 AAC 28.100 |
| Juneau/Haines (A1) | Southeast (w/o Yakutat) Herring | A | 5 AAC 27.100 |
| Yakutat (A2) | Yakutat Herring | D | 5 AAC 27.200 |
| Ketchikan/Craig (B) | Southeast (w/o Yakutat) Dungeness Shrimp | A | 5 AAC 31.100 |
| Petersburg/Wrangell (C) | Yakutat Shrimp | D | 5 AAC 31.150 |
| Sitka/Pelican (D) | Southeast (w/o Yakutat) Crab | A | 5 AAC 32.100 |
| | Yakutat Dungeness Crab | D | 5 AAC 32.155 |
| | Southeast (w/o Yakutat) King Crab | A | 5 AAC 34.100 |
| | Yakutat King Crab | D | 5 AAC 34.160 |
| | Southeast (w/o Yakutat) Tanner Crab | A | 5 AAC 35.100 |
| | Southeast (w/o Yakutat) Miscellaneous Shellfish | D | 5 AAC 35.160 |
| | Yakutat Miscellaneous Shellfish | A | 5 AAC 38.100 |
| | Southeast (w/o Yakutat) Salmon | D | 5 AAC 38.160 |
| | Yakutat Salmon | A | 5 AAC 33.100 |
| | | D | 5 AAC 29.010 |
| | | | 5 AAC 30.100 |
| Yukon River: | Yukon-Northern Salmon | Y | 5 AAC 05.100 |
| Lower Yukon (YL) | | | |
| Upper Yukon (YU) | | | |

TABLE 17 TO PART 679.—PROCESS CODES FOR USE WITH STATE OF ALASKA COMMERCIAL OPERATOR'S ANNUAL REPORT (COAR)

| Codes | Process Codes and Description |
|---|---|
| Prefix Codes | 1–Fresh |
| | 2–Frozen |
| | 3–Salted/brined |
| | 4–Smoked |
| | 5–Canned |
| | 6–Cooked |
| | 7–Live |
| | 8–Dry |
| | 9–Pickled |
| | 11–Minced |
| Suffix Codes | 0–General |
| | 1–Canned Conv. |
| | 2–Canned smoked |
| | 8–Vacuum packed |
| | 1–Individual quick frozen (IFQ) pack |

TABLE 17 TO PART 679.—PROCESS CODES FOR USE WITH STATE OF ALASKA COMMERCIAL OPERATOR'S ANNUAL REPORT (COAR)—Continued

| Codes | Process Codes and Description |
|---|---|
| | S–Shatter pack<br>B–Block |

TABLE 18 TO PART 679.—REQUIRED BUYING AND PRODUCTION FORMS FOR USE WITH STATE OF ALASKA COMMERCIAL OPERATOR'S ANNUAL REPORT (COAR)

| Fishery | Required Form Number and Name |
|---|---|
| Salmon | *Salmon Buying*:<br>(A)(1) Seine gear<br>(A)(1) Gillnet gear<br>(A)(2) Troll gear Hatchery<br>(A)(3) Miscellaneous gear<br>*King Salmon Production*:<br>(B)(1) Production<br>(B)(1) Canned Production<br>*Sockeye Salmon Production*:<br>(B)(2) Production<br>(B)(2) Canned Production<br>*Coho Salmon Production*:<br>(B)(3) Production<br>(B)(3) Canned Production<br>*Pink Salmon Production*:<br>(B)(4) Production<br>(B)(4) Canned Production<br>*Chum Salmon Production*:<br>(B)(5) Production<br>(B)(5) Canned Production<br>*Salmon Roe & Byproduct Production*:<br>(B)(6) Roe<br>(B)(6) Byproduct Production |
| Herring | *Herring Buying*:<br>(C)(1) Seine gear<br>(C)(1) Gillnet gear<br>(C)(2) Gillnet gear (contd)<br>(C)(2) Pound gear<br>(C)(2) Hand-pick gear<br>*Herring Production*:<br>(D) Production<br>(D) Byproduct Production |
| Crab | (E)*Crab Buying*:<br>(F) Crab Production |
| Shrimp/Miscellaneous shellfish | (G)*Shrimp/Misc.Shellfish Buying*:<br>Trawl gear<br>Pot gear<br>Diving/picked gear<br>Other gear (specify)<br>(H) Shrimp/Misc. Shellfish Production |
| Groundfish | (I)(1) (I)(2) Groundfish Buying<br>(J)(1) (J)(2) Groundfish Production |
| Halibut | (K) Halibut Buying & Production |
| Custom Production | *Custom Production*:<br>(L)(1) Associated Processors<br>Custom Fresh/Frozen<br>Misc. production<br>Custom Canned Production<br>(L)(2) (additional sheet) |
| PRICES NOT FINAL | (M)(1) Fish Buying Retro Payments<br>(M)(2) Post-season Adjustments |

[FR Doc. 00–31916 Filed 12–13–00; 8:45 am]

BILLING CODE 3510-01-S

# Notices

Federal Register

Vol. 65, No. 241

Thursday, December 14, 2000

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.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

*Date:* January 10, 2001 (8:45 a.m. to 12:00 p.m.).

*Location:* Washington Plaza Hotel, 10 Thomas Circle, NW, Washington, DC.

This meeting will feature discussion of the Committee's recommendations for U.S. policymakers on major new priorities for development and humanitarian assistance. The findings of an ACVFA–USAID study on best practices in USAID/PVO relations will also be discussed.

The meeting is free and open to the public. Persons wishing to attend the meeting can fax or e-mail their name to Kari Wickenheiser, (703) 741–0567, *Kari.AMATech@juno.com.*

Dated: December 5, 2000.

**Noreen O'Meara,**

*Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).*

[FR Doc. 00–31893 Filed 12–13–00; 8:45 am]

BILLING CODE 6116–01–M

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Announcement of Draft Guidelines for Title II Cooperating Sponsor Results Reports and Resources Requests

Pursuant to the Agricultural Market and Transition Act of 1996 (Public Law 480, as amended), notice is hereby given that the Draft Guidelines for Title II Cooperating Sponsor Results Reports and Resource Requests are being made available to interested parties of the required thirty (30) day comment period.

Individuals who wish to receive a copy of these draft guidelines should contact: Office of Food for Peace, Agency for International Development, RRB 7.06–120, 1300 Pennsylvania Avenue, Washington, DC 20523–0809. Individuals who have questions or comments on the draft guidelines should contact Richard Newberg at the above address or at (202) 712–1828.

The thirty-day comment period will begin on the date that this announcement is published in the **Federal Register**.

Dated: October 13, 2000.

**William T. Oliver,**

*Director, Office of Food for Peace Bureau for Humanitarian Response.*

[FR Doc. 00–31674 Filed 12–13–00; 8:45 am]

BILLING CODE 6116–01–M

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Changes to Section IV of the Field Office Technical Guides for NRCS in California

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of change.

**SUMMARY:** Pursuant to section 343 of Subtitle E of the Federal Agriculture Improvement and Reform Act of 1996 (FAIRA) that requires the Secretary of Agriculture to provide public notice and comment under section 553 of Title 5, United States Code, with regard to any future revisions to those provisions of the Natural Resources Conservation Service (NRCS) State technical guides that are used to carry out Subtitles A, B, and C of Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*), the Natural Resources Conservation Service, United States Department of Agriculture, gives notice of revisions to all conservation practices in section IV of State technical guides in California. The distribution of these revisions and an updated index of conservation practice standards and specifications was made to all California NRCS offices via California Technical Guide Notice 43 dated September 29, 2000.

These revisions to conservation practices in Section IV of State technical guides are subject to these provisions since one or more are used, or could be used, as a part of a conservation management system to comply with the Highly Erodible Land Conservation or Wetland Conservation requirements of the Food Security Act of 1985.

**FOR FURTHER INFORMATION CONTACT:** Diane B. Holcomb, State Resource Conservationist, USDA–NRCS, 430 G Street, Davis, CA 95616–4164. Telephone Number (530)–792–5667, FAX #(530)–792–5793, or email *diane.holcomb@ca.usda.gov.*

A copy of the new index and any of the revised items can be obtained on the Web at *http://www.ca.nrcs.usda.gov/rts/fotgintro.htm,* or from Ms. Holcomb, either in paper copy format, or electronic copy on compact disk (CD). These items are also available at each of the NRCS field offices in California.

Comments can be sent at anytime to Diane B. Holcomb or to the District Conservationist at any NRCS field office in California. Comments will be reviewed and considered by NRCS technical discipline specialists and the California State Technical Guide Committee, which meets approximately four times a year at the NRCS State Office in Davis, California.

**SUPPLEMENTARY INFORMATION:** In California, ''State technical guides'' refers to the State Office Technical Guide maintained by the NRCS State Resource Conservationist in Davis, California, to the Area Office Technical Guide maintained at each NRCS Area Office in Red Bluff, Salinas, Fresno, and Riverside, California, and to the Field Office Technical Guide maintained at each NRCS Field Office in California.

Practice standards establish the minimum level of acceptable quality for planning, designing, installing, operating, and maintaining conservation practices. National standards from the National Handbook of Conservation Practices form the basis for developing State supplements to the standards. Practice specification guidance are developed by each State and establish and list the terms and conditions, and how the practice standard will be made site-specific.

The last revisions to conservation practices in State technical guides in California were completed in July, 2000, and issued via California Technical Guide Notice Number 43 on September 29, 2000. The current California ''Index

of Conservation Practice Standards and Specifications'' and practice standards and specifications are dated July 2000. All practice standards and specifications are reviewed by the State Technical Guide Committee at least once every five years from their date of issuance to determine if the standard is needed and reflects the latest acceptable technology.

The July, 2000, revisions cover all of the 221 conservation practice standards, 132 conservation practice specifications and their practice requirements sheets, 128 conservation practice material specifications, and 9 conservation practice construction specifications in California. Revisions include word changes, reformatting sections of practice standards, name changes, renumbering, additions, deletions, updates of technical requirements, changing dates, and adding some new practices.

**Diane B. Holcomb,**

*State Resource Conservationist.*

[FR Doc. 00–31734 Filed 12–13–00; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Report of Privately Owned Residential Building or Zoning Permits Issued (Building Permits Survey).

*Form Number(s):* C–404.

*Agency Approval Number:* 0607–0094.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 30,716 hours.

*Number of Respondents:* 19,000.

*Avg Hours Per Response:* 9 minutes.

*Needs and Uses:* The Census Bureau conducts the Building Permits Survey to collect data that will provide estimates of the number and valuation of new residential housing units authorized by building permits. We use the data, a component of the index of leading economic indicators, to estimate the number of housing units started, completed, and sold, if single-family. The Census Bureau also uses these data to select samples for its demographic surveys. Policymakers, planners, businessmen/women, and others use the detailed geographic data collected from state and local officials on new residential construction authorized by building permits to monitor growth and plan for local services, and to develop production and marketing plans. The Building Permits Survey is the only source of statistics on residential construction for states and smaller geographic areas.

Due to budget reductions, the collection of nonresidential data was discontinued as of January 1996. With this submission we have decreased the estimated number of annual responses, accordingly. We have also eliminated the Forms C–404(I) and C–404(B). The primary instructions, C–404(I), are now included on the reverse side of Form C–404. The C–404(B) booklet listing classification of many types of nonresidential construction is no longer needed.

*Affected Public:* State, local, or Tribal Government.

*Frequency:* Monthly and annually.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C., Sections 9(b), 161, and 182.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482–3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at mclayton@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: December 8, 2000.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–31780 Filed 12–13–00; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Reporting and Record Keeping Requirements Under the Wassenaar Arrangement

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before February 12, 2001.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, Management Analyst, Bureau of Export Administration (BXA), Department of Commerce, Room 6883, 14th and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The information required by this collection is required semiannually from all exporters of certain items specified in § 743.1 of the Export Administration Regulations controlled for national security reasons on the Commerce Control List and exported under certain License Exceptions.

#### II. Method of Collection

The information will be collected in electronic and written form.

#### III. Data

*OMB Number:* 0694–0106.

*Form Number:* N/A.

*Type of Review:* Regular submission for extension of a currently approved collection.

*Affected Public:* Businesses and other for-profit institutions, small businesses or organizations.

*Estimated Number of Respondents:* 2,000.

*Estimated Time Per Response:* 12 minutes.

*Estimated Total Annual Burden Hours:* 734 hours.

*Estimated Total Annual Cost:* No start-up capital expenditures.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have

practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 8, 2000.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–31781 Filed 12–13–00; 8:45 am]

BILLING CODE 3510–33–P

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## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Application for Transfer of Licenses to Another Party; Proposed Collection; Comment Request

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before February 12, 2001.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, Management Analyst, Department of Commerce, Room 6883, 14th & Constitution Avenue, NW., room 6877, Washington, DC, 20230.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Certain circumstances such as company mergers, company takeovers, etc., necessitate the transfer of an active export license from one party to another. When a licensee transfers an unexpired license to another party, there must be assurances that the other party, the transferee, will also be accountable for the proper use of the license. The required information collected from both parties provides assurances that the balance of the shipments will not be diverted or used for purposes contrary to the authorized use of the approved license.

**II. Data**

*OMB Number:* 0694–0051.

*Form Number:* None.

*Type of Review:* Regular submission for extension of a currently approved collection.

*Affected Public:* Individuals, businesses or other for-profit and not-for-profit institutions.

*Estimated Number of Respondents:* 10.

*Estimated Time Per Response:* 1.1 hours per response.

*Estimated Total Annual Burden Hours:* 11.

*Estimated Total Annual Cost:* No start-up or capital expenditures.

**III. Request for Comments**

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 8, 2000.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–31782 Filed 12–13–00; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Short Supply Regulations, Petroleum (Crude Oil); Notice and Request for Comments

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before February 12, 2001.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW., Washington DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, Management, Department of Commerce, Room 6883, 14th & Constitution Avenue, NW., Washington, DC, 20230.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The information is collected as supporting documentation for license applications to export petroleum (crude oil) and used by licensing officers to determine the exporter's compliance with the 5 statutes governing this collection.

**II. Method of Collection**

**III. Data**

*OMB Number:* 0694–0027.

*Form Number:* BXA–748P.

*Type of Review:* Regular submission for extension of a currently approved collection.

*Affected Public:* Individuals, businesses or other for-profit and not-for-profit institutions.

*Estimated Number of Respondents:* 24.

*Estimated Time Per Response:* 4–12 hours per response.

*Estimated Total Annual Burden Hours:* 196.

*Estimated Total Annual Cost:* No start-up capital expenditures.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 8, 2000.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–31783 Filed 12–13–00; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### License Exception, Humanitarian License; Proposed Collection; Comment Request

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before February 12, 2001.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dawnielle Battle, Management Analyst, Department of Commerce, Room 6883, 14th & Constitution Avenue, NW, Room 6877, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

Section 7(g) of the EAA, as amended by the Export Administration Amendments Act of 1985 (Public Law 99–64), exempts from foreign policy controls exports of donations to meet basic human needs. Since the enactment of Public Law 99–74, an exporter had to apply for a bulk Humanitarian license, permitting the export of goods identified in a supplement to the regulation without restriction as to quantity or number of shipments to any of the embargoed destinations. New License Exception procedures contained in this regulation reduce the regulatory burden on these exporters by enabling them to make humanitarian donations with only minimal recordkeeping.

**III. Data**

*OMB Number:* 0694–0033.

*Form Number:* None.

*Type of Review:* Regular submission for extension of a currently approved collection.

*Affected Public:* Individuals, businesses or other for-profit and not-for-profit institutions.

*Estimated Number of Respondents:* 2.

*Estimated Time Per Response:* 5 hours per response.

*Estimated Total Annual Burden Hours:* 10.

*Estimated Total Annual Cost:* No start-up or capital expenditures.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 8, 2000.

**Madeleine Clayton,**

*Departmental Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–31784 Filed 12–13–00; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Proposed Collection; Comment Request

**TITLE:** Non-Tariff Barriers Survey.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before February 12, 2001.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Forms, Clearance Officer, (202) 482–3129, Email *MClayton@doc.gov.*, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Request for additional information or copies of the information collection instrument and instructions should be directed to: Mary Rhody, Trade Development, Office of Environmental Technologies Industries (ETI), Room 1003; U.S. Department of Commerce, 14th & Constitution Ave., NW, Washington, DC 20230; Phone number: (202) 482–5225.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The International Trade Administration's Office of Environmental Technologies Industries (ETI) office is the principal resource and key contact point within the U.S. Department of Commerce for American environmental technology companies. ETI's goal is to facilitate and increase exports of environmental technologies, goods and services by providing support and guidance to U.S. exporters. One aspect of increasing exports is to reduce trade barriers and non-tariff measures. ETI works closely with the Office of the U.S. Trade Representative on trade negotiations and trade liberalization initiatives. The information collected by this survey will be used to support these projects and enable ETI to maintain a current, up-to-date list of non-tariff measures that create trade barriers for U.S. exports of environmental goods and services.

**II. Method of Collection**

Electronic submission to the International Trade Administration's Office of Environmental Technologies Industries.

**III. Data**

*OMB Number:* None.
*Form Number:* None.
*Type of Review:* Regular Submission.
*Affected Public:* Business or other for profit.
*Estimated Number of Respondents:* 200.
*Estimated Time Per Response:* 10 minutes.
*Estimated Total Annual Burden Hours:* 33 hours.
*Estimated Total Annual Costs:* $12,000 (Government $5,000, Respondents $7,000).

**IV. Request for Comments**

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 8, 2000.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–31806 Filed 12–13–00; 8:45 am]

BILLING CODE 3510–DR–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D.120700B]**

## Endangered Species; Permits

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

**ACTION:** Receipt of application to modify permits (1201).

**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 applications for permit modifications from: Dr. Thane Wibbels, University of Alabama at Birmingham (1201).

**DATES:** Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5 p.m. eastern standard time on January 16, 2001.

**ADDRESSES:** Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review in the indicated office, by appointment: For permits 1201: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph: 301-713-1401, fax: 301-713-0376).

**FOR FURTHER INFORMATION CONTACT:** For permits 1201: Terri Jordan, Silver Spring, MD (ph: 301-713-1401, fax: 301-713-0376, e-mail: Terri.Jordan@noaa.gov).?????

**SUPPLEMENTARY INFORMATION:**

**Authority**

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (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. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

**Species Covered in This Notice: Sea Turtles**

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Green turtle (*Chelonia mydas*), Kemp's ridley turtle (*Lepidochelys kempii*), Loggerhead turtle (*Caretta caretta*).

**Modification Requests Received**

*Permit #1201*

The applicant requests a modification to Permit 1201. Permit 1201 authorizes the sampling for and collection of green, loggerhead and Kemp's ridley turtles in the estuaries of Alabama in the Northern Gulf of Mexico. The purpose of the research is to evaluate the abundance, movements, and location of juvenile sea turtles in the estuaries of Alabama, to potentially identify specific foraging areas. The presence of juvenile sea turtles in estuaries represents a potential conflict for fisheries and coastal development. However, there is little information about this issue for the estuaries of Alabama. The information from this study is critical to developing a prudent management strategy which protects sea turtles while sustaining the productivity of the fisheries. The proposed research is a prerequisite to determining if the estuaries of Alabama represent a developmental habitat for juvenile sea turtles.

The applicant proposes to: (1) Identify potential foraging areas by conducting sampling surveys, and measuring and tagging all captured turtles, (2) Perform radio tracking on some of the turtles to determine short term movements, home range, and identify foraging areas, (3) Collect samples of fecal and stomach materials in order to identify and document the diets of juvenile turtles, (4) Collect blood samples to estimate of sex ratio. Modification #1 would extend the permit expiration date from February 28, 2001 to February 28, 2003.

Dated: December 11, 2000.

**Wanda L. Cain,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–31918 Filed 12–13–00; 8:45 am]

BILLING CODE: 3510–22 –S

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.235N]**

## Special Demonstration Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

*Purpose of Program:* To provide financial assistance to support projects or programs that expand and improve the provision of rehabilitation and other services for individuals with disabilities, including technical assistance that meets the needs of underserved populations.

For FY 2001 this competition focuses on projects designed to meet the priorities we describe in the PRIORITIES section of this application notice. This competition provides funds for a Technical Assistance Center focusing on Latinos and Hispanics with Disabilities and a Technical Assistance Center focusing on Asian Americans and Pacific Islanders with Disabilities.

*Eligible Applicants:* State vocational rehabilitation agencies; community rehabilitation programs; Indian tribes or tribal organizations; and public or nonprofit agencies or organizations, including institutions of higher education.

*Applications Available:* December 21, 2000.

*Deadline For Transmittal of Applications:* February 20, 2001.

*Deadline For Intergovernmental Review:* April 21, 2001.

*Estimated Available Funds:* $1,000,000.

*Estimated Range of Awards:* $400,000 to $500,000 per year per Center.

*Estimated Number of Awards:* 2.

*Reasonable Accommodations:* We will consider, and may fund, requests for additional funding as an addendum to an application to reflect the costs of reasonable accommodations necessary to allow individuals with disabilities to be employed on the project as personnel on project activities.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months. The Assistant Secretary believes that a period of at least 36 months is necessary to accomplish the project objectives. The Assistant Secretary will assess, during the third year of the project period, whether there is a continuing need for the project and whether to provide funding beyond 36 months.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, and 99; and (b) The regulations for this program in 34 CFR part 373.

### Priority

*Background*

Many individuals with disabilities, including Latinos, Hispanics, Asian Americans, and Pacific Islanders, have difficulty accessing rehabilitation services and employment opportunities due to existing language, cultural, socio-economic, and other barriers. In particular, the unique characteristics of immigrant subpopulations living in urban and rural areas support the need for culturally appropriate technical assistance regarding civil rights, education and employment opportunities, and disability-related services. That technical assistance will assist Latinos and Hispanics with disabilities, Asian Americans and Pacific Islanders with disabilities, and other individuals with disabilities and their families, rehabilitation agencies, local educational agencies, higher education institutions, independent living centers, parent training information centers, and employers to gain access to appropriate services and information in order to improve community integration, independent living, and employment outcomes.

### Priorities

Under 34 CFR 75.105(c)(3) and section 303(b)(4)(C) and (5)(B)(vi) of the Rehabilitation Act of 1973, as amended, the Assistant Secretary gives an absolute preference to applications that meet one of the following priorities. The Assistant Secretary funds only applications that meet one of the absolute priorities.

The projects must create a National Technical Assistance Center that would provide culturally appropriate technical assistance to organizations, State vocational rehabilitation agencies, other service agencies, individuals, and families focusing on increasing employment opportunities, vocational, educational, and independent living outcomes for Latinos and Hispanics with disabilities or Asian Americans and Pacific Islanders with disabilities.

*Priority 1:* Creating a National Technical Assistance Center for Individuals with Disabilities focusing on Latinos and Hispanics with Disabilities.

*Priority 2:* Creating a National Technical Assistance Center for Individuals with Disabilities Focusing on Asian Americans and Pacific Islanders with Disabilities.

### Allowable Activities

Activities that may be supported under this competition include, but are not limited to—

- Providing information to employers and industry, small business administrations, and chambers of commerce;
- Providing culturally and linguistically relevant training on the provisions of the Americans with Disabilities Act, sections 504 and 508 of the Rehabilitation Act of 1973, as amended, the Individuals with Disabilities Education Act (IDEA), and other civil rights legislation focused on Latinos and Hispanics with disabilities, Asian Americans and Pacific Islanders with disabilities, and other individuals with disabilities who wish to use the training.
- Identifying solutions related to the barriers to obtaining employment, educational and independent living opportunities for individuals with disabilities focusing on Latinos and Hispanics with disabilities and Asian Americans and Pacific Islanders with disabilities;
- Providing educational and vocational outreach to Latinos and Hispanics with disabilities, Asian Americans and Pacific Islanders with disabilities, other individuals with disabilities, including migrant and seasonal farmworkers, and their families through key organizations and agencies;
- Assisting organizations, families, higher education, and individuals with disabilities to better understand other issues relevant to these populations, including, but not limited to, housing, transportation, assistive technology, independent living, long-term care, and Federal statutes such as the Workforce Investment Act, the Ticket to Work and Work Incentives Act, and the Individuals with Disabilities Education Act.

*Selection Criteria:* In evaluating an application for a new grant under this competition, we use selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

*For Applications Contact:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734

You may also contact ED Pubs at its Web site: http://www.ed.gov/pubs/edpubs.html

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED pubs, be sure to identify this

competition as follows: CFDA number 84.235N.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

**FOR FURTHER INFORMATION CONTACT:** Thomas E. Finch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3314, Switzer Building, Washington, DC. 20202–2650. Telephone: (202) 205–8292. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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

*Electronic Access to This Document*

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: *http://ocfo.ed.gov/fedreg.htm, http://www.ed.gov/news.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

**Program Authority:** 29 U.S.C. 773(b).

Dated: December 8, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00–31809 Filed 12–13–00; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Office of Science Financial Assistance Program Notice 01–13; Human Genome Program—Ethical, Legal, and Social Implications

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice Inviting Grant Applications.

**SUMMARY:** The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications in support of the Ethical, Legal, and Social Implications (ELSI) subprogram of the Human Genome Program (HGP). Applications should focus on issues of (1) Genetics and the workplace, (2) storage of genetic information and tissue samples, (3) education, or (4) complex or multigenic traits. The HGP is a coordinated, multidisciplinary, directed research effort aimed at obtaining a detailed understanding of the human genome at the molecular level. This particular research notice invites research grants that address ethical, legal, and social implications from the use of information and knowledge resulting from the HGP.

**DATES:** Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 01–13, should be received by 4:30 p.m., EST, January 19, 2001. Early submissions are encouraged. A response discussing the potential program relevance and encouraging or discouraging a formal application generally will be communicated within 20 days of receipt.

Formal applications submitted in response to this notice must be received by 4:30 p.m., EST, March 29, 2001, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2001.

**ADDRESSES:** Preapplications, referencing Program Notice 01–13, should be sent to: Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 01–13, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 01–13. This address also must be used when submitting applications by U.S. Postal Service Express Mail, or any commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted.

**FOR FURTHER INFORMATION CONTACT:** Dr. Daniel W. Drell, Office of Biological and Environmental Research, SC–72, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–6488 or E-mail: *daniel.drell@science.doe.gov.* The full text of Program Notice 01–13 is available via the World Wide Web using the following web site address: *http://www.sc.doe.gov/production/grants/grants.html.*

**SUPPLEMENTARY INFORMATION:** The DOE encourages the submission of applications that will address, analyze, or anticipate ELSI issues associated with human genome research in four broad areas:

### I. Genetics and the Workplace

Research is encouraged on the uses, impacts, implications of, and privacy of genetic information in the workplace. A particular emphasis of this solicitation is screening and monitoring programs that involve the collection and evaluation of genetic information. Research is also encouraged on the use of the workplace as a research venue. Research could explore historical experiences, current practices, international practices, the economics of, and lessons learned as they pertain to the collection and use of worker genetic information. Research can include issues arising from the creation, use, maintenance, privacy and disclosure of genetic information obtained in workplace settings that can include, but is not limited to, workplaces at which DOE activities are taking place or have in the past.

### II. Storage of Information and Samples

Research is encouraged on access to, and protection of genetic information stored in databases (especially computerized databases), or obtained from stored human tissue or sample archives. Research can explore threats to, issues surrounding, and protection of the confidentiality of genetic data in databanks and databases, ways to anonymize existing or new genetic records and samples, to assess the economics of genetic data collection, and to explore the intellectual property protection of genetic information and genome research tools, technologies, and resources. Research can also explore the privacy and ownership issues associated with genetic data in records collected as part of occupational medical surveillance, as well as in academic genetics research.

**III. Education**

Research is encouraged to create and disseminate relevant educational materials in any appropriate medium that will enhance understanding of the ethical, legal, and social aspects of the HGP among the public or specified groups. A particular interest of this solicitation is the creation of innovative and novel materials to Institutional Review Boards (IRB) and Ethics Boards that review protocols involving the gathering of genetic information or from genome investigators who work with human subjects or materials from which human genetic information can be obtained. Educational efforts should not target specific groups that have already been the subject of past ELSI awards (for further information about past awards under previous ELSI solicitations, see *http://www.ornl.gov/hgmis/research/elsi.html.*)

**IV. Complex or Multigenic Traits**

Research is encouraged that addresses the ethical, legal, and societal implications of advances in the scientific understanding of complex or multi-genic characteristics and conditions. Such conditions may include, but are not limited to, behavioral conditions, diseases of aging, vulnerability to substance abuse, susceptibility to workplace exposure hazards, or other common conditions with a partial genetic basis. This can include:

(1) Gene—environment interactions that result in diseases or disease susceptibilities, and human polymorphisms.

(2) Studies that explore the novel issues raised by research on complex conditions.

(3) The responses of institutions (*e.g.,* courts, employers, companies or company health officers, schools, etc., including Federal Agencies) that must deal with ''genetic uncertainty,'' *e.g.,* uncertainty about the significance of results of screening for susceptibility genes, uncertainty about the role of yet-undefined environmental influences, and uncertainty about the implications of different alleles at highly polymorphic genes when those alleles are not fully characterized.

All applications should demonstrate knowledge of the relevant literature, any related completed activities, and should include detailed plans for the gathering and analysis of factual information and the associated ethical, legal, and social implications. All applications should include, where appropriate, detailed discussion of human subjects protection issues, e.g., storage of, manipulation of, and access to personal genetic data. Provisions to ensure the inclusion of women, minorities, and potentially disabled individuals must be described, unless specific exclusions are scientifically necessary and justified in detail. All proposed research applications should provide a plan to disseminate results to the widest appropriate audience as well as a time line for their production and dissemination. In the absence of tangible products, rigorous assessments must be included to evaluate progress or outcomes. All applications should include letters of agreement to collaborate from potential collaborators; these letters should specify the contributions the collaborators intend to make if the application is accepted and funded.

If an educational effort for a specific group is proposed, the value to the Human Genome Program of that group or community should be explained in detail. In addition, the DOE encourages applications for the support of novel and innovative conferences focusing on the concerns addressed in this notice, *e.g.,* privacy and access to research materials, workplace uses of genetic information, education of targeted groups such as IRBs and investigators, and susceptibility/sensitivity genes, and polymorphisms. Educational and conference applications should demonstrate awareness of the relevant literature, include detailed plans for the accomplishment of project goals, and clearly describe the outcome or ''deliverables'' from the activity. For conference applications, a detailed and largely complete roster of speakers is necessary. Educational and conference applications must also demonstrate awareness of the need to reach the widest appropriate audience, and not be focused exclusively on a local community or group. For all conferences supported under this notice, a summary report is required following the conference. In applications that propose the production of educational materials, the DOE requests that samples of previous similar work by the producers and writers be submitted along with the application. In applications for the support of educational activities, the DOE requires inclusion of a plan for assessment of the effectiveness of the proposed activities.

DOE does not encourage applications dealing with issues consequent to the initiation or implementation of genetic testing protocols. Also, DOE does not encourage survey-based research, unless a compelling case is made that this methodology is critical to address an issue of uncommon significance. DOE generally discourages applications for geographically limited efforts (*e.g.,* college or school curricula that will not be disseminated) and requests detailed justification of the need for external support, beyond normal departmental and college resources, evidence of commitment from the parent department or college, and a dissemination plan. Applications for the writing of scholarly publications or books should include justifications for the relevance of the publications or book to the goals of the Human Genome Project, as well as discussion of the estimated readership and impact. DOE ordinarily will not provide unlimited support for a funded program and thus strongly encourages the inclusion of plans for transition to self-sustaining status.

The dissemination of materials and research data in a timely manner is essential for progress toward the goals of the DOE Human Genome Program. The OBER requires the timely sharing of resources and data. Applicants should, in their applications, discuss their plans for disseminating research results and materials that may include, where appropriate, publication in the open literature, wide-scale mailings, etc. Once OBER and the applicant have agreed upon a distribution plan, it will become part of the award conditions. Funds to defray the costs of disseminating results and materials are allowable; however, such requests must be sufficiently detailed and adequately justified. Applicants should also provide time lines projecting progress toward achieving proposed goals.

*Additional Request for Small Grants*

The DOE also encourages small grant applications, to a maximum of $33,000 total costs, for innovative and exploratory activities within the previously described areas. Such exploratory grants could be used to carry out pilot or investigative research on an issue consistent with any of the above areas of ELSI research, support a sabbatical leave to organize and hold a conference, or to initiate start-up studies that could generate preliminary data for a subsequent grant application. This program could be appropriate for a research scientist interested in exploring a related area of ELSI research, or a scholar conducting ELSI research of one type to explore an ELSI research topic of a different type. Such applications must use the standard DOE application forms, which can be found on the Internet at: *http://www.sc.doe.gov/production/grants/grants.html,* but the description of research activities should

not be more than five pages and curriculum vitae should not exceed two pages. These small grants, which will be peer reviewed, will not extend beyond one year from the award date. It is expected that up to nine of these awards might be made in FY 2001. As with larger applications to this notice, applications should be sent to the address given above.

*Program Funding*

It is anticipated that approximately $800,000 will be available for multiple grant awards (including any small grants) to be made during Fiscal Year 2001, contingent upon the availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon the availability of funds. Previous awards have ranged from $50,000 per year up to $500,000 per year with terms from one to three years; most awards average about $200,000 per year for two or three years (not applicable for any small grants as stated above.) Similar award sizes are anticipated for new grants. Generally, conference awards do not exceed $25,000 and indirect costs are not allowed as part of conference grant awards.

*Collaboration*

Applicants are encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and federally funded research and development centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: *http://www.sc.doe.gov/production/grants/Colab.html.*

*Preapplications*

A brief preapplication should be submitted. The preapplication should identify, on the cover sheet, the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the DOE's Human Genome Program. Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

**Merit Review**

Applications will be subjected to a scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

*Submission Information*

Information about development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html.* DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

DOE policy requires that potential applicants adhere to 10 CFR 745 ''Protection of Human Subjects,'' or such later revision of those guidelines as may be published in the **Federal Register**. The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health ''Guidelines for Research Involving Recombinant DNA Molecules,'' which is available via the World Wide Web at: *http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf,* (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

(The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.)

Issued in Washington, DC on December 4, 2000.

**John Rodney Clark,**

*Associate Director of Science for Resource Management.*

[FR Doc. 00–31890 Filed 12–13–00; 8:45 am]

BILLING CODE 6450–01–U

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. IC00–80–001, FERC Form No. 80]**

## Information Collection Submitted for Review and Request for Comments

December 7, 2000.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

**SUMMARY:** The Federal Energy Regulatory Commission (''Commission'') has submitted the energy information collection listed in this notice to Office of Management and Budget (OMB) for review under provisions of section 3507 of the Paperwork Reduction Act of 1995 (Public Law 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of September 5, 2000 (65 FR 53707) and has made this notation in its submission to OMB.

**DATES:** Comments regarding this collection of information are best assured of having their full effect if received on or before January 16, 2001.

**ADDRESSES:** Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, NW, Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory

Commission, Division of Information Services, Attention: Mr. Michael Miller, 888 First Street NE, Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at *mike.miller@ferc.fed.us*.

**SUPPLEMENTARY INFORMATION**

## Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC Form No. 80 ''Licensed Hydro Power Development Recreation Report''.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* OMB No. 1902–0106. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is an increase in the reporting burden due to a change of status for this information collection. Form 80 is currently in ''standby'' status as the respondents file once every six years and one hour has been assigned to it. Form 80 will be collected again in 2002 or during the next potential OMB review period. The Commission has noted this adjustment in burden in its submission to OMB. These are mandatory collection requirements. The Commission does not consider this information to be confidential.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Federal Power Act (FPA). The information reported under Commission identifier FERC Form 80 is filed in accordance with sections 4(a), 10(a), 301(a), 304, and 309(FPA). The Commission issues licenses for nonfederal hydro power projects and monitors these projects to ensure the conditions of the license are being met. The Commission's licensing and post-licensing processes have the multiple intent of maintaining power generation, enhancing and protecting the environment, and enhancing recreational assets of water resources. Hydro power facilities provide tangible benefits to the regions where they are located. These benefits include additional recreational opportunities, economic benefits through commercial development and the generation of electricity without the use of fossil fuels. At the same time, operation of hydro power projects can adversely affect resources such as water quality, fishery resources, water-based recreational uses, terrestrial and cultural enhancing environmental resources. Submission of the data as required may be found in 18 CFR 811. and 141.14.

5. *Respondent Description:* The respondent universe currently comprises on average, 400 respondents filing the recreation report.

6. *Estimated Burden:* 1,200 total burden hours, 400 respondents, 1 response sexennial, 30 hours per response (average).

7. *Estimated Cost Burden to Respondents:* 1,200 hours ÷ 2,080 hours per year × $115,357 per year = $66,552. The cost per respondent is $166.

**Statutory Authority:** Sections 4(a), 10(a), 301(a), 304 and 309 of the Federal Power Act (FPA), 16 U.S.C. 797–825h.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31858 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. RP01–74–001 and RP97–406–026]**

## Dominion Transmission, Inc; Notice of Proposed Changes in FERC Gas Tariff

December 7, 2000.

Take notice that on December 1, 2000, Dominion Transmission Inc. (DTI) filed as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 1, 2001:

Substitute Third Revised Sheet No. 31
Substitute Third Revised Sheet No. 32
Third Revised Sheet No. 33
Substitute Third Revised Sheet No. 34
Substitute Third Revised Sheet No. 35

DTI states that the purpose of the filing is to apply the rate component changes that DTI originally proposed in this proceeding on November 1, 2000, to the currently effective rates and tariff sheets that the Commission approved in its order issued October 17, 2000, in Docket No. RP00–602–000. The original November 1, 2000, filing in this docket was made under the assumption that the TCRA rates that DTI had proposed on September 29, 2000, in Docket No. RP000–632, would be allowed to become effective on November 1, 2000. That latter filing, however, was suspended by the Commission.

DTI also states that it is filing to withdraw Second Revised Sheet No. 33 that was paginated incorrectly in the November 1, 2000, filing and to replace it with Third Revised Sheet No. 33.

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, 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 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 of the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31839 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96–389–014]**

## Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

December 7, 2000.

Take notice that on December 1, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following Agreement to a recently filed negotiated rate transaction:

Agreement to ITS–2 Service Agreement No. 70052 between Columbia Gulf Transmission Company and Amoco Energy Trading Corporation dated November 30, 2000

Transportation service which was scheduled to commence December 1, 2000.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a protest

with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.214 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31866 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–43–001]**

### Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 2000.

Take notice that on November 28, 2000, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute First Revised Sheet No. 169, proposed to be effective on November 1, 2000.

Eastern Shore states that the purpose of this filing is to make further necessary modifications to its tariff to (1) permit imbalance netting and (2) expand its imbalance trading period, as directed by the Commission's letter order dated November 9, 2000 in the above-referenced proceeding in order to fully comply with the requirements of FERC Order No. 587–L.

Eastern Shore states that a copy of this filing has been mailed to its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31838 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2069–003 Arizona]**

### Arizona Public Service Company; Notice of Site Visit and Technical Conference

December 8, 2000.

Take notice that on Tuesday, January 9, 2001, FERC staff will conduct a site visit to the Childs Irving Project No. 2069. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at 9:00 a.m. at the parking lot of the Best Western Cliff Castle Lodge at 333 West Middle Verde Road in Camp Verde, Arizona. Arizona Public Service Company (APS), the applicant for the project, will provide transportation to the project site to minimize the number of vehicles. APS will also provide lunch for all participants. Anyone who wishes to attend the site visit should contact Mr. Larry Johnson of APS at 480–350–3131 by 4:00 p.m. on Monday, January 8, 2001.

On September 15, 2000, APS filed with the Commission an Offer of Settlement and Settlement Agreement. Commission staff will hold a technical conference of APS, parties to the proposed Settlement Agreement, and other interested parties in the relicensing proceeding for the project. The conference will be held on January 10, 2001, from 10:00 a.m. to 5:00 p.m. at the Community Room of the Phoenix Museum of History, 105 North 5th Street, Phoenix, Arizona.

The purposes of the conference are to learn more about the Settlement Agreement, and discuss related procedural steps. All interested individuals, organizations, and agencies are invited to attend the conference.

For further information, please contact Dianne Rodman at (202) 219–2830.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–31854 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–625–001]**

### Canyon Creek Compressions Company; Notice of Compliance Filing

December 7, 2000.

Take notice that on December 4, 2000, Canyon Creek Compression Company (Canyon) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 127, to be effective on January 1, 2001.

Canyon states that this tariff sheet is being filed in compliance with the Commission's ''Order on Filing to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L,'' issued October 27, 2000, in Docket No. RP00–625–000.

Canyon requested any waivers which may be required for the tendered tariff sheet to become effective January 1, 2001.

Canyon states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. RP00–625.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may

be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31833 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP00–344–000 and RP00–601–000]**

### Dominion Transmission, Inc.; Notice of Technical Conference

December 7, 2000.

Take notice that a technical conference to further discuss the various issues raised by Dominion Transmission, Inc.'s (Dominion) Order No. 637 compliance filing will be held on Thursday, December 14, 2000, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31850 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–22–002]**

### East Tennessee Natural Gas Company; Notice of Compliance Filing

December 7, 2000.

Take notice that on November 27, 2000, East Tennessee Natural Gas Company (East Tennessee) tendered its compliance filing with the Commission's ''Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L [93 FERC ¶ 61,903 (2000)] issued on October 27, 2000 (October 27 Order.

East Tennessee states that the purpose of this filing is to comply with the requirements of the October 27 Order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31836 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP01–41–000]**

### El Paso Natural Gas Company; Notice of Application

December 8, 2000.

On November 30, 2000, El Paso Natural Gas (El Paso), pursuant to Section 3 of the Natural Gas Act (NGA), and Subparts B and C of Part 153 of the Federal Energy Regulatory Commission's (Commission) regulations under the NGA, filed in Docket No. CP01–41–000 its application for: (1) an order authorizing the siting, construction, and operation of 60 feet of 16-inch diameter pipeline and the place of exit for export of up to 8,500 Mcf per day of natural gas at the International Boundary between the United States and Mexico in Santa Cruz County, Arizona; and, (2) a Presidential Permit, pursuant to Section 7 of the NGA and the Commission's Rules and Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

The application states that El Paso understands that Nogales, Sonora, Mexico is host to a growing commercial manufacturing industry. Due to the increasing number of industrial parks and U.S. manufacturing plants being located in northern Sonora, there is an increasing need for supplies of clean burning natural gas as fuel. In response thereto, Ener-Son, U.S.A. Inc. (Ener-Son), a buyer and seller of natural gas, has agreed to provide for the increasing needs of these commercial manufacturing plants. In addition, Ener-Son also desires to provide natural gas to fuel future electric power generation in Northern Mexico.

El Paso states that its existing California Mainline System is capable of providing interruptible transportation service for such quantities of natural gas. However, certain additional metering and lateral facilities must be constructed between El Paso's existing mainline system and the point of interconnection at the International Boundary. El Paso will construct and operate: a delivery point, Ductos de Nogales; 4,216 feet of 6.625-inch diameter lateral pipeline (the last 60 feet of lateral on the United States side will be 16-inch diameter pipe); and, metering facilities pursuant to the automatic blanket provisions under sections 157.211(a) and 157.208(a), respectively, of the Commission's regulations.

El Paso's application further states that measurement will take place at the new delivery point; however, custody transfer will take place at the border crossing. A financial arrangement has been executed with El Paso for the construction and operation of the new gas transportation facilities. El Paso understands that construction has been completed of the necessary pipeline system in Mexico to the Mexican side of the border crossing.

Questions regarding the details of this proposed project should be directed to Robert T. Tomlinson, Director, Tariff and Certificates Department, El Paso Natural Gas Company, Post Office Box 1492, El Paso, Texas 79978, call (915) 496–5959.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before December 22, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be

placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

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

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

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

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

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–31852 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–220–007]**

### Great Lakes Gas Transmission Limited Partnership; Notice of Negotiated Rate Agreements

December 7, 2000.

Take notice that on November 29, 2000, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed for disclosure, two (2) transportation service agreements pursuant to Great Lakes' Rate Schedule FT entered into by Great Lakes and Tenaska Marketing Ventures (Tenaska) and by Great Lakes and CXY Energy Marketing (U.S.A.) Inc. (CXY) (FT Service Agreements). The FT Service Agreements being filed reflect negotiated rate arrangements between Great Lakes and Tenaska and between Great Lakes and CXY commencing December 1, 2000.

Great Lakes states that the FT Service Agreements are being filed to implement negotiated rate contracts as required by both Great Lakes' negotiated rate tariff provisions and the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulations of Negotiated Transportation Services of Natural Gas Pipelines, issued January 31, 1996, at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31846 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–466–004]**

### Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

December 7, 2000.

Take notice that on November 30, 2000, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing, to be effective January 1, 2001.

Great Lakes states that these tariff sheets are being filed to comply with the Commission's Order No. 587–I issued on September 29, 1998, in Docket No. RM96–1–009. 84 FERC ¶ 61,328 (1998). The proposed sheets reflect the necessary revisions to Great Lakes' tariff to reflect the completion of Great Lakes' transition to Internet communications.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210

of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31847 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER01–556–000]**

### Handsome Lake Energy, LLC; Notice of Filing

December 7, 2000.

Take notice that on December 1, 2000, Handsome Lake Energy, LLC tendered for filing pursuant to section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates, to reassign transmission capacity, and to resell Firm Transmission Rights.

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before December 22, 2000. 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. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31856 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2055]**

### Idaho Power Company; Notice of Authorization for Continued Project Operation

December 7, 2000.

On November 24, 1998, Idaho Power Company, licensee for the C.J. Strike Project No. 2055, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2055 is located on the Snake and Bruneau Rivers in Elmore and Owyhee Counties, Idaho.

The license for Project No. 2055 was issued for a period ending November 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2055 is issued to Idaho Power Company for a period effective December 1, 2000, through November 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before December 1, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Idaho Power Company is authorized to continue operation of the C.J. Strike Project No. 2055 until such time as the Commission acts on its application for subsequent license.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31861 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–17–002]**

### Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

December 7, 2000.

Take notice that on November 27, 2000, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered its compliance filing with the Commission's ''Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L [93 FERC ¶ 61,903 (2000)]'' issued on October 27, 2000 (''October 27 Order'') and as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective on November 1, 2000:

Sub Original Sheet No. 262A
Sub First Revised Sheet No. 263

Maritimes states that the purpose of this filing is to comply with the requirements of the October 27 Order.

Maritimes also states that copies of the filing were mailed to all affected customers and interested state commissions.

Any person desiring to protest such filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31835 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. EG01–9–000, EG01–40–000 and EG01–41–000]**

## Mexican Business Trust No. 111076–2, Et Al.; Notice of Amendment to Application for Commission Determination of Exempt Wholesale Generator Status

December 8, 2000.

Take notice that on November 27, 2000, Mexican Business Trust No. 111076–2 (the Trust); Banco Nacional de Mexico, S.A., Institucion de Banca Multiple, Division Fiduciaria, Grupo Financiero Banamex-Accival (the Trustee under Mexican Business Trust No. 111076–2); and Termoelectrica Penoles, S. de R.L. de C.V. (TEP and together with the Trust and Trustee, Applicants), filed with the Commission a request for additional docket number designations in connection with the Applicants' application for a determination of exempt wholesale generator status, filed with the Commission in EG01–9–000, on October 20, 2000.

Any person desiring to be heard concerning the amended application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application. All such motions and comments should be filed on or before December 14, 2000, and must be served on the applicant. 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 or on the Internet at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–31853 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER01–98–000]**

## Miami Valley Resources, Inc.; Notice of Filing

December 7, 2000.

Take notice that on November 16, 2000, Miami Valley Resources, Inc. (MVR), tendered for filing a request for withdrawal of its FERC Electric Rate Schedule Volume No. 1, filed with the Commission on October 11, 2000 in the above-referenced docket.

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before December 15, 2000. 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 to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31855 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP01–158–000]**

## Midwestern Gas Transmission Company; Notice of Tariff Filing

December 7, 2000.

Take notice that on December 1, 2000, Midwestern Gas Transmission Company (Midwestern), tendered for filing FERC Gas Tariff, Second Revised, Volume 1, Fourth Revised Sheet No. 70 and Third Revised Sheet No. 79, with an effective date of January 1, 2001.

Midwestern states that these revised tariff sheets are being filed in order to revise the invoicing and notice provisions of its FERC Gas Tariff to state the method by which Midwestern will render invoices.

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 and 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31842 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–176–024]**

### Natural Gas Pipeline Company of America; Notice of Negotiated Rate

December 7, 2000.

Take notice that on November 30, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet Nos. 26P, 26P.01 and 26P.02, to be effective December 1, 2000.

Natural states that the purpose of this filing is to implement two negotiated rate transactions with Dynegy Marketing and Trade under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions (GT&C) of Natural's Tariff.

Natural asks the Commission to accept the proposed tariff sheet and the related Agreement to become effective December 1, 2000.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31844 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatoary Commission

**[Docket No. RP99–176–025]**

### Natural Gas Pipeline Company of America; Notice of Negotiated Rate

December 7, 2000.

Take notice that on November 30, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 26B, to be effective December 1, 2000.

Natural states that the purpose of this filing is to implement a negotiated rate transaction with MidAmerican Energy Company (MEC) under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions (GT&C) of Natural's Tariff.

Natural concurrently tenders for filing with the Commission, by a separate filing in this docket, the amended Firm Transportation Negotiated Rate Agreement (Agreement) entered into by Natural and MEC. Natural states that the Agreement does not deviate in any material respects from the applicable form of service agreement in Natural's Tariff.

Natural asks the Commission to accept the proposed tariff sheet and the related Agreement to become effective December 1, 2000.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31845 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–76–001]**

### Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 2000.

Take notice that on November 30, 2000, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet proposed to be effective December 1, 2000:

2 Revised Sheet No. 56

Northern states that the reason for this filing is to file Tariff Sheet No. 56, which sets forth Rate Schedule VFT base rates, to reflect the impact of the SLA rate adjustment on Northern's VFT rates. Tariff Sheet No. 56 was not included in the November 1 tariff filing in this proceeding because the Commission did not approve the VFT Rate Schedule until November 8, 2000.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210. of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the

Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31840 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 1962–000]**

### Pacific Gas and Electric Company; Notice Establishing a Deadline for Submission of Comments on Settlement Agreement

December 7, 2000.

Take notice that on December 4, 2000, Pacific gas and Electric Company, licensee for the Rock Creek-Cresta Project No. 1962, located on the North Fork Feather River in Butte and Plumas counties, California, filed supporting documentation for the Settlement Agreement filed in the proceeding on September 29, 2000. This supporting documentation is available for public inspection.

Our October 10, 2000, notice soliciting comments on the Settlement Agreement, 65 FR 61160 (2000), stated that comments on the settlement were to be due November 30, 2000, or 30 days after the filing of the supporting documentation, whichever comes later. Reply comments were to be due December 13, 2000, or 45 days after the filing of supporting documentation. Accordingly, comments on the Settlement Agreement are due on January 3, 2001, and reply comments are due on January 18, 2001.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31859 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–162–008]**

### Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

December 7, 2000.

Take notice that on December 1, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing a report detailing the activity under Rate Schedule HFT through October 1, 2000.

Panhandle states that the purpose of this filing is to comply with the Commission's Order, 91 FERC ¶ 61,174 (May 22, 2000) (Order) in the above-referenced proceeding. Panhandle's report reflects that, since the effective date on May 22, 2000 until October 1, 2000, no service has been provided under Rate Schedule HFT.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31849 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–200–061]**

### Reliant Energy Gas Transportation Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 2000.

Take notice that on November 30, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective January 1, 2001:

Substitute Third Revised Sheet No. 8B
Substitute Original Sheet No. 8B.01
Substitute Original Sheet No. 8B.02

REGT states that the purpose of this filing is to reflect the delay in implementation of a new negotiated rate arrangement involving three contracts which was filed in this docket on November 3, 2000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31865 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–180–000]**

### San Diego Gas & Electric Company; Notice of Filing

December 8, 2000.

Take notice that on December 7, 2000, San Diego Gas & Electric Company (SDG&E) filed a Request For Emergency Relief pursuant to Rule 207(a)(2) and (5). The filing requests that the Commission issue an order: (1) that price caps for short-term releases of capacity for service to the California border and to points of interconnection between interstate pipelines and California local distribution companies, be re-imposed effective immediately and kept in effect until March 31, 2001; and (2) that sellers be required to state separately the transportation and commodity components of the bundled rate for bundled sales at these points so that the cap can be enforced on these transactions. Alternatively, the cap could be enforced on such bundled sales through a mechanism which caps bundled sales at these points at 150% of the sum of a reported average

commodity sales price plus the as-billed rate for interstate transportation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 13, 2000. 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–31886 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP01–25–002]**

### Texas Eastern Transmission Corporation; Notice of Compliance Filing

December 7, 2000.

Take notice that on November 27, 2000, Texas Eastern Transmission Corporation (Texas Eastern) tendered its compliance filing with the Commission's ''Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L [93 FERC ¶ 61,903 (2000)] issued on October 27, 2000 (October 27 Order) and as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets to become effective on November 1, 2000:

Sub Second Revised Sheet No. 525
Sub Original Sheet No. 525A

Texas Eastern states that the purpose of this filing is to comply with the requirements of the October 27 Order. Texas Eastern also states that copies of the filing were mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31837 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–83–006]**

### Texas Gas Transmission Corporation; Notice of Compliance Filing

December 7, 2000.

Take notice that on November 13, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of June 14, 2000:

Substitute First Revised Sheet No. 126
Second Substitute First Revised Sheet No. 278

Texas Gas states that the revised tariff sheets are being filed to comply with the Commission's Order issued on October 30, 2000, in Docket No. RP00–83–004 and RP00–83–005, implementing a new summer no-notice (SNS) service on the Texas Gas system.

Texas Gas states that copies of the filing have been served upon Texas Gas's jurisdictional customers, interested state commissions, and those parties appearing on the official service list.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 14, 2000. 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. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.us/efi/doorbell.htm.*

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31848 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Trans-Union Interstate Pipeline, L.P.; Notice of Application

December 7, 2000.

Take notice that on November 22, 2000, Trans-Union Interstate Pipeline, L.P., (Applicant) 4100 Spring Valley, Suite 1001, Dallas, Texas 75244, tendered for filing an application, pursuant to section 7(c) of the Natural Gas Act (NGA), 15 U.S.C. 717(f), and the Federal Energy Regulatory Commission's Regulations under Part 284, Subpart G, 18 CFR part 284, Subpart G, for a blanket certificate of public convenience and necessity, authorizing it to undertake self-implementing interstate transportation of natural gas under a Part 284 Subpart G blanket transportation certificate. Applicant also requests approval of the ''open access'' rates and tariff submitted herewith. Applicant also seeks authorization of its negotiated rate proposal, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The application may be viewed on the web at *www.ferc.fed.us/online/rims.htm.* (Call 202–208–2222 for assistance).

Applicant indicates that any questions regarding the application

herein should be directed to project counsel, Ned Hengerer, at John & Hengerer, 1200 17th Street, NW., Washington, DC 20036 (202) 249–8811.

Applicant states that it will be a natural gas company subject to the Commission's NGA jurisdiction once its previously certificated facilities have been constructed and it has been authorized to commence service. It is indicated that the Commission's order issued July 26, 2000 in Docket No. CP00–47–000. *Trans-Union Interstate Pipeline, L.P.* 92 FERC ¶ 61,066, authorized Applicant to construct and operate facilities subject to the Commission's jurisdiction.

Applicant states that the Application is filed in compliance with Ordering Paragraph (E) of the July 26th order, which conditions the certificate on Applicant filing an application under Part 284, Subpart G, along with tariff and rates consistent with the Commission's Regulations within one hundred and twenty days (120) of the date of the order.

Applicant states that it will provide firm and interruptible transportation services on a non-discriminatory, open access basis, consistent with the Commission's Part 284 policy. It is stated that firm transportation will be offered when firm capacity is available, under Rate Schedule FT, and interruptible transportation service will be offered under Rate Schedule IT. Applicant asserts that its tariff complies with the Commission's policies and regulations established in Order Nos. 636 and 637, as well as the Gas Industry Standards Board (GISB), and that, to diverge in some limited respects from a strict construction of that policy, it requests the requisite waivers. Finally, Applicant requests negotiated rate approval in the context of this open access certificate filing.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 28, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31857 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TM99–6–29–003]**

### Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

December 7, 2000.

Take notice that on November 29, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 Substitute Eleventh Revised Sheet No. 29 and Substitute Twelfth Revised Sheet No. 44, with a proposed effective date of April 1, 1999.

Transco states that the instant filing is submitted in compliance with the Commission's Order On Rehearing issued October 30, 2000 in Docket No. TM99–6–29–001 (October 30 Order). In that order, the Commission authorized Transco to adjust its fuel retention percentages (FRP) to include previously disallowed prior period adjustments amortized over a seven year period. In compliance with the Ordering Paragraph of the October 30 Order, Transco submits herein the tariff sheets reflecting the FRPs to be effective April 1, 1999, a detailed narrative describing Transco's amortization plan and the workpapers supporting the revised FRPs.

Transco states that it is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31843 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–288–006]**

### Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 7, 2000.

Take notice that on November 30, 2000, Transwestern Pipeline Company (Transwestern) tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective on December 1, 2000:

Third Revised Sheet No. 5B.05
Second Revised Sheet No. 5B.07

Transwestern states that the above sheets are being filed to implement a specific negotiated rate transaction in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31867 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–609–001]**

## Trunkline Gas Company, Notice of Compliance Filing

December 7, 2000.

Take notice that on November 27, 2000, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Pro Forma Sheet No. 181.

Trunkline states that the purpose of this filing is to comply with the Federal Energy Regulatory Commission's (Commission) ''Order on Filings to Establish Imbalance Netting and Trading Pursuant to Order Nos. 587–G and 587–L'' (Order) dated October 27, 2000 in the above-referenced proceeding.

Trunkline states that copies of this filing are being served on all parties to this proceeding, affected customers and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31832 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. RP01–104–000]**

## Venice Gathering System, L.L.C.; Notice of Compliance Filing

December 7, 2000.

Take notice that on November 7, 2000, Venice Gathering System, L.L.C., (Venice) filed a letter with the Commission explaining that its tariff complies with the imbalance netting and trading provisions of Order Nos. 587–G and 587–L. According to Venice, its tariff already contains imbalance netting and trading provisions, as required by those orders.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 14, 2000. 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31841 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP01–13–001]**

## Williams Gas Pipelines Central, Inc., Notice of Compliance Filing

December 7, 2000.

Take notice that on November 27, 2000, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective December 1, 2000:

Third Revised Sheet No. 147

In compliance with the Commission's October 27, 2000 Order (Docket No. RM96–1, et al., 93 FERC ¶ 61,903), Williams is removing from Section 3(f) of the PS Rate Schedule the language which would have permitted an appropriate adjustment for fuel. This removal is without prejudice to Williams' filing to revise its tariff in the future should actual experience warrant an additional transportation charge attributable to any specific netting or trading activity.

Williams states that copies of the revised tariff sheet is being mailed to Williams's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31834 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG01–36–000, et al.]**

## PPL Montour, LLC, et al.; Electric Rate and Corporate Regulation Filings

December 7, 2000.

Take notice that the following filings have been made with the Commission:

### 1. PPL Montour, LLC

[Docket No. EG01–36–00]

Take notice that on December 6, 2000, PPL Montour, LLC (PPL Montour) tendered for filing an Amendment to its Application for New Determination of Exempt Wholesale Generator Status.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

### 2. American Transmission Systems, Inc.

[Docket No. ER00–3667–001]

Take notice that on December 4, 2000, American Transmission Systems, Inc. (ATSI), tendered for filing its Rate Schedule FERC No. 2 to conform to the header and footer designations of Order No. 614, as directed by the Commission in its November 2, 2000 order. The rate schedule now bears the designation First Revised Rate Schedule FERC No. 2, and each sheet is given a sheet number. ATSI states that it has made no change to the text of the rate schedule.

FirstEnergy and ATSI state further that they have served the filing on all parties to the proceeding.

*Comment date:* December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 3. New York Independent System Operator, Inc.

[Docket Nos. ER97–1523–003, ER97–1523–004, OA97–470–004, OA97–470–005, ER97–4234–002 and ER97–4234–003]

Take notice that on December 1, 2000, the New York Independent System Operator, Inc. (NYISO), tendered for filing a Report on Certain Generation Issues One Year After Start-Up. The NYISO was required to submit this report pursuant to Central Hudson Gas & Electric Corp., et al., 88 FERC ¶ 61,138 (1999).

A copy of this filing was served upon all parties in Docket Nos. ER97–1523–003, and –004, OA97–470–004 and –005, and ER97–4234–002 and –003.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 4. Xcel Energy Services Inc.

[Docket No. ER01–205–001]

Take notice that on December 4, 2000, Xcel Energy Services Inc. (Xcel Energy Services), in order to fully comply with the Commission's Order No. 614, tendered for filing codes of conduct for the market-based rate tariffs of Xcel Energy Services, Public Service Company of Colorado (PSCo) and Southwestern Public Service Company (SPS) that were previously filed in the above-captioned docket.

Since the filing made today is purely administrative in nature, Xcel Energy Services seeks the same effective date requested in its original filing, October 24, 2000.

Copies of this filing have been served on those parties listed on the official service list in this proceeding and the state commissions having jurisdiction over the Xcel Operating Companies.

*Comment date:* December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 5. Pacific Gas and Electric Company

[Docket No. ER01–460–001]

Take notice that on December 4, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing amendments and corrections to its filing of November 15, 2000, in Docket No. ER01–460–000 concerning revised Must-Run Service Agreements (RMR Agreements) between it and the California Independent System Operator Corporation (ISO). The amendments are required to implement a request of the ISO to change planned outages of the Hunters Point Power Plant. The corrections result from typographic errors in the November 15 filing.

Copies of this filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

*Comment Date:* December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 6. Commonwealth Edison Company

[Docket No. ER01–546–000]

Take notice that on November 30, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (collectively ''ComEd''), tendered for filing two unexecuted amended Network Service Agreements (NSA) between ComEd and the City of Batavia (Batavia), and between ComEd and the City of St. Charles (St. Charles). ComEd asks that the NSAs supersede and be substituted for the NSAs with Batavia and St. Charles previously filed on September 29, 2000 in Docket No. ER00–3788–000. These agreements will govern ComEd's provision of network service load under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of November 1, 2000 for the Agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies were filed on the Cities of Batavia and St. Charles.

*Comment date:* December 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 7. American Electric Power Service Corporation

[Docket No. ER01–552–000]

Take notice that on December 1, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing an executed Interconnection and Operation Agreement between Ohio Power Company and National Power Cooperative, Inc. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Revised Volume No. 6, effective June 15, 2000.

AEP requests an effective date of February 1, 2001.

A copy of the filing was served upon the Public Utilities Commission of Ohio.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 8. New England Power Pool

[Docket No. ER01–554–000]

Take notice that on December 1, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for acceptance materials (1) to permit NEPOOL to expand its membership to include BP Energy Company, MIECO, Inc., The New Power Company and TCPL Power Ltd. (together, the Applicants); and (2) to terminate the memberships of StratErgy, Inc. (StratErgy) and PPL Utilities (PPLU).

The Participants Committee requests an effective date of December 1, 2000 for commencement of participation in NEPOOL by the Applicants, November 1, 2000 for the termination of StratErgy and December 31, 2000 for the termination of PPLU.

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

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Virginia Electric and Power Company**

[Docket No. ER01–555–000]

Take notice that on December 1, 2000, Virginia Electric and Power Company (Dominion Virginia Power), tendered for filing an amendment, ''Rider SB1286 For Resale Service to Central Virginia Electric Cooperative under Schedule VA-RC'' (the Rider), to the Contract for the Purchase of Electricity for Resale by Rural Electric Cooperatives dated March 20, 1967, by and between Dominion Virginia Power and Central Virginia Electric Cooperative (CVEC), Rate Schedule FERC No. 94. The Rider reflects Senate Bill 1286 passed by the 1999 Virginia General Assembly which provides for both the elimination of the gross receipts tax and the imposition of a Virginia state income tax effective January 1, 2001.

Dominion Virginia Power requests that the amendment become effective January 1, 2001. Dominion Virginia Power states that copies of the filing have been served upon CVEC and the Virginia State Corporation Commission.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Holland Energy, LLC**

[Docket No. ER01–558–000]

Take notice that on December 1, 2000, Holland Energy, LLC tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates, to reassign transmission capacity, and to resell Firm Transmission Rights.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Wolf Hills Energy, LLC**

[Docket No. ER01–559–000]

Take notice that on December 1, 2000, Wolf Hills Energy, LLC submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates, to reassign transmission capacity, and to resell Firm Transmission Rights.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Big Sandy Peaker Plant, LLC**

[Docket No. ER01–560–000]

Take notice that on December 1, 2000, Big Sandy Peaker Plant, LLC, tendered for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates, and to reassign transmission capacity.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Xcel Energy Services, Inc.**

[Docket No. ER01–561–000]

Take notice that on December 1, 2000, Xcel Energy Services Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), tendered for filing a Long Term Firm Point-to-Point Transmission Service Agreement between Public Service and Tri-State Generation and Transmission Association Inc. under Xcel's Joint Open Access Transmission Service Tariff (Xcel FERC Electric Tariff, Original Volume No. 1).

XES requests that this agreement, designated as Original Service Agreement No. 101–PSCo, become effective on November 3, 2000.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. SEI Michigan, L.L.C.**

[Docket No. ER01–562–000]

Take notice that on December 1, 2000, SEI Michigan, L.L.C. (SEI Michigan) tendered for filing an application requesting acceptance of its proposed Market Rate Tariff, waiver of certain regulations, and blanket approvals. The proposed tariff would authorize SEI Michigan to engage in wholesale sales of capacity and energy to eligible customers at market rates.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. Conectiv Energy Supply, Inc.**

[Docket No. ER01–563–000]

Take notice that on December 1, 2000, Conectiv, on behalf of its subsidiaries Conectiv Energy Supply, Inc. (CESI) and Delmarva Power and Light Company (Delmarva), tendered for filing a power sale agreement (PSA) between CESI and Delmarva for CESI to sell all or a portion of the power needed by Delmarva to meet its retail sales obligation in the States of Delaware, Maryland and Virginia.

Conectiv asks that the PSA be allowed to become effective on February 1, 2001.

Copies of the filing were served upon the public utility's jurisdictional customers, and upon the regulatory commissions of the States of Delaware, Maryland and Virginia.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**16. Xcel Energy Services, Inc.**

[Docket No. ER01–564–000]

Take notice that on December 1, 2000, Xcel Energy Services Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), tendered for filing a Short Term Firm Point-to-Point Transmission Service Agreement between Public Service and PacifiCorp Power Marketing under Xcel's Joint Open Access Transmission Service Tariff (Xcel FERC Electric Tariff, Original Volume No. 1).

XES requests that this agreement become effective on October 17, 2000 designated as Original Service Agreement No. 100–PSCo.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. The Dayton Power and Light Company**

[Docket No. ER01–565–000]

Take notice that on December 1, 2000, The Dayton Power and Light Company (DP&L), tendered for filing a Service Agreement and Transaction Agreement establishing DPL Energy Resources as a customer under the terms of DP&L's market-based sales tariff.

DP&L requests an effective date of January 1, 2001 for the Service Agreement and Transaction Agreement.

Copies of this filing were served upon DPL Energy Resources and the Public Utilities Commission of Ohio.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. Duke Energy McClain, LLC**

[Docket No. ER01–566–000]

Take notice that on December 1, 2000, Duke Energy McClain, LLC (Duke McClain), tendered for filing pursuant to Section 205 of the Federal Power Act its proposed FERC Electric Tariff No. 1.

Duke McClain seeks authority to sell energy and capacity, as well as ancillary services, at market-based rates, together with certain waivers and preapprovals. Duke McClain also seeks authority to sell, assign, or transfer transmission rights that it may acquire in the course of its marketing activities.

Duke McClain seeks an effective date sixty (60) days from the date of filing for its proposed rate schedules.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**19. Virginia Electric and Power Company**

[Docket No. ER01–567–000]

Take notice that on December 1, 2000, Virginia Electric and Power Company (Dominion Virginia Power), tendered for filing an amendment, ''Rider SB1286 For Resale Service to Rural Electric Cooperatives under Schedule VA–RC'' (the Rider), to the Contract for the Purchase of Electricity for Resale By Rural Electric Cooperatives dated March 20, 1967 by and between Dominion Virginia Power and Craig-Botetourt Electric Cooperative (CBEC), Rate Schedule FERC No. 78. The Rider reflects Senate Bill 1286 passed by the 1999 Virginia General Assembly which provides for both the elimination of the gross receipts taxes and the imposition of a Virginia State income tax effective January 1, 2001.

Dominion Virginia Power requests that the amendment become effective January 1, 2001.

Dominion Virginia Power states that copies of the filing have been served upon CBEC and the Virginia State Corporation Commission.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**20. Commonwealth Edison Company**

[Docket No. ER01–568–000]

Take notice that on December 1, 2000 Commonwealth Edison Company (ComEd) tendered for filing agreements between ComEd and Exelon Generation Company, L.L.C. (Exelon).

ComEd requests an effective date of the later of January 1, 2001 or the date the facilities underlying the agreements are transferred to Exelon.

ComEd states that a copy of the filing was served on Exelon, parties to Docket No. EC00–98, and the Illinois Commerce Commission.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**21. Virginia Electric and Power Company**

[Docket No. ER01–569–000]

Take notice that on December 1, 2000, Virginia Electric and Power Company (the Company), tendered for filing Notices of Assignment entered into by and among Public Service Electric and Gas Company (Assignor), PSEG Energy Resources & Trade LLC (Assignee), and Virginia Electric and Power Company dated August 24, 2000. Under this assignment, the Assignor assigns to the Assignee and the Assignee assumes all of the Assignor's rights and obligations pertaining to the following Service Agreements with Virginia Electric and Power Company:

1. Service Agreement for Non-Firm Point-To-Point Transmission Service dated May 20, 1997 and accepted by Letter Order dated August 20, 1997 in Docket No. ER97–3652–000.

2. Service Agreement for Firm Point-To-Point Transmission Service dated October 7, 1997 and accepted by Letter Order dated December 15, 1997 in Docket No. ER98–512–000.

The Company requests an effective date of the assignments of August 21, 2000.

Copies of this filing were served upon PSEG Energy Resources & Trade LLC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

*Comment date:* May 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

**22. Dearborn Industrial Generation, L.L.C.**

[Docket No. ER01–570–000]

Take notice that on December 1, 2000, Dearborn Industrial Generation, L.L.C. (DIG), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Tariff No. 2 to be effective at the earliest possible time, but not later than 60 days for the date of its filing.

DIG intends to engage in electric power and energy purchases and sales. In transactions where DIG sells electric energy, it proposes to make such sales on rates, terms and conditions to be manually agreed to with the purchasing party. As outlined in DIG's petition, DIG is an affiliate of CMS Energy, a public utility holding company and the parent company of Consumers Energy Company.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**23. Central Vermont Public Service Corporation**

[Docket No. ER01–571–000]

Take notice that on November 30, 2000, Central Vermont Public Service Corporation (CVPS), tendered for filing the Forecast 2001 Cost Report required under Paragraph Q–2 on Original Sheet No. 19 of the Rate Schedule FERC No. 135 (''RS–2 rate schedule'') under which CVPS sells electric power to Connecticut Valley Electric Company Inc. (Customer). CVPS states that the Cost Report reflects changes to the RS–2 rate schedule which were approved by the Commission's June 6, 1989 order in Docket No. ER88–456–000.

*Comment date:* December 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

**24. Commonwealth Edison Company**

[Docket No. ER01–572–000]

Take notice that on December 1, 2000, Commonwealth Edison Company (ComEd), tendered for filing a Short-Term Firm Transmission Service Agreement with TransAlta Energy Marketing (TEM) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of November 9, 2000 for the Agreement, and accordingly, seeks waiver of the Commission's notice requirements.

*Comment date:* December 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**25. Alliant Energy Corporate Services, Inc.**

[Docket No. ER01–573–000]

Take notice that on December 4, 2000, Alliant Energy Corporate Services, Inc. tendered for filing executed Service Agreements for long-term firm point-to-point transmission service, establishing Madison Gas and Electric Company as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc. transmission tariff.

Alliant Energy Corporate Services, Inc. requests an effective date of January 1, 2001, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

*Comment date:* December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**26. Hunlock Creek Energy Ventures**

[Docket No. ER01–574–000]

Take notice that on December 4, 2000 Hunlock Creek Energy Ventures (Energy Ventures), tendered for filing a market rate tariff of general applicability under which it proposes to sell capacity and energy to affiliates and non-affiliates at market-based rates, and to make such sales to franchised utility affiliates with captive rate payers at rates capped by a publicly available regional index price.

Energy Ventures requests an effective date no later than December 5, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**27. Central Maine Power Company**

[Docket No. ER01–576–000]

Take notice that on December 4, 2000, Central Maine Power Company (CMP), tendered for filing as an initial rate schedule pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (the Commission) Regulations, 18 CFR 35.12, an executed interconnection agreement (the Agreement) between CMP and Sparhawk Mill Company (Sparhawk).

The Agreement is intended to replace and supersede the unexecuted interconnection agreement filed by CMP on March 31, 2000. As such, CMP is requesting that the Agreement become effective March 1, 2000.

Copies of this filing have been served upon the Commission, the Maine Public Utilities Commission, and Sparhawk.

*Comment date:* December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**28. Puget Sound Energy, Inc.**

[Docket No. ER01–578–000]

Take notice that on December 4, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service and a Service Agreement for Non-Firm Point-To-Point Transmission Service with Aquila, as Transmission Customer.

A copy of the filing was served upon Aquila.

*Comment date:* December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**29. Puget Sound Energy, Inc.**

[Docket No. ER01–579–000]

Take notice that on December 4, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service and a Service Agreement for Non-Firm Point-To-Point Transmission Service with Cinergy Energy Services, Inc. (Cinergy), as Transmission Customer.

A copy of the filing was served upon Cinergy.

*Comment date:* December 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such 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 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–31885 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–U

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 1981–010–Wisconsin]**

## Oconto Electric Cooperative; Notice of Availability of Draft Environmental Assessment

December 7, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a new license for the existing Stiles Hydroelectric Project, located on the Oconto River, in the township of Stiles, Oconto County, Wisconsin, and has prepared a draft Environmental Assessment (EA) for the project. In the draft EA, the Commission staff has analyzed the potential environmental effects of the project and has concluded that the approval of the project, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the draft EA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426. The draft EA may also be viewed on the internet at *http://www.ferc.fed.us/online/rims.htm.* Please call (202) 208–2222 for assistance.

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix ''Stiles Hydroelectric Project, FERC Project No. 1981–010'' to all comments. For further information, please contact Patti Leppert at (202) 219–2767. Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31860 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

December 7, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License.

b. *Project No.:* P–2631–007.

c. *Date Filed:* August 31, 1999.

d. *Applicant:* International Paper Company.

e. *Name of Project:* Woronoco Hydroelectric Project.

f. *Location:* On the Westfield River in the Town of Russell, Hampden County, Massachusetts. No federal lands are affected by the proposed project.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:*

Ted Lewellyn, P.E., International Paper Company, Paper Mill Road, Millers Falls, MA 01349, (413) 659–2337

Michael K. Chapman, Esq., International Paper Company, 6400 Poplar Avenue, Memphis, TN 38197, (901) 763–5888

Jon Christensen, Kleinschmidt Associates, 75 Main Street, Pittsfield, ME 04967, (207) 487–3328

i. *FERC Contact:* Allan Creamer, (202) 219–0365, allan.creamer@ferc.fed.us.

j. *Deadline for Comments, Recommendations, Terms and Conditions, and Prescriptions:* 60 days from the issuance of this notice.

*All documents (original and eight copies) should be filed with:* David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Protests, comments on filings, comments on environmental assessments and environmental impact statements, and reply comments may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

k. *Status of Environmental Analysis:* This application has been accepted for filing, and, pursuant to § 4.30(b)(25), is ready for environmental analysis at this time.

l. *Description of Project:* The proposed run-of-river project would consist of the following features: (1) Two non-contiguous dam sections, with lengths of about 307 feet (North dam) and 351 feet (South dam), and a crest elevation of 229 feet NGVD; (2) a 655-foot-long earthen dike with a sheet steel core; (3) a 40-foot-wide by 15-foot-high intake structure, having trashracks with 1.25-inch clear bar spacing; (4) a 550-foot-long penstock; (5) a powerhouse containing three Francis turbines and generating units, having an installed capacity of 2,700 kW; (6) a 43-acre impoundment that extends approximately 1.2 miles upstream; (7) an interim downstream fish passage facility; and (8) appurtenant facilities. The applicant estimates that the total average annual generation would be approximately 7,700 MWh.

m. *Availability of Application:* A copy of the application, as supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. The application may be viewed at http://www.ferc.fed.us/online/rims.htm, or call (202) 208–2222 for assistance. A copy of the application, as supplemented, is also available for inspection and reproduction at International Power Company, Paper Mill Road, Millers Falls, Massachusetts 01349 and through the Town of Russell, Robert P. Drake, Chairman, Board of Selectman, Town of Russell, Russell, Massachusetts 01071

n. *Filing and Service of Responsive Documents*—The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions, or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31862 Filed 12–13–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

December 7, 2000.

a. *Application Type:* Application to Amend License for the Lytle Creek Project.

b. *Project No:* 1932–005.

c. *Dated Filed:* November 9, 2000.

d. *Applicant:* Southern California Edison Company (SCE).

e. *Name of Project:* Lytle Creek Project.

f. *Location:* The project is located on Lytle Creek, a tributary of the Santa Ana River, in San Bernardino County, California. The project utilizes lands of the San Bernardino National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Bryant Danner, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, CA 91770, (626) 302–4459.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 219–3273 or by e-mail at vedula.sarma@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* January 12, 2001.

Please include the project number (1932–005) on any comments or motions filed.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

k. *Description of Filing:* SCE proposes to revise the project boundary by removing a telephone line, caretaker building, and storage building because they are no longer used for project purposes. The proposed modifications reduce the amount of federal lands used by the project by 9.82 acres.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31863 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

December 7, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No:* 11175–008.

c. *Date Filed:* October 30, 2000.

d. *Applicant:* Crown Hydro Company.

e. *Name of Project:* Crown Mill.

f. *Location:* The project is located on the Mississippi River in the City of Minneapolis, Hennepin County, Minnesota. The project occupies 0.5 acres of lands of the United States under the jurisdiction of the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Thomas R. Griffin, 5436 Columbus Avenue South, Minneapolis, Minnesota 55417 (612) 825–1043.

i. *FERC Contact:* Any questions on this notice should be addressed to Dave Snyder at (202) 219–2385.

j. *Deadline for filing comments and or motions:* January 12, 2001.

*All documents (original and eight copies) should be filed with:* David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the Project Number (11175–008) on any comments or motions filed.

k. *Description of Filing:* Crown Hydro requests deletion of article 402 of the license for the Crown Mill Project No. 11175. Article 402 requires Crown Hydro to file for approval a plan to construct a pedestrian walkway and bridge in the project tailrace area and excavate a historic turbine and move it to a public area for viewing. Crown Hydro reports that the state grant (to be equally matched by the license) is no longer available.

l. *Locations of the Application:* A copy of the application for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commissioin's web site at *http://www.ferc.fed.us/efi/doorbell.htm*

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.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–31864 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PL01–1–000]**

### Hydroelectric Licensing Policies, Procedures, and Regulations—Comprehensive Review; Notice of Public Meetings and Requesting Comments and Recommendations

December 8, 2000.

Pursuant to section 603 of the Energy Act of 2000 (Public Law No. 106–469), the Commission is preparing a comprehensive review of policies,

procedures, and regulations for the licensing of hydroelectric projects to determine how to reduce the cost and time of obtaining a license. Section 603 directs the Commission to report its findings to Congress, including any recommendations for legislative changes, by May 8, 2001.

To ensure a comprehensive review, the Commission seeks the comments and recommendations of all stakeholders in the Commission's hydroelectric licensing program, including federal and state agencies, Indian tribes, non-governmental organizations, licensees and other members of the public. In particular, the Commission wishes to receive comments identifying steps in the existing licensing process that may require inordinate time and expense to complete, and the reasons therefor. We also are seeking proposed administrative or legislative solutions to any problem areas identified.

The Commission will conduct public meetings at the following locations to receive comments and recommendations:

| Date | Address |
|---|---|
| Monday, January 8, 2000 | Commission Meeting Room, 2–C, 888 First Street, N.E., Washington D.C., (202) 219–2722. |
| Tuesday, January 9, 2000 | Richard B. Russell Building, Storm Auditorium, 75 Spring Street, Atlanta GA, (404) 562–9404. |
| Wednesday, January 10, 2000 | Ramada Inn, 300 Broadway, Albany, NY, (518) 434–4111. |
| Thursday, January 11, 2000 | Lansing Center, 333 E. Michigan Avenue, Lansing, MI, (517) 483–7400. |
| Wednesday, January 17, 2000 | Holiday Inn Airport, 8439 N.E. Columbia, Portland, OR, (503) 256–5000. |
| Thursday, January 18, 2000 | Vagabond Executive Inn, 2030 Arden Way, Sacramento, CA, (916) 929–5600. |

All meetings will commence at 9:00 A.M. Each public meeting will include a review of the existing licensing process and an opportunity for participants to offer their comments on how it can be improved. The public meetings will be recorded by a stenographer and, thereby, will become a part of the record of the proceeding. Persons making statements will be asked to identify themselves for the record. The speaking time permitted to individuals will be determined at the beginning of each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least ten minutes to present their views.

Persons choosing not to speak but wishing to comment, as well as speakers unable to summarize their positions within the allotted time, may submit written statements for inclusion in the public record.

Written comments may also be mailed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Correspondence should clearly show the following caption on the first page:

Docket No. PL01–1–000

Hydroelectric Licensing Policies, Procedures, and Regulations—Comprehensive Review

In light of the limited amount of time available for submission of the Commission's Report to Congress, commenters are encouraged to provide written comments as early as possible, but not later than February 1, 2001, and to use their time at the public meetings to summarize previously filed written comments or to focus on only the most significant sources of cost and delay in the licensing process from their perspective. Comments may also be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.* Commenters may also send copies of their comments to agencies or other entities of interest.

**FOR FURTHER INFORMATION:** Please contact Edward Abrams at the Commission, 202–219–2773.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–31851 Filed 12–13–00; 8:45 am]

BILLING CODE 6717–01–M

## OFFICE OF NATIONAL DRUG CONTROL POLICY

### Appointment of Members of Senior Executive Services Performance Review Board

**AGENCY:** Office of National Drug Control Policy (ONDCP).

**ACTION:** Notice of appointments.

**SUMMARY:** The following persons have been appointed to the ONDCP Senior Executive Service Performance Review Board: Dr. Albert E. Brandenstein; Henry H. Marsden III, and Daniel Schecter.

**FOR FURTHER INFORMATION CONTACT:** Please direct any questions to Edward H. Jurith, General Counsel (202) 395–6622, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20503.

**Linda V. Priebe,**

*Assistant General Counsel.*

[FR Doc. 00–31790 Filed 12–13–00; 8:45 am]

BILLING CODE 3180–02–P

## EXPORT-IMPORT BANK

### Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank).

**SUMMARY:** The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

*Time and Place*: Wednesday, December 13, 2000, at 9:30 AM to 12:30 PM. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

*Agenda*: This meeting will include a discussion of the end of the year report from the Advisory Committee to Ex-Im Bank.

*Public Participation*: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to November 3, 2000, Nichole Westin, Room 1257, 811 Vermont Avenue, NW, Washington, D.C. 20571, Voice: (202) 565–3542 or TDD (202) 565–3377.

*Further Information*: For further information, contact Nichole Westin, Room 1257, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3542.

**John M. Niehuss,**

*General Counsel.*

[FR Doc. 00–31791 Filed 12–13–00; 8:45 am]

BILLING CODE 6690–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

December 6, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. 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 control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

**Federal Communications Commission**

*OMB Control No.:* 3060–0943.

*Expiration Date:* 12/31/2003.

*Title:* Section 54.809, Carrier Certification.

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 27 respondents; 1.5 hours per response (avg.).; 41 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* Annually; Third Party Disclosure.

*Description:* 47 CFR 54.809 requires each price cap or competitive local exchange carrier (LEC) that wishes to receive universal service support to file an annual certification with the Universal Service Administrative Company (USAC) and the Commission. The certification must state that the carrier will use its interstate access universal service support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The Commission and USAC will use the certifications to ensure that carriers comply with section 254(e) of the Telecommunications Act by using the interstate access universal service support only for the provision, maintenance, and upgrading of facilities and service for which the support is intended. Obligation to respond: Required to obtain or retain benefits.

*OMB Control No.:* 3060–0816.

*Expiration Date:* 11/30/2003.

*Title:* Local Competition and Broadband Reporting, CC Docket No. 99–301.

*Form No.:* FCC Form 477.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 255 respondents; 58.6 hours per response (avg.).; 29,924 total annual burden hours (based on two responses per respondents).

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* Semi-annually.

*Description:* FCC Form 477 seeks to gather information on the development of local competition and deployment of broadband service also known as advanced telecommunications services. The data is necessary to evaluate the status of developing competition in local exchange telecommunications markets and to evaluate the status of broadband deployment. The information will be used by Commission staff to advise the Commission about the efficacy of Commission rules and policies adopted to implement the Telecommunications Act of 1996. Copies of the FCC Form 477, Local Competition and Broadband Reporting Form, can be obtained from the Commission's website at *www.fcc.gov.* Obligation to respond: Mandatory.

*OMB Control No.:* 3060–0790.

*Expiration Date:* 11/30/2003.

*Title:* Section 68.110(c)—Availability of Inside Wiring Information.

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 200 respondents; 1 hour per response (avg.); 1200 total annual burden hours (based on six requests per year).

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion.

*Description:* 47 CFR 68.110(c) requires telephone companies to provide building owners with all available information regarding carrier-installed wiring on the customer's side of the demarcation point, including copies of existing schematic diagrams and service records. The information must be provided to the telephone company upon request of the building owner or agent thereof. The information is needed so that building owners may be able to contract with an installer of their choice for maintenance and installation service, or elect to contract with the telephone company to modify existing wiring or assist with the installation of additional inside wiring. Obligation to respond: Required to obtain or retain benefits.

*OMB Control No.:* 3060–0933.

*Expiration Date:* 11/30/2003.

*Title:* Community Broadband Deployment Database Reporting Form.

*Form No.:* FCC Form 460.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 150 respondents; .25 hours per response (avg.); 37 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion.

*Description:* Pursuant to section 410(b) of the Communications Act of 1934, as amended, on October 8, 1999, the FCC convened a Federal-State Joint Conference on Advanced Telecommunications Services to provide a forum for cooperative dialogue and information exchange between and among state and federal jurisdictions regarding the deployment of advanced telecommunications services. As part of this ongoing effort, a searchable on-line database of community broadband demand aggregation and deployment effort has been established. The information will enable the Commission to better assess the availability of broadband services so that it can better satisfy its duty to encourage the deployment of advanced telecommunications capability as Congress directed the Commission to do in Section 706 of the Telecommunications Act of 1996. Obligation to respond: Voluntary.

*OMB Control No.:* 3060–0964.

*Expiration Date:* 05/31/2001.

*Title:* Certification for Waiver of September 30, 2000 Deadline.

*Form No.:* N/A.

*Respondents:* Not-for-profit institution; Business or other for-profit.

*Estimated Annual Burden:* 250 respondents; .50 hours per response (avg.); 125 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion.

*Description:* The Commission extended the September 30, 2000 deadline for certain applicants under the schools and libraries universal service support mechanism for implementation of non-recurring services whose year two funding commitment letters were issued by the Universal Service Administrative Company on or after April 4, 2000, who received service provider change authorizations or service substitution authorizations from USAC on or after April 4, 2000, whose service provider's control, or who have had their funding disbursements delayed while USAC investigates their application for program compliance until September 30, 2001. To the extent an applicant has not met the September 30, 2000 deadline because its service provider has been unable, due to circumstances beyond the service provider's control, to complete delivery of non-recurring

services prior to the deadline, the applicant shall also receive an extension of the deadline until September 30, 2001. The applicant must have submitted documentation to USAC prior to the expiration of the September 30, 2000 deadline requesting relief on the grounds that its service provider was unable to deliver the services due to events beyond the service provider's control, such as labor walk-outs or natural disasters. In addition, an applicant may also qualify for an extension of the September 30, 2000 deadline to September 30, 2001, if the applicant has certified to USAC that its service provider was unwilling to deliver or install non-recurring services before the expiration of the September 30, 2000 deadline, because USAC had withheld payment for those services on a properly-submitted invoice for more than 60 days after the submission of the invoice. If an applicant believes it qualifies for relief under this second scenario, but has not yet certified to USAC that its service provider has been unwilling to implement non-recurring services due to the withholding of payments on its invoices, the applicant shall have sixty (60) days from the release date of CC Docket No. 96–45 (DA No. 00–2444, released 11/1/2000) to make such certification to USAC.

The Commission will use the information collected to determine whether schools and libraries applicants qualify for extensions of the September 30, 2000 deadline for implementation of non-recurring services. Obligation to respond: Required to obtain or retain benefits.

*OMB Control No.:* 3060–0791.

*Expiration Date:* 11/30/2003.

*Title:* Accounting for Judgments and Other Costs Associated with Litigation, CC Docket No. 93–240.

*Form No.:* N/A.

*Respondents:* Business or other for-profit.

*Estimated Annual Burden:* 1 respondents; 36 hours per response (avg.); 36 total annual burden hours.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion.

*Description:* In CC Docket No. 93–240, the Commission considered the issue of the accounting rules and ratemaking policies that should apply to litigation costs incurred by carriers subject to 47 CFR part 32. The Commission concluded that there should be special rules to govern the accounting treatment of federal antitrust judgements and settlements, in excess of the avoided costs of litigation, but not for litigation expenses. The Commission further concluded that these special rules should not apply to costs arising in other kinds of litigation. A carrier must make a showing to receive recognition of its avoided costs of litigation. The information will be used to determine the justness and reasonableness of the rates. Obligation to respond: Required to obtain or retain benefits.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–31888 Filed 12–13–00; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 2:00 p.m. on Monday, December 11, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), the Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: December 11, 2000.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 00–31968 Filed 12–12–00; 4:06 pm]

BILLING CODE 6714–01–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Open Meeting, Board of Visitors for the Emergency Management Institute

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, FEMA announces the following committee meeting:

**NAME:** Board of Visitors for the Emergency Management Institute.

**DATES OF MEETING:** January 9–10, 2001.

**PLACE:** Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Room 408, Emmitsburg, Maryland 21727.

**TIME:** Tuesday, January 9, 2001, 8:30 a.m.–5 p.m., Wednesday, January 10, 2001, 8:30 a.m.–12 p.m.

**PROPOSED AGENDA:** Status reports on training in response and recovery, planning, mitigation, and simulation and exercises; informal working sessions regarding EMI activities; expansion of the Independent Study program and EMI's Higher Education Program.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public with approximately 10 seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1286.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the Superintendent, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: November 30, 2000.

**Kay C. Goss,**

*Associate Director for Preparedness, Training and Exercises.*

[FR Doc. 00–31901 Filed 12–13–00; 8:45 am]

BILLING CODE 6718–06–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

## Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice lists federal financial assistance administered by FEMA that is covered by Title IX of the Education Amendments of 1972. Title IX prohibits recipients of federal financial assistance from discriminating on the basis of sex in education programs or activities.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Director, Office of Equal Rights, Federal Emergency Management Agency, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646–4122, (email) pauline.campbell@fema.gov.

**SUPPLEMENTARY INFORMATION:** Title IX of the Education Amendments of 1972, 28 U.S.C. 1681–1688, prohibits recipients of federal financial assistance from discriminating on the basis of sex in educational programs or activities. Specifically, the statute states that ''[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any education program or activity receiving Federal financial assistance,'' with specific exceptions for various entities, programs, and activities. 20 U.S.C. 1681(a).

Twenty-one (21) federal agencies, including FEMA, published the final common rule for the enforcement of Title IX in the **Federal Register** on August 30, 2000, 65 FR 52857 to 52895. FEMA's portion of the final common rule will be codified at 44 CFR Part 19. Both Title IX of the Education Amendments and the Title IX common rule prohibit discrimination on the basis of sex in the operation of, and the provision or denial of benefits by, education programs or activities conducted not only by educational institutions but also by other entities, including, law enforcement agencies, and for-profit and nonprofit organizations.

Subpart F of the Title IX common rule requires each federal agency that awards federal financial assistance to publish in the **Federal Register** a notice of the federal financial assistance covered by the Title IX regulations within sixty (60) days after the effective date of the final common rule. In accordance with Subpart F, FEMA publishes the following:

### List of Federal Financial Assistance Administered by the Federal Emergency Management Agency to Which Title IX Applies

**Note:** All recipients of federal financial assistance from FEMA are subject to Title IX, but Title IX limits its anti-discrimination prohibitions to the educational components of the recipient's program or activity, if any.

If Title IX is otherwise applicable, failure to list a type of federal assistance below does not mean that Title IX does not cover a program or activity.

The following types of federal financial assistance were derived from the Catalog of Federal Domestic Assistance (CFDA).

1. U.S. Fire Administration Assistance Provided By

*National Fire Academy Educational Program* including training to increase the professional level of the fire service and others responsible for fire prevention and control. (Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. 2201 *et seq*).

*National Fire Academy Training Assistance* in the form of travel stipends to students attending Academy courses. (Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. 2201 *et seq*).

*First Responder Counter-Terrorism Training Assistance* including training and grants to enhance the capabilities of first responders in managing the consequences of terrorist acts. (Omnibus Consolidated Appropriations Act of 1997, Pub. L. 104–208).

2. Office of Financial Management Assistance Provided By

*Emergency Management Performance Grants* including training to encourage the development of comprehensive emergency management, including for terrorism consequence management, at the State and local level and to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. (Department of Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act of 2000, Pub.L. 106–74; Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, Title II, section 201(d) 42 U.S.C. 5131(d); Title VI, sections 611 and 613, 42 U.S.C. 5196 and 5196b; and the Omnibus Consolidated Appropriations Act of 1997, Pub.L. 104–208).

3. Preparedness, Training and Exercises Directorate Assistance Provided By

*Emergency Management Institute (EMI): Resident Educational Program* including training to improve emergency management practices among State and local government managers, and Federal officials, in response to emergencies and disasters. (Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; National Security Act of 1947, 50 U.S.C. 401 *et seq.*; Defense Production Act of 1950, 50 U.S.C. App. 2061 *et seq.*; Earthquake Hazards Reduction Act of 1977, 42 U.S.C. 7701 *et seq.*).

*EMI: Training Assistance/Student Stipend Reimbursement Program (SEP)* to defray travel and per diem expenses of State and local emergency management personnel who attend training courses conducted by EMI. (Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; National Security Act of 1947, 50 U.S.C. 401 *et seq.*; Defense Production Act of 1950, 50 U.S.C. App. 2061 *et seq.*; Earthquake Hazards Reduction Act of 1977, 42 U.S.C. 7701 *et seq.*).

*Hazardous Materials Training Program for Implementation of the Superfund Amendment and Reauthorization Act (SARA) of 1986/ SARA Title III Training Program,* which makes funding available to provide training in support of tribal governments emergency planning, preparedness, mitigation, response, and recovery capabilities, with special emphasis on emergencies associated with hazardous chemicals. (Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as further amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986, 42 U.S.C. 9615 et seq.

*EMI: Independent Study Program* training to enhance public and selected audience knowledge of emergency management practices among State and local government managers in response to emergencies and disasters. The program currently consists of 21 courses. (Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; National Security Act of 1947, 50 U.S.C. 401 *et seq.*; Defense Production Act of 1950, 50 U.S.C. App. 2061 *et seq.*; Earthquake Hazards Reduction Act of 1977, 42 U.S.C. 7701 *et seq.*).

Further information on FEMA federal financial assistance can be found by consulting the Catalog of Domestic Financial Assistance (CFDA) at *http://www.cfda.gov.* If using the Internet site, please select ''Search the Catalog,'' select; ''Browse the Catalog—By Agency,'' and then click on ''The Federal Emergency Management Agency.'' Catalog information is also available by calling, toll free, 1–800–699–8331 or by writing to: Federal Domestic Assistance Catalog Staff (MVS), General Services Administration, Reporters Building, room 101, 300–7th Street, SW., Washington, DC 20407.

Dated: December 6, 2000.

**Pauline C. Campbell,**

*Director, Office of Equal Rights.*

[FR Doc. 00–31902 Filed 12–13–00; 8:45 am]

BILLING CODE 6718–01–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.:* 011737.

*Title:* The MCA Agreement.

*Parties:* Crowley Liner Services, Inc., Inchcape Shipping Services, Inc., Linea Maritima Mexicana S.A. De C.V., Lykes Lines Limited, LLC, Tecmarine Lines, Inc., and Transportacion Maritima Grancolombiana, S.A.

*Synopsis:* The proposed agreement authorizes the parties to discuss and share credit and collection information. The agreement does not permit the parties to act concertedly, or establish common credit rules, credit policy or terms, rates or agreements on conditions under which credit is granted or not granted.

By Order of the Federal Maritime Commission.

Dated: December 8, 2000.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–31763 Filed 12–13–00; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

**Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants**

YEZ Shipping Co., Ltd., 199–34 34th Avenue, Bayside, NY 11358, Officers: Angela M. Lazzara, President, (Qualifying Individual), Kathie Chu, Operations Manager

Celestial International Freight, Inc., 2300 E. Higgins Road, Suite #224, Elk Grove Village, IL 60007, Officers: Marilou Pedres, Managing Director/CEO, (Qualifying Individual), Herme G. Pedres, President

Next Day Cargo, Inc., 8805 N.W. 35th Lane, Miami, FL 33172, Officer: Andy Abreu, President, (Qualifying Individual)

Tignes Inc., 7088 N.W. 50th Street, Miami, FL 33166, Officer: Sergio Lemme, President, (Qualifying Individual)

Sky Way Shipping Inc., 357 E. Mooney Drive, Monterey Park, CA 91755, Officer: Zai He (David), Li, President

**Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants**

IS America, LLC, 30 Vessey Street, 10th Floor, New York, NY 10007, Officers: Edward S. Simioni, Operating Manager, (Qualifying Individual), Pietro Vavasson, Secretary

Transtar Express, Inc., 405 Victory Avenue, Suite D, South San Francisco, CA 94080, Officers: Catherine K. Tse, CEO, Alix K. Co, Secretary, (Qualifying Individuals)

Daily Freight Cargo, Corp., 8426 N.W. 70th Street, Miami, FL 33166, Officers: Pedro David Esteller Rangel, President, (Qualifying Individual), Teresa De Vincenzo, Vice President

**Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant**

Freight Logistics Services, LLC, 300 Elliott Avenue West, Suite 315, Seattle, WA 98119, Officer: Kathy L. Reeves, General Manager, (Qualifying Individual)

Dated: December 8, 2000.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–31764 Filed 12–13–00; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 2000.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. Citizens Union Bancorp of Shelbyville, Inc.,* Shelbyville, Kentucky; to acquire 100 percent of the voting

shares of Dupont State Bank, Dupont, Indiana.

Board of Governors of the Federal Reserve System, December 8, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–31789 Filed 12–13–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 28, 2000.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. BB&T Bancshares,* Bloomingdale, Illinois; to engage in the nonbanking activity of extending credit and servicing loans pursuant to section 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 8, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–31788 Filed 12–13–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL TRADE COMMISSION

**[File No. 002 3025]**

### WFS Enterprises, Inc. d/b/a The Cash Nursery, et al.; Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before December 29, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Karen Leonard, FTC/H–238, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3597.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to case and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained form the FTC Home Page (for October 31, 2000), on the World Wide Web, at ''http://www.ftc.gov/opa/2000/10/topten.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

#### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from W.F.S. Enterprises, Inc., a corporation, doing business as The Cash Nursery, and Rabb Sabin and Arthur Smith, individually and as officers of the corporation (together, ''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the commission will again review the agreement and and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents sell a training program on the Internet for the daily buying and selling of stock and commodity options (also known as ''day trading''). They advertise on their Internet Web site. *www.thecashnursery.com.* This matter concerns allegedly deceptive representations of the earnings and profit potential, as well as the extent or risk involved in using respondents' trading methods.

The Commission's proposed complaint alleges that respondents made unsubstantiated claims that users of respondents' options trading program could reasonably expect to earn large profits, as much as seven figures annually (*i.e.,* more than $1,000,000); that users could reasonably expect consistent investment returns of 100% to 500% on their trades; and that testimonials appearing in the advertisements for respondents' options trading program reflected the typical or ordinary experience of members of the public who use the program. In addition, the complaint alleges that respondents misrepresented that users of their options trading program could reasonably expect to trade with little financial risk.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have a reasonable basis substantiating any representation that users of respondents' currency trading program can reasonably expect to earn

large profits: (1) That users of Respondents' commodity and stock option trading program can reasonably expect to earn large profits, or as much as six figures annually; (2) that users of Respondents' commodity and stock option trading program can reasonably expect consistent investment returns of 100% to 500% on their trades; and (3) that users of Respondents' commodity and stock option trading program can reasonably expect 90% or more of their trades to yield returns of 100% or better. Part I also requires respondents to possess a reasonable basis substantiating claims about the amount of earnings, income, or profit that a prospective user of any trading program could reasonably expect to attain, or about any financial benefit or other benefit from any trading program offered by respondents.

Part II of the proposed order prohibits respondents from misrepresenting that users of any trading program can reasonably expect to trade with little or no financial risk and from misrepresenting the extent of risk to which users of any such program are exposed.

Part III of the proposed order requires respondents to disclose, clearly and conspicuously, ''Stock, commodity futures, and stock or commodity options trading involve HIGH RISKS and YOU can LOSE a lot of money,'' in close proximity to any representation that make about the financial benefits of any trading program. This disclosure is in addition to, and not instead of, any other disclosure that respondents may be required to make.

Part IV of the proposed order prohibits respondents from representing without a reasonable basis that the experience represented by any user, testimonial or endorsement of any trading program represents the typical or ordinary experience of members of the public who use the program; or respondents must disclosure either what the generally expected results would be for users of the trading program, or the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

Parts V and VI of the proposed order require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements and to provide copies of the order to certain personnel. Part VII requires W.F.S. Enterprises, Inc. to notify the Commission of any changes in the corporate structure that might affect compliance with the order. Parts VIII and IX require that individual respondents Rabb Sabin and Arthur Smith, respectively, to notify the commission of changes in their employment status for a period of ten years. Part X requires W.F.S. Enterprises, Inc. to file compliance reports with the Commission. Part XI provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–31777 Filed 12–13–00; 8:45 am]

BILLING CODE 6750–01–M

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## FEDERAL TRADE COMMISSION

**[File No. 002 3024]**

## R.S. of Houston Workshop, et al.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before December 29, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Peter Lamberton, FTC/H–238, 600 Pennsylvania Ave., NW., Washington, DC 20580. (202) 326–3274.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 31, 2000), on the World Wide Web, at ''http://www.ftc.gov/opa/2000/10/topten.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from R.S. of Houston Workshop, a company, and Ronald J. Schoemmell and Valdimar Thorkelsson, fifty percent owners and principals of the company, individually and as officers of the company (together, ''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents sell a training program for a trading method on the Internet for the daily buying and selling of stocks (also known as ''day trading''). They advertise on their Internet Web site, *www.rsofhouston.com.* This matter concerns allegedly deceptive representations of the earnings and profit potential, as well as the extent of risk involved in using respondents' trading programs and trading methods.

The Commissions' proposed complaint alleges that respondents made unsubstantiated claims that users of respondents' trading programs and trading methods could reasonably expect to earn large profits, as much as six figures annually (*i.e.,* more than $182,000); that users of respondents'

trading programs and trading methods could reasonably expect consistent investment returns of $2,500 to $3,500 per week; that users of respondents' trading programs and trading methods could reasonably expect to succeed at day trading for a lifetime of profitable and enjoyable trading; and that testimonials appearing in the advertisements for respondents' trading programs and trading methods reflected the typical or ordinary experience of members of the public who use the program. In addition, the complaint alleges that respondents misrepresented that users of respondents' trading programs and trading methods could trade in volatile markets with LOW RISK.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have a reasonable basis substantiating any representation that users of respondents' day trading program can reasonably expect to earn large profits: (1) That users of respondents' trading program or trading method can reasonably expect to earn large profits, or as much as $2,000 to $5,000 per day on some days; (2) that users of respondents' trading program or trading method can reasonably expect to earn profits of $500 to $750 or more per day; (3) that users of respondents' trading program or trading method can reasonably expect to approach trading as a business and earn a consistent living from the markets; and (4) that users of respondents' trading program or trading method can reasonably expect to trade in volatile markets with low risk. Part I also requires respondents to possess a reasonable basis substantiating claims about the amount of earnings, income, or profit that a prospective user of any trading program or trading method could reasonably expect to attain, or about any financial benefit or other benefit from the purchase or use of any such trading program or trading method.

Part II of the proposed order prohibits respondents from misrepresenting that users of any trading program can reasonably expect to trade with little or no financial risk and from misrepresenting the extent of risk to which users of any such program are exposed.

Part III of the proposed order requires respondents to disclose, clearly and conspicuously, ''DAYTRADING involves HIGH RISKS and YOU can LOSE a lot of money.'' in close proximity to any representation they make about the financial benefits of any trading program. This disclosure is in addition to, and not instead of, any other disclosure that respondents may be required to make.

Part IV of the proposed order prohibits respondents from representing without a reasonable basis that the experience represented by any user, testimonial or endorsement of any trading program represents the typical or ordinary experience of members of the public who use the program; or respondents must disclose either what the generally expected results would be for users of the trading program, or the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

Parts V and VI of the proposed order require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements and to provide copies of the order to certain personnel. Part VII requires R.S. of Houston Workshop to notify the Commission of any changes in the corporate structure that might affect compliance with the order. Parts VIII and IX require that individual respondents Ronald J. Schoemmell and Valdimar Thorkelsson, respectively, to notify the Commission of changes in their employment status for a period of seven years. Part X requires respondents to file compliance reports with the Commission. Part XI provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–31778 Filed 12–13–00; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request Drug Accountability Form and Drug Transfer Form

**SUMMARY:** In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for public comment on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**Proposed Collection**

*Title:* Drug Accountability Form and Drug Transfer Form.

*Type of Information Collection Request:* Revision. (OMB No. 0925–0240, expires 4/30/2002).

*Need and use of Information Collection:* The regulations of the Food and Drug Administration (FDA) require investigators to establish a record of the receipt, use, and disposition of all investigational agents. The National Cancer Institute (NCI), as a sponsor of investigational drug trials, has the responsibility for assuring to the FDA that systems for drug accountability are being maintained by investigators in its clinical trials program. In order to fulfill these requirements, we have developed a standardized investigational Drug Accountability Report Form (NIH 2564) designed to account for drug inventories and usage by protocol. The Transfer Investigational Drug Form (NIH–2564–1) permits intra-institutional transfer of agents to NCI approved protocols for use by the investigator or other NCI registered investigators on approved protocols. The data obtained from the drug accountability record is used to track the dispensing of investigational anticancer drugs from receipt from NCI to dispensing or administration to patients. NCI uses the accountability data to ensure that investigational drug supplies are not diverted for inappropriate protocol or patient use. The drug accountability information is used to validate patient protocol reporting forms during site audits conducted at each of the Cooperative Groups. The intent is to ensure the investigational agents are used according to protocol guidelines and to ensure the patient's safety and protection.

*Frequency of response:* Daily.

*Affected public:* State or local governments, businesses or other for profit, Federal agencies or employees, non-profit institutions, and small business or organizations. *Types of Respondents:* Investigators and their designees, pharmacists, nurses, pharmacy technicians, data managers. The annual reporting burden is divided into two major areas. These are the audits of Drug Accountability Forms by Government and its contractors and the use of the forms by clinical research sites. The burden is as follows: The annualized respondents' burden for record keeping is estimated to require 3,648 hours for drug accountability and

120 hours for drug transfer. The reporting burden is the average time (4 minutes or 0.1 hours) required to complete the transfer investigational drug form multiplied by the number of forms completed annually. The record keeping burden represents an average time required for multiple entries (4 minutes or 0.1 hour per entry) on the drug accountability form, the average number of forms maintained by each record keeper and the number of record keepers. These estimates are based on the items shipped by the PMB and the number of transfer approvals in the calendar year 1999.

| Type of respondents | Est. number of respondents | Est. number of responses-respondents | Ave. burden hrs per response | Ave. burden hours | Est. total annual burden hours requested |
|---|---|---|---|---|---|
| Drug Transfer Form | 1,200 | 1 | 0.1 | 120 | 120 |
| Drug Accountability Form | 4,560 | 8 | 0.1 | 3,648 | 3,648 |
| Total | 5,760 | | | | 3,768 |

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

**Request for Comments**

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Carl Huntley, Head Drug Management and Authorization Section, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, Division of Cancer Therapy and Diagnosis, National Cancer Institute, Executive Plaza North, Room 7112, 9000 Rockville Pike, Bethesda, Maryland 20892. Or call non-toll-free number 301–496–5725 or e-mail your request, include your address to *HuntleyC&ctep.nci.nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received on or before February 12, 2001.

Dated: December 5, 2000.

**Reesa Nichols,**

*NCI Project Clearance Liaison.*

[FR Doc. 00–31829 Filed 12–13–00; 8:45 am]

**BILLING CODE 4140–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request; Tobacco Use Supplement to the 2001–2002 Current Population Survey

**SUMMARY:** In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**Proposed Collection**

*Title:* Tobacco Use Supplement to the 2001–2002 Current Population Survey.

*Type of information request:* REVISION, OMB No. 0925–0368, Expiration 01/31/2003.

*Need and Use of Information Collection:* The 2001–2002 Tobacco Use Supplement to the Current Population Survey conducted by the Bureau of the Census will collect data from the civilian non-institutionalized population on tobacco use and smoking prevalence, workplace smoking policies, medical and dental advice to stop smoking, and changes in smoking norms and attitudes. This survey will provide invaluable information to government agencies, other scientists and the general public necessary for tobacco control surveillance and research, as well as measure progress toward tobacco control as part of the National Cancer Institute's Extraordinary Opportunities in Tobacco Research. This survey is part of a continuing series of surveys that were sponsored by NCI and fielded periodically over the 1990's by the Census Bureau as part of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) project and made available for general public use. The Tobacco Use Supplements will be continuing over the next decade alternating between a standard or core tobacco use survey (such as the 2001–2002 survey) and a special topic survey focusing on emerging adult tobacco control issues. The survey will allow state specific estimates to be made. Data will be collected in June 2001, November 2001 and February 2002 from approximately 293,000 respondents. The National Cancer Institute is co-sponsoring this survey with the Centers for Disease Control and Prevention.

*Frequency of Response:* One-time study.

*Affected Public:* Individuals or households.

*Type of respondents:* Persons 15 years of age or older.

The total annual reporting burden is as follows:

*Estimated Number of Respondents:* 97,666;

*Estimated Number of Responses per Respondent:* 1;

*Average Burden Hours per Response:* 0.1169; and

*Estimated Total Annual Burden Hours Requested:* 11,417.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

**Request for Comments**

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of

the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Anne Hartman, Health Statistician, National Cancer Institute, Executive Plaza North, Suite 4005, Bethesda, Maryland 28092–7344, or call non-toll free (301) 496–4970, or FAX your request, to (301) 435–3710, or E-mail your request, including your address, to *ah42t@nih.gov* or Anne_Hartman@nih.gov.

*Comments Due Date:* Comments regarding this information collection are best assured of having their effect if received on or before February 12, 2001.

Dated: December 5, 2000.

**Reesa Nichols,**

*NCI Project Clearance Liaison.*

[FR Doc. 00–31830 Filed 12–13–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute, Submission for OMB Review; Comment Request; The Atherosclerosis Risk in Communities Study (ARIC)

**SUMMARY:** Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval the information collection listed below. This proposed information collection was previously published in the **Federal Register** on August 22, 2000, pages 50999–51000, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Proposed Collection**

*Title:* The Atherosclerosis Risk in Communities Study (ARIC).

*Type of Information Collection Request:* Revision of a currently approved collection (OMB No. 0925–0281).

*Need and Use of Information Collection:* This project involves annual follow-up by telephone of participants in the ARIC study, review of their medical records, and interviews with doctors and family to identify disease occurrence. Interviewers will contact doctors and hospitals to ascertain participants' cardiovascular events. Information gathered will be used to further describe the risk factors, occurrence rates, and consequences of cardiovascular disease in middle aged and older men and women.

*Frequency of Response:* The participants will be contacted annually.

*Affected Public:* Individuals or households; Businesses or other for profit; Small Businesses or Organizations.

*Type of Respondents:* Middle aged and elderly adults; doctors and staff of hospitals and nursing homes. The annual reporting burden is as follows:

*Estimated Number of Respondents:* 15,113;

*Estimated Number of Responses per Respondent:* 1.0;

*Average Burden Hours Per Response:* 0.2479; and

*Estimated Total Annual Burden Hours Requested;* 3,746.

The annualized cost to respondents is estimated at $41,453, assuming respondents' time at the rate of $10 per hour for family and patient respondents, and $75 per hour for physicians. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF ANNUAL HOUR BURDEN

| Type of response | Number of respondents | Frequency of response | Average time per response | Annual hour burden |
|---|---|---|---|---|
| Participant follow-up | 14,448 | 1.0 | 0.2500 | 3,622 |
| Physician, hospital, nursing home staff [1] | 245 | 1.0 | 0.2500 | 61 |
| Participant's next-of-kin [1] | 380 | 1.0 | 0.1667 | 63 |
| Total | 15,113 | 1.0 | 0.2479 | 3,746 |

[1] Annual burden is placed on doctors, hospitals, nursing homes, and respondent relatives/informants through requests for information which will help in the compilation of the number of new fatal and nonfatal events.

**Request for Comments**

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Direct Comments to OMB**

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more

information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. A. Richey Sharrett, Project Officer, NIH, NHLBI, 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892–7934, or call non-toll-free number (301) 435–0448 or E-mail your request, including your address to: SharretR@nhlbi.nih.gov.

**Comments Due Date**

Comments regarding this information collection are best assured of having their full effect if received on or before January 16, 2001.

Dated: December 4, 2000.

**Peter Savage,**

*Acting Director, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute.*

[FR Doc. 00–31831 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7 J4.

*Date:* January 5, 2001.

*Time:* 3 pm. to 4:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NIDDK/DEA/Review Branch, 2 Democracy Boulevard, 6707 Democracy Boulevard, MSC 5452, Room 659, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Lakshmanan Sankaran, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 659, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 7, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–31822 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Special Emphasis Panel Chromosome Rearrangements and Mental Retardation.

*Date:* December 18, 2000.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 6100 Executive Blvd. 5th Floor, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Norman Chang, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: December 5, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–31823 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* December 14, 2000.

*Time:* 3 pm to 4:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Mary Sue Krause, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 6, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–31826 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel.

*Date:* December 11–13, 2000.

*Time:* 7 pm to 12:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Loews Giorgio Hotel, 4150 East Mississippi Avenue, Denver, CO 80246.

*Contact Person:* Carole H. Latker, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2848.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: December 6, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–31828 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Library of Medicine Special Emphasis Panel, Analysis of the Function Impact of Coding Regions SNP's.

*Date:* December 21, 2000.

*Time:* 11 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Milton Corn, Associate Director, Office of Extramural Programs, National Library of Medicine, National Institutes of Health, One Rockledge Centre, Suite 301, 6705 Rockledge Drive, MSC 6075, Bethesda, MD 20892–6075, 301–496–4621.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 6, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–31827 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* December 6, 2000.

*Time:* 10 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Quality Hotel, Courthouse Plaza, 1200 North Courthouse Road, Arlington, VA 22201.

*Contact Person:* J. Terrell Hoffeld, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* December 6, 2000.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892, (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* December 12, 2000.

*Time:* 10 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* David J. Remondini, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210 MSC 7890, Bethesda, MD 20892, 301–435–1038, remondid@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* December 12, 2000.

*Time:* 11 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Angela M. Pattatucci-Aragon, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, (301) 435–1775.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* December 12, 2000.

*Time:* 1 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Jean Hickman, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* December 14, 2000.

*Time:* 10 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Michael Micklin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–435–1258; micklinm@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* December 15, 2000.

*Time:* 11 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, Georgetown, DC 20007.

*Contact Person:* Jeanne N. Ketley, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, 301–435–1789.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* December 18, 2000.

*Time:* 11 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Samuel Rawlings, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7844, Bethesda, MD 20892, 301–435–1243.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* December 18, 2000.

*Time:* 1:30 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* December 19, 2000.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Marcia Litwack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, 301–435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* December 20, 2000.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Joseph Kimm, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301–435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 5, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–31824 Filed 12–13–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* December 11, 2000.

*Time:* 11 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Harold M. Davidson, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, 301/435–1776, davidsoh@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* December 11, 2000.

*Time:* 4 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Nancy Shinowara, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, 301/435–1173, shinowan@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* December 14, 2000.

*Time:* 4 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Nancy Shinowara, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, 301/435–1173, shinowan@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* December 22, 2000.

*Time:* 3:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Anita Miller Sostek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301/435–1260.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892–93.893, National Institutes of Health, HHS)

Dated: December 6, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–31825 Filed 12–13–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4639–N–01]**

## Notice of HUD-Held Multifamily and Healthcare Loan Sale; 2000–1 Sale

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice of sale of mortgage loans.

**SUMMARY:** This notice announces the Department's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed-bid sale. This notice also describes generally the bidding process to be used in the Multifamily Healthcare Loan Sale 2000–1 (Sale).

**DATES:** Bid Packages are currently available. It is anticipated that HUD will be accepting bids for the loans in the Sale on December 19, 2000.

**ADDRESSES:** To become a Qualified Bidder and receive a Bid Package, prospective bidders must submit a completed Confidentiality Agreement and Qualification Statement. Both documents are available on the FHA Multifamily and Healthcare Loan Sale Page at: www.hud.gov/fha/comp/asset/mfam/mhls.html. The executed Confidentiality Agreement and Qualification Statement must be mailed and faxed to: Secured Capital Corp, 11150 Santa Monica Blvd., Suite 1400, Los Angeles, CA 90025, ATTN: R. Mark Williams, FHA MHLS 2000–1, Facsimile: 310–477–3436. Prospective bidders may make special arrangements to receive the Bid Package and other bid materials through expedited delivery by calling Secured Capital Corp at 310–477–9600.

The Due Diligence Facility is scheduled to be open from November 6, 2000, through December 17, 2000. Qualified Bidders will be able to review the imaged copies of the loan files and other information, to the extent available (Due Diligence Investor Package and Asset Review Files) via computer workstations at the Due Diligence Facility. Qualified Bidders are required to schedule an appointment and post a refundable $500 deposit before they may visit the facility. Appointments may be scheduled by contacting Daniel H. Lisser at (212) 319–8600 of Secured Capital Corp. Imaged copies of the Due Diligence Investor Package and Asset Review Files on CDs will also be available for purchase by Qualified Bidders in the manner described in the Bid Package.

**FOR FURTHER INFORMATION CONTACT:** Office of the Housing-FHA Comptroller, Asset Sales Office, Room 6266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2625.

**SUPPLEMENTARY INFORMATION:** The Department announces its intention to sell in the Sale certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. A final listing of the specific Mortgage Loans included in the Sale will be contained in a supplement to the Bid Package. The Mortgage Loans will be sold without FHA insurance. The Department will offer Qualified Bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans have been pooled for bidding purposes into 27 Mortgage Loan Pools. Each Mortgage Loan Pool contains Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified Bidders will be permitted to submit bids for any one or more of the individual Mortgage Loans and any one or more pools of Mortgage Loans. Bidders will be permitted to submit all-or-none pool bids and will also be permitted to establish floors (minimums) and a ceiling (a maximum) with respect to pool bids. The Department will evaluate the bids submitted and use its sole discretion to determine successful bids.

### The Bidding Process

The Department will describe in detail the procedure for participating in the Sale in a Bid Package, which will include a standardized nonnegotiable loan sale agreement (Loan Sale Agreement), as well as certain information concerning each of the Mortgage Loans, such as the unpaid principal balance and interest rate. Bid Packages are currently available. Qualified Bidders may receive a Bid Package by contacting Secured Capital as specified in the **ADDRESSES** section, above, of this notice. Qualified Bidders will be required to submit a deposit at the time of bidding as detailed in the Bid Package. HUD anticipates that closings will be held during the first two weeks of January 2001. If a successful bidder fails to close in accordance with the terms of the Loan Sale Agreement, the Department shall be entitled to retain as liquidated damages the deposit received from such bidder.

TO ENSURE A COMPETITIVE BIDDING PROCESS, THE TERMS OF SALE ARE NOT SUBJECT TO NEGOTIATION.

### Due Diligence Facility

During the approximately four-week period prior to the Bid Date, a Due Diligence Facility will be open to Qualified Bidders. At the Due Diligence Facility, the Department will provide access to computer workstations at which Qualified Bidders may view available information about the Mortgage Loans, including environmental and title reports and market data. The Department reserves the right to charge a reasonable fee to recover its costs in duplicating and forwarding any information requested by a Qualified Bidder. Qualified Bidders are required to post a refundable deposit of $500 towards such costs prior to visiting the Due Diligence Facility. Appointments to visit the Due Diligence Facility may be scheduled by contacting Daniel H. Lisser at (212) 319–8600 of Secured Capital Corp.

### Mortgage Sale Policy

The Department reserves the right to remove Mortgage Loans from the Sale at any time prior to the Award Date. The Department also reserves the right, in its sole discretion, and for any reason

whatsoever, to terminate the Sale, in whole or in part, prior to the Award Date and to reject any and all bids, without prejudice to the Department's right to include any Mortgage Loans in a later sale.

The regulations applicable to the sale of the HUD-held multifamily mortgages (Multifamily Mortgage Sale Regulations) (24 CFR 290.30 *et seq.*) were promulgated in consideration of the settlement that the Department entered into in *Walker* v. *Kemp,* No. C 87 2628 (RFP) (N.D. Cal.). In settling the matter, the Department agreed, with regard to specific mortgage loans, to consider, prior to the sale of such mortgage loans, certain factors pertaining to the protection of tenant interests in projects securing subsidized and unsubsidized HUD-held mortgage loans.

This is a sale of unsubsidized mortgage loans. Therefore, the Department has determined that, pursuant to the Multifamily Mortgage Sale Regulations, the Mortgage Loans may be sold without FHA insurance. Consistent with HUD's policy as set forth in 24 CFR 290.35(b), the Department knows of no Mortgage Loan that is delinquent and secures a project (1) for which foreclosure appears unavoidable, and (2) in which reside very low-income tenants who are not receiving housing assistance and who would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the Mortgage Loan (24 CFR 290.35(b)). If the Department determines that any Mortgage Loans meet these criteria, they will be removed from the Sale.

**Mortgage Loan Sale Procedure**

The Department selected a competitive sale as the method to sell the Mortgage Loans primarily to satisfy the Multifamily Mortgage Sale Regulations. These regulations require that, except under certain limited circumstances, HUD-held multifamily mortgage loans must be sold on a competitive basis (24 CFR 290.30). This method of sale optimizes the Department's return on the sale of these Mortgage Loans, affords the greatest opportunity for all Qualified Bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for the Department to dispose of the Mortgage Loans.

**Replacement of Reserve Funds**

Depending upon the Mortgage Loan, amounts in reserve for replacement accounts will, in HUD's discretion, be refunded to the Mortgagor, applied against the Mortgagor's outstanding arrearage, or credited against the amounts due by the Successful Bidder.

**Timely Bids and Deposits**

Each Qualified Bidder assumes all risks of loss relating to its failure to deliver, or cause to be delivered, on a timely basis and in the manner specified by the Department, its bid form, deposit and Loan Sale Agreement required to be submitted by the bidder.

**Ties for High Bidder**

In the event there is a tie for a high bid, the Department, through its transaction specialist, will contact the Qualified Bidders who submitted the tie bids and afford each of them an opportunity to submit a best and final bid. The successful bidder will be the one with the highest bid.

**Status of Mortgage Loans**

The Mortgage Loans contained within the Sale are comprised of performing, subperforming and nonperforming loans.

**Ineligible Bidders**

The following individuals and entities (either alone or in combination with others) are ineligible to bid on any one or combination of the Mortgage Loans included in the Sale:

(1) Any employee of HUD, a member of such employee's household or an entity owned or controlled by any such employee or member of such an employee's household;

(2) Any individual or entity that is debarred from doing business with HUD pursuant to 24 CFR part 24;

(3) Any contractor, subcontractor and/or consultant or adviser (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for, or on behalf of, HUD in connection with the Sale;

(4) Any individual that was a principal, partner, director, agent or employee of any entity or individual described in paragraph (3) above at any time during which the entity or individual performed services for or on behalf of HUD in connection with the Sale;

(5) Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under paragraphs (1) through (4) above, to assist in preparing its bid on any Mortgage Loan(s); and

(6) Any individual or entity that employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in the Sale.

(7) Mortgagors who have not submitted their project's audited financial statements for fiscal years 1998 and 1999.

Furthermore, any entity or individual that served as a loan servicer or performed other services for or on behalf of HUD at any time during the two-year period prior to October 23, 2000 with respect to any Mortgage Loan(s) is ineligible to bid on such Mortgage Loan(s) or provide services to Bidder with respect to such Mortgage Loans during the Warranty Period established for the Sale. The following also are ineligible to bid on such Mortgage Loan(s): (a) Any employee, affiliate or principal of such entity or individual described in the preceding sentence, (b) any contractor, subcontractor or other person or entity which, during that two-year period prior to October 23, 2000, either had access to information concerning or provided any services with respect to any such Mortgage Loan(s) or provided services to such person or entity with respect to such Mortgage Loans, or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan(s).

**Freedom of Information Requests**

The Department reserves the right, in its sole and absolute discretion, to disclose information regarding the Sale, including, but not limited to, the identity of bidders and the bid price or bid percentage, upon the consummation of the Sale. Even if the Department elects not to publicly disclose any information relating to the Sale, the Department will have the right to disclose any information the Department is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

**Scope of Notice**

This notice applies to the Sale, and does not establish the Department's policy for the sale of any other mortgage loans.

Dated: December 8, 2000.

**William C. Apgar,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 00–31807 Filed 12–13–00; 8:45 am]

BILLING CODE 4210–27–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Applications for Permit

**Endangered Species**

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

*Applicant:* University of Wisconsin, Madison, WI, PRT–831689.

The applicant request re-issuance of a permit to import blood and feather samples taken from captive-held and wild-caught Andean condors (*Vultur gryphus*) in South America for the purpose of scientific research. This notification covers activities conducted by the applicant over a five year period.

*Applicant:* Steven E. Kobrine, Potomac, MD, PRT–036841.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife has information collection approval from OMB through February 28, 2001. OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); Fax: (703/358–2281).

Dated: December 11, 2000.

**Anna Barry,**

*Branch of Permits, Division of Management Authority.*

[FR Doc. 00–31905 Filed 12–13–00; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the requirement should be made directly to the Desk Officer for the Interior Department, Office of Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

*Title:* Comprehensive Test Ban Treaty.

*Current OMB approval number:* 1028–0059.

*Abstract:* This information, required by the Comprehensive Test Ban Treaty (CTBT), will provide the CTBT Technical Secretariat with geographic locations of sites where chemical explosions greater than 300 tons TNT-equivalent have occurred. Respondents to the information collection request are U.S. nonfuel minerals producers.

*Bureau form numbers:* 9–4040–A.

*Frequency:* Annual.

*Description of respondents:* Companies that have conducted in the last calendar year, or that potentially will conduct in the next calendar year, explosions with a total charge size of 300 tons of TNT-equivalent, or greater.

*Annual Responses:* 3,000.

*Annual burden hours:* 750.

*Bureau clearance officer:* John Cordyack, 703–648–7313.

**K.W. Mlynarski,**

*Acting Chief Scientist, Minerals Information Team.*

[FR Doc. 00–31772 Filed 12–13–00; 8:45 am]

BILLING CODE 4310–Y7–M

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### Biological Resources Division Request for Public Comments on Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act

The proposal for the information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. the accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:
3. the quality, utility, and clarity of the information to be collected; and
4. how to minimize the burden of the collection of information on those who

are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

*Title:* North American Breeding Bird Survey.

*Current OMB Approval Number:* None.

**SUMMARY:** The North American Breeding Bird Survey (BBS) is a large-scale avian monitoring program used to track the status and trends of North American bird populations. The survey consists of over 4100 road-side routes of which approximately 2500 U.S. routes are sampled annually. Along each route participants record every bird seen or heard during 50, 3-min point counts. This information will be used by scientists and federal, state and local agencies to identify bird populations demonstrating significant declines in order to direct conservation and research efforts towards those populations before their numbers have reached critically low levels. For more information see the web site (*www.mp2-pwrc.usgs.gov/bbs/*).

Participants are provided with detailed survey instructions, a map of the route, a blank survey form, and a postage-paid reply envelope. Once the data are submitted, each participant is provided with a report summarizing the results from their route.

*Estimated Annual Number of Respondents:* 2500.

*Estimated Annual Burden Hours:* 12,500 hours.

*Affected Public:* Primarily U.S. residents.

**FOR FURTHER INFORMATION CONTACT:** To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Dated: December 5, 2000.

**Dennis B. Fenn,**

*Chief Biologist.*

[FR Doc. 00–31894 Filed 12–13–00; 8:45 am]

**BILLING CODE 4310–Y7–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[ID–080–1220–PA]

**AGENCY:** Bureau of Land Management, Upper Columbia-Salmon Clearwater District, Coeur d'Alene Field Office, Idaho.

**ACTION:** Notice of restriction order number ID–086–27 for the Wallace Forest Conservation Area.

**SUMMARY:** By order, the following restrictions apply to the Wallace Forest Conservation Area, described as all public land located in T50N, R2W, Sec 31, T50N, R3W, Sec 35, T49N, R2W, Sec 6 and those portions of T49N, R3W, Sec 1 north of Lake Coeur d'Alene:

(1) Camping by any person or group of persons is prohibited except at the log landing at the terminus of the Landing Road.

(2) Camping as allowed by restriction number one above is limited to a maximum of two nights or 48 hours within any 28-day period. The two night limit my be reached through separate visits or continuous occupation. After the second night of occupation, campers must move outside of a 25-mile radius of the previous location.

(3) No person may leave personal property or supplies unattended for a period of more than 12 hours.

(4) Cutting of personal use firewood is prohibited.

(5) Use of motor vehicles on other than existing country roads is prohibited.

(6) Possession of a loaded firearm is prohibited, except that:

A. Firearms may be legally possessed within a motor vehicle in accordance with the Idaho State Code.

B. Waterfowl hunters may transport unloaded shotguns by the most direct route from either the Yellowstone Trail or the Landing Road for the purpose of hunting waterfowl below the high water mark of Lake Coeur d'Alene within Blue Creek Bay.

The authority for establishing these restrictions is Title 43 Code of Federal Regulations 8364.1 and 8341.2.

These restrictions become effective immediately and shall remain in effect until revoked and/or replaced with supplemental rules.

This Order includes lands previously described under Order ID–060–14, ID–060–19 and ID–080–21; these orders are hereby rescinded.

Definitions

*Camping* is defined as the erecting of a tent or shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking a motor vehicle, motor home or trailer for the apparent purpose of overnight occupancy during any part of the night period from 10 p.m. to 6 a.m.

*Firearms* are defined as pistols, rifles, shotguns or any implement capable of firing a projectile with the use of compressed gas or gunpowder.

The *Log Landing* is defined as the southern end of the Landing Road south of the last unnamed road blocked with a concrete jersey barrier.

These restrictions do not apply to:

(1) Any Federal, State or local law enforcement officer or member of an organized rescue or fire fighting force while engaged in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, contractor or cooperator while engaged in the performance of an official duty.

(3) Any person or group expressly authorized by an Authorized Officer to use or occupy the subject public land through the issuance of a special use permit or other use authorization.

These restrictions are necessary to:

(1) Preclude any individual or group from camping at one location for an extended period, thereby depriving others an opportunity to use the location for recreational purposes.

(2) Protect public land from habitat degradation due to illegal firewood cutting and soil erosion due to off-road vehicle use.

(3) To protect property and families of adjacent homeowners.

Violation of this order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

**FOR FURTHER INFORMATION CONTACT:** Eric Thomson, Coeur d'Alene Field Manager, Bureau of Land Management, 1808 N. Third St., Coeur d'Alene, ID 83814.

Dated: December 7, 2000.

**Ted Graf,**

*Acting District Manager.*

[FR Doc. 00–31906 Filed 12–13–00; 8:45 am]

**BILLING CODE 4310–66–M**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale

**ACTION:** Amendment to proposed notice of sale 178.

The Minerals Management Service made available the proposed Notice of Sale for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 178 in the Central Gulf of Mexico through the Notice of Availability published in the **Federal Register** at 65 FR 71119 on Wednesday, November 29, 2000. This Notice amends the area identified in the proposed Notice of Sale as available for leasing.

On October 18, 2000, the United States Senate gave advice and consent to ratification of the treaty establishing the continental shelf boundary between the United States and Mexico in the area beyond the U.S. Exclusive Economic Zone (EEZ) known as the Western Gap.

On November 28, 2000, the Senate of Mexico also approved the treaty. Given that the two countries will likely exchange instruments of ratification prior to the proposed sale date, the MMS proposes to offer in this sale blocks beyond the U.S. EEZ in the Western Gap, with the exception of blocks and portions of blocks in the 1.4 mile buffer area along the boundary established by the treaty.

Blocks beyond the U.S. EEZ in the northern portion of the Western Gap are now proposed to be available for leasing in the proposed sale *except for:*

• Blocks or portions of blocks beyond the U.S. EEZ in the northern portion of the Western Gap which are in the 1.4 nautical mile buffer zone north of the continental shelf boundary between the United States and Mexico. Both the zone and the boundary were established by the ''Treaty Between The Government Of The United States Of America And The Government Of The United Mexican States On The Delimitation Of The Continental Shelf In The Western Gulf Of Mexico Beyond 200 Nautical Miles'' signed by the United States and Mexico on June 9, 2000, and to which the U.S. Senate gave advice and consent to ratification on October 18, 2000, and for which the Mexican Senate gave its approval on November 28, 2000.

*The following blocks lie wholly within the 1.4 nautical mile buffer and are deferred from this sale: Amery Terrace (Area NG15–09),* 280, 281, 318 through 320, 355 through 359.

*The portions of the following blocks lying within the 1.4 nautical mile buffer are deferred from this sale: Amery Terrace (Area NG15–09),* 235 through 238, 273 through 279, 309 through 317.

The available acreage in these blocks will be provided in the ''Unleased Split Blocks and Unleased Acreage of Blocks with Aliquots and Irregular Portions Under Lease'' document to be included in the Final Sale Notice Package. Also, Supplemental Official OCS Block Diagrams for these blocks are available from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519. These diagrams can also be found on the MMS Homepage Address on the Internet: http://www.mms.gov. For additional information, please call Mr. Charles Hill (504) 736–2795.

Blocks or portions of blocks beyond the U.S. EEZ are offered in Sale 178 consistent with U.S. law and the provisions of the 1982 Law of the Sea Convention. The Convention balances the extension of coastal Nation control over the natural resources of the continental margin seaward of 200 miles with a modest obligation on such Nations to share revenues from successful mineral development seaward of 200 miles. The Convention provides that payments by the coastal Nations subject to it would not be required during exploration or the first 5 years of production, and once instituted, would be at the rate of 1 percent of the value or volume of production beginning in the sixth year of such production, increasing at a rate of 1 percentage point per year to a maximum of 7 percent in the 12th year and thereafter. It has been expected that payments would come from normal royalties already paid by the industry to the United States Government. The question of what, if any, effect the Law of the Sea Convention revenue sharing requirements and the methods and procedures of paying any international obligations of the U. S. Government from royalty payments to the United States would have on royalty suspension volumes is under review. Once determinations are made on this issue, specific terms and conditions for leasing blocks in this area will be specified as soon as possible, but no later than in the final Notice of Sale.

All other terms and conditions of the proposed sale remain the same as described in the proposed Notice of Sale.

Dated: December 8, 2000.

**Thomas R. Kitsos,**

*Acting Director, Minerals Management Service.*

Dated: December 8, 2000.

**Sylvia V. Baca,**

*Assistant Secretary, Land and Minerals Management.*

[FR Doc. 00–31779 Filed 12–13–00; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

## National Park Service

## 60 Day Notice of Intention to Request Clearance of Collection of Information; Opportunity for Public Comment

**AGENCY:** National Park Service, Rocky Mountain National Park, Department of the Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** The National Park Service (NPS) is seeking to gather information from residents of Colorado with respect to their acceptance of and preferences for different elk and vegetation management alternatives possible in Rocky Mountain National Park (RMNP). The information sought will also determine acceptability of specific techniques to achieve the objectives of these different alternatives. The information gathered is to be used in developing an elk and vegetation management plan for RMNP, as well as an Environmental Impact Statement on the plan. To gather this information, the NPS is proposing to survey Colorado residents regarding their attitudes towards elk and vegetation management issues facing the Park.

| | Estimated numbers of Responses | Burden hours |
|---|---|---|
| Rocky Mountain National Park Regional Resident Survey | 400 | 200 |

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on the need for gathering the information in the proposed survey. The NPS also is asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

The NPS goal in conducting these surveys is to determine Colorado residents' acceptance and preferences for different management alternatives that are possible in RMNP.

**DATES:** Public comments will be accepted on or before February 12, 2001.

*Send comments to:* Michael J. Manfredo, Human Dimensions in Natural Resources Unit, College of Natural Resources, Colorado State University, Fort Collins, CO 80523.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Manfredo. Voice: 970–491–6591, e-mail: manfredo@cnr.colostate.edu.

**SUPPLEMENTARY INFORMATION:**

*Titles:* Public preferences for elk vegetation management in Rocky Mountain National Park: Regional Resident Survey.

*Bureau Form Number:* None.

*OMB Number:* To be requested.

*Expiration Date:* To be requested.

*Type of Request:* Request for new clearance.

*Description of Need:* The National Park Service needs information assessing the acceptability of different overall management alternatives for elk and vegetation management in RMNP as well as the acceptability of specific management techniques to achieve the objectives of the different alternatives.

*Automated Data Collection:* At the present time there is no automated way to gather this information because it includes asking Colorado residents their acceptance and preferences regarding different elk and vegetation management alternatives that are possible in RMNP.

*Description of Respondents:* Persons residing in Colorado.

*Estimated Average Number of Respondents:* 400.

*Estimated Average Number of Responses:* Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

*Estimated Average Burden Hours Per Response:* 30 minutes.

*Frequency of Response:* 1 time per respondent.

*Estimated Annual Reporting Burden:* 200 hours.

Dated: December 11, 2000.

**Leonard E. Stowe,**

*Acting Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.*

[FR Doc. 00–31912 Filed 12–13–00; 8:45 am]

**BILLING CODE 4310–70–M**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Draft Environmental Impact Statement/ General Management Plan; Santa Monica Mountains National Recreation Area, Los Angeles and Ventura Counties, CA; Notice of Availability

**SUMMARY:** Pursuant to section102(2)(c) of the National Environmental Policy Act of 1969 (Public Law 91–190, as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement assessing the potential impacts of the proposed General Management Plan (GMP) for Santa Monica Mountains National Recreation Area. This conservation planning and environmental impact analysis effort to date has identified and analyzed five alternatives (and appropriate mitigation strategies) for the management and use of the Santa Monica Mountains National Recreation Area over the next fifteen to twenty years.

*Proposal and Alternatives:* The draft environmental impact statement (DEIS) includes five alternatives, including the ''no action'' (existing conditions) alternative. The No Action Alternative assumes that physical facilities would remain largely unchanged and staffing and operational funding would remain relatively constant over the next fifteen to twenty years. The Preferred Alternative incorporates the exceptional elements of all of the alternatives to provide protection of significant natural and cultural resources while promoting compatible recreation and educational opportunities. The Preservation Alternative emphasizes the preservation of all natural and cultural systems and removing some park-related development. Virtual media and exhibits would provide visitors with alternative experiences and information. Visitor disturbance would be reduced while visitor appreciation for the resource would increase. The Education Alternative would promote strong environmental and cultural education programs that reach the public and especially the school systems. The Recreation Alternative maximizes recreation with any new park development in non-sensitive areas.

*Comments:* Printed or CD–ROM copies of the DEIS are available for public review at Park Headquarters, as well as at many public libraries and federal offices in southern California. In addition the document is posted on the internet at www.nps.gov/samo. Inquiries and requests for copies may also be directed to: Superintendent, Santa Monica Mountains National Recreation Area, 401 W. Hillcrest Drive, Thousand Oaks, California, 91360. The telephone number for the park is (805) 370–2300. Interested individuals, organizations, and agencies wishing to provide information or suggest issues and concerns to be addressed in future land management are encouraged to address these to the Superintendent, Santa Monica Mountains National Recreation Area. All written comments must be postmarked not later than February 28, 2001.

If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There may also be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations and businesses; and, anonymous comments may not be considered.

*Public Meetings:* Five public meetings will be held in the vicinity surrounding the park. The particular locations selected for these meetings were determined based upon responses received from the public during the scoping process. The meetings scheduled are: February 5, 2001 (Calabasas/Agoura Hills); February 6, 2001 (Santa Monica); February 7, 2001 (Los Angeles); February 8, 2001 (Malibu); February 9, 2001 (Thousand Oaks). Confirmed details as to specific locations and times will be announced in local newspapers, available at the internet site identified above, or can be obtained by calling the park at (805) 370–2341.

*Decision:* After the formal DEIS review period has concluded, all comments and suggestions received will be considered in preparing the final EIS. Currently the final EIS is anticipated in the fall of 2001; its availability will be similarly announced in the **Federal Register**. Subsequently a Record of Decision would be executed no sooner than 30 (thirty) days after the release of the final EIS. The official responsible for approval of the DEIS/GMP is the Regional Director, Pacific West Region; the official responsible for implementation of the approved GMP is the Superintendent, Santa Monica Mountains National Recreation Area.

Dated: December 4, 2000.

**James R. Shevock,**

*Acting Regional Director, Pacific West Region.*

[FR Doc. 00–31915 Filed 12–13–00; 8:45 am]

**BILLING CODE 4310–70–P**

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Availability of Draft Fee Schedules and Guidance for Commercial Filming in Compliance with Public Law 106–206 To Apply in All Units of the National Park Service

**AGENCY:** National Park Service, Interior.

**ACTION:** Public notice.

**SUMMARY:** The National Park Service (NPS) has available for public review, the draft fee schedules and associated guidance for Filming and Photography Location Fees to be charged in all units of the National Park Service in accordance with Public Law 106–206. We hope to be shortly issuing our proposed regulations requesting public comments. In the meantime, we want to obtain public involvement as early as possible regarding our draft location fee schedule and guidance by issuing this notice now. Other Federal land management agencies may adopt any or all of the schedule(s) as they are finalized, however this notice only applies to the location fee schedules and associated guidance applicable to NPS.

Copies of the draft location fee schedules and guidance will be made available upon request by writing: National Park Service, Ranger Activity Division, 1849 C St., NW, Suite 7408, Washington, DC 20240, or by calling (202) 208–4874. The draft document is also available on the NPS website at the following URL: *www.nps.gov/refdesk/DOrders*

**DATES:** Public comments will be accepted on or before February 12, 2001.

**ADDRESSES:** Comments should be addressed to: Dick Young, Special Park Uses Program Manager, C/O Colonial NHP, P.O. Box 210, Yorktown, VA 23690, or via email at: Dicks__S.__Young@nps.gov.

**FOR FURTHER INFORMATION CONTACT:** Dick Young at (757) 898–7846, or (757) 898–3400, ext. 2426.

**Chris Andress,**

*Chief, Ranger Activities Division.*

[FR Doc. 00–31913 Filed 12–13–00 8:45 am]

BILLING CODE 4310–70–M

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 701–TA–409–412 and 731–TA–909–912 (Preliminary)]**

## Low Enriched Uranium From France, Germany, the Netherlands, and the United Kingdom

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of countervailing and antidumping duty investigations and scheduling of preliminary phase investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing and antidumping duty investigations Nos. 701–TA–409–412 and 731–TA–909–912 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from France, Germany, the Netherlands, and the United Kingdom of low enriched uranium that are alleged to be sold in the United States at less than fair value and that are alleged to be subsidized by the governments of France, Germany, the Netherlands, and the United Kingdom. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) and 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) and 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing and antidumping duty investigations in 45 days, or in this case by January 22, 2001. The Commission's views are due at the Department of Commerce within five business days thereafter, or by January 29, 2001.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** December 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

### Background

These investigations are being instituted in response to a petition filed on December 7, 2000, by USEC Inc. and its wholly owned subsidiary United States Enrichment Corp., Bethesda, MD.

### Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing and antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

### Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

### Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on December 28, 2000, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Mary Messer (202–205–3193) not later than December 22, 2000, to arrange for their appearance. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

### Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission

on or before January 3, 2000, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: December 8, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–31795 Filed 12–13–00; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and Resource Conservation and Recovery Act

Notice is hereby given that a proposed consent decree in *United States* v. *Abex Aerospace Division, et al.,* Civil No. 00–12471 CAS, was lodged on Nov. 24, 2000, with the United States District Court for the Central District of California (''Abex Decree''). The proposed Consent Decree would resolve certain claims under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, as amended, as well as certain claims under Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, brought against 120 defendants (collectively ''Settling Defendants''), to recover response costs incurred by the Environmental Protection Agency and to undertake certain response actions in connection with the release of hazardous substances at a portion of the Omega chemical Corporation Superfund Site (''Site''). The Settling Defendants are liable as persons who arranged for the disposal or treatment of hazardous substances (or waste) or who arranged for transport for disposal or treatment of such substances at the Site, or as a person who accepted hazardous substances (or waste) for transport to the Site, or succeeded to the liabilities of persons who made such arrangements or accepted hazardous substances (or waste) for transport. Under the proposed Consent Decree, the Settling Defendants will pay $282,636 to the Hazardous Substances Superfund to reimburse the United States for Past Response Costs through May 1999, plus interest, and all Oversight Costs. In addition, under the proposed Consent Decree, the Settling Defendants have agreed to perform certain response actions at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20530, and should refer to *United States* v. *Abex Aerospace, et al.,* C.D. CA, Civil No. *00–12471 CAS,* DOJ Ref. #90–11–3–06529. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. § 6973(d).

The Consent Decree may be examined at the Region 9 Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105 and the United States Attorney's Office for the Central District of California, Federal Building 300 North Los Angeles Street, Room 7516, Los Angeles, CA 90012 *c/o* Assistant U.S. Attorney Lawrence Kole. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, D.C. 20044. In requesting copies please refer to the referenced case and enclose a check in the amount of $43.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Walker Smith,**

*Principal Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–31769 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department of Justice policy, 28 CFR 50.7., notice is hereby given that a proposed consent decree in the action entitled *United States of America* v. *Chemical Leaman Tank Lines, Inc.* (Civil No. 00CV5715 (SSB), was lodged on November 21, 2000, with the United States District Court for the District of New Jersey. The proposed consent decree resolves claims of the United States and the State of New Jersey under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9607, against Chemical Leaman Tank Lines, Inc. (hereinafter, defendant) for natural resources damages with respect to the Chemical Leaman Tank Lines Superfund Site (''Site'') in Logan Township, Gloucester County, New Jersey.

Under the terms of the proposed consent decree, defendant will pay the Natural Resources Trustees for the United States and for the State of New Jersey Department of Environmental Protection (''State'') the total sum of $4,200,000, for reimbursement of assessment costs and damages to natural resources at the Site. Of the total sum, assessment costs to be paid to the United States and to the States are $27,739.00 and $20,000.00 respectively. Of the total sum, the United States will receive $500,000.00 and the State will receive $3,652,261.00 for natural resources damages. Pursuant to a Cooperative Agreement to be entered into between the United States and the State, all monies paid pursuant to the Consent Decree, except for the monies paid for assessment costs, shall only be spent for the purchase of and restoration of wetlands and associated uplands; lands to be acquired will require unanimous consent of the United States and State Trustees.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be address to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States of America* v. *Chemical Leaman Tank Lines, Inc.* (Civil No. 00CV5715 (SSB)), DOJ Ref. No. 90–11–2–296/1.

The proposed consent decree may be examined at the offices of the United States Department of the Interior, Office of the Solicitor, One Gateway Center, Suite 612, Newton Corner, MA 02485–2802, and at the Office of the United States Attorney, District of New Jersey, Camden Federal Building and Courthouse, 4th Floor, 401 Market Street, Camden, New Jersey 08101. A copy may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611. In requesting a copy by mail, please refer to the referenced case and enclose a check in the amount of $5.25 for the Consent Decree (25 cents per page reproduction costs) made payable to Consent Decree Library. A copy of the Appendices to the Consent Decree can be ordered by enclosing a check for $78.25 made payable to the Consent Decree Library (25 cents per page reproduction costs).

**Bruce S. Gelber,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–31771 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Pursuant to the Clean Water Act and the categorical pretreatment standards contained at 40 CFR 414.55 and 414.111, notice is hereby given that a proposed consent decree embodying a settlement in *United States* v. *Georgia-Pacific Resins, Inc.,* CIV–S–00–2531 GEB–PAN (E.D. Cal.), was lodged on November 16, 2000, with the United States District Court for the Eastern District of California.

Specifically, Georgia-Pacific discharged zinc and toluene in excess of the categorical pretreatment standards from its thermosetting resin manufacturing facility located at Elk Grove, California, to the Sacramento Regional County Sanitation District's Treatment Plant.

Under the proposed consent decree, the settling party will pay a $165,000 penalty and perform a supplemental environmental project which will result in Georgia-Pacific reducing the amount of hazardous solids generated in the resin manufacturing process.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Georgia-Pacific Resins, Inc.* DOJ Ref. #90–5–1–1–3954A.

The proposed consent decree may be examined at the Office of the United States Attorney for the Eastern District of California, 501 ''I'' Street, Suite 10–100, Sacramento, California 95814. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, Box 7611, Ben Franklin Station, Washington, DC 20044–7611. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Walker B. Smith,**

*Principal Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–31770 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decrees Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a cross-claim and two consent decrees, which together would resolve all claims in *Jones* v. *Thorne, et al.,* Civil Action No. CV97–1674–ST (D. Ore.), were lodged with the United States District Court for the District of Oregon on November 30, 2000.

The first proposed consent decree, entitled ''Consent Decree Settling United States' Cross-Claim Against Port of Portland,'' settles claims asserted by the United States against the Port of Portland (''Port'') in a cross-claim in the lawsuit. The cross-claim was also lodged with the Court. The cross-claim and consent decree concern alleged violations of the Clean Water Act, 33 U.S.C. 1311, resulting from the Port's alleged unauthorized discharge of dredged or fill materials into waters of the United States in the Rivergate area of Portland, Oregon, near the confluence of the Columbia and Willamette Rivers, between 1991 and 1996. The consent decree requires the Port to: (a) Mitigate and restore approximately 37 acres of wetlands and associated upland riparian habitat and buffer areas adjacent to the Columbia Slough and Smith and Bybee Lakes in the Rivergate area, in accordance with parameters specified in the consent decree and detailed plans to be approved by the United States Army Corps of Engineers (''Corps''); (b) preserve the mitigation and restoration in perpetuity by recording the consent decree and identifying the restrictions against development on the property in any instrument by which the Port conveys an interest in the property; (c) pay $285,000 for additional mitigation projects in the Smith and Bybee Lakes Management Area, subject to the approval of the corps; (d) pay $64,000 to the City of Portland for revegetation of the lower Columbia Slough banks and buffer areas; and (e) pay $50,000.00 to the United States Treasury.

The second consent decree, entitled ''Consent Decree, Order of Dismissal with Prejudice and Release,'' settles claims asserted by William Michael Jones against the Port and the United States related to the Port's development of Rivergate. This consent decree requires the Port to perform some of the same activities required in the consent decree described in the previous paragraph. Also in this consent decree, the United States, on behalf of the Corps, the Environmental Protection Agency and the Fish and Wildlife Service, releases the Port from any claims it may have under the 1989 Cooperative Agreement regarding the Port's development of Rivergate.

The Department of Justice will receive written comments relating to the cross-claim and proposed consent decrees for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: G. Scott Williams, Senior Attorney, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *Jones* v. *Thorne, et al.,* DJ No. 90–5–1–4–585.

The cross-claim and proposed consent decrees may be examined at the Clerk's Office, United States District Court, 740 United States Courthouse, 1000 S.W. Third Avenue, Portland, OR 97204–2902.

**Letitia J. Grishaw,**

*Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.*

[FR Doc. 00–31767 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that on Thursday, November 30, 2000, a consent decree was lodged in *United States* v. *Ribi Immunochem Research, Inc.,* Civil Action No. 98–55–M–DWM, with the United States District Court for the District of Montana.

This consent decree, between the United States, the State of Montana, and Corixa Corporation (successor to Ribi Immunochem Research, Inc.), provides that Corixa Corporation will pay $2.65 million in settlement of its alleged liability to the United States and Montana for past and future response costs related to contamination of the Bitterroot Valley Sanitary Landfill (''BVSL'') in Hamilton, Montana. The United States will receive $1.1 million of this payment, Montana will receive $450,000, and $1.1 million will be placed in an escrow account, with at least $900,000 of this amount to be used by Montana to fund future response actions related to contamination of the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ribi Immunochem Research, Inc.,* DOJ Ref. No. 90–11–3–1713. The proposed Consent Decree may be examined at the office of the United States Attorney, United States Attorney's Office Russell Smith Courthouse, 201 E. Broadway, Room 210, Missoula, Montana 59802. A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. When requesting a copy by mail, please enclose a check in the amount of $5.75 (twenty-five cents per page reproduction costs), payable to the ''Consent Decree Library.''

**Walker Smith,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–31768 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980

In accordance with Departmental policy and 28 CFR 50.7, notice is hereby given that on November 30, 2000, a consent decree was lodged in *United States* v. *Sonoco Products Company and Kardon Industries, Inc.,* Civil Action No. 00–6068 with the United States District Court for the Eastern District of Pennsylvania.

Pursuant to the consent decree, defendants Sonoco Products Company (''Sonoco'') and Kardon Industries, Inc. (''Kardon'') will pay $40,000 in reimbursement of response costs incurred by EPA at the Kardon Park Site in Chester County, Pennsylvania.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sonoco Products Company and Kardon Industries, Inc.,* DOJ Ref. No. 90–11–3–06935. The proposed Consent Decree may be examined at the office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania, 19106. Copies of the consent decree may also be examined at the offices of the Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. When requesting a copy by mail, please enclose a check in the amount of $4.75 (Twenty-five cents per page reproduction costs), payable to the ''Consent Decree Library.''

**Walker Smith,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–31766 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

**[AAG/A Order No. 211–2000]**

### Privacy Act of 1974; System of Records

**AGENCY:** Federal Bureau of Investigation, DOJ.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), and Office of Management and Budget (OMB) Circular No. A–130, notice is hereby given that the Department of Justice, Federal Bureau of Investigation (FBI), is modifying the following system of records which was last published in the **Federal Register** on November 25, 1998 (63 FR 65223):

The National Instant Criminal Background Check System (NICS) JUSTICE/FBI–018.

**Opportunity For Comment**

The Privacy Act (5 U.S.C. 552a(e)(4) and (11)) requires that the public be given 30 days in which to comment on any new or amended uses of information in a system of records. In addition, in accordance with Privacy Act requirements (5 U.S.C. 552a(r)), the Department of Justice has provided a report on these modifications to OMB and the Congress. OMB, which has oversight responsibilities under the Act, requires that OMB and the Congress be given 40 days in which to review major changes to Privacy Act systems. Therefore, the public, OMB, and the Congress are invited to submit written comments on this modification.

**FOR FURTHER INFORMATION CONTACT:** Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, 1400 National Place Building, Washington, DC 20530.

**EFFECTIVE DATE:** These proposed changes will be effective January 23, 2001, unless comments are received that result in a contrary determination.

**SUPPLEMENTARY INFORMATION:** The Department is modifying the system of records to clarify that the NICS contains records of appealed transactions in an appeals file which is separate from and in addition to the NICS Audit Log. (Although the NICS Audit Log is also used to record basic comments relating to appealed transactions.) Accordingly, we have added ''Appeals Records'' to the list of categories of records in the system.

Clarification was made to the category of ''aliens'' who are covered by the system. The revision notes that the category also includes aliens who have been admitted to the United States under a non-immigrant visa.

An introductory paragraph has been inserted into the ''Routine Uses'' section which sets the context for the enumerated uses that follow. We are also providing clarification through the promulgation of one new routine use

(''I'') which expressly provides that information relating to individuals who have been *denied* a firearm by the NICS may be provided to federal, states, local, joint, tribal, foreign, international, or other public agencies/organizations for the furtherance of law enforcement interests. Proposed firearm transfers are denied by the NICS when available information demonstrates that the prospective transferee is disqualified from possessing a firearm under federal or state law. Law enforcement agencies may use this information to investigate possible violations of federal and/or state law with regard to the attempted purchase of the firearm, as well as for other law enforcement uses that could have significant public safety benefits.

Accordingly, the system of records is modified as provided below.

Dated: December 6, 2000.

**Stephen R. Colgate,**

*Assistant Attorney General for Administration.*

**Justice/FBI–018**

**SYSTEM NAME:**

National Instant Criminal Background Check System (NICS).

* * * * *

**ACTION:**

The system notice published in the **Federal Register** on November 25, 1998 (63 FR 65223), is amended as follows:

1. In the section titled ''Category of Individuals Covered by the System,'' subsection E is revised, and subsection L is amended by replacing the first two sentences with three new sentences, to read as follows:

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

* * * * *

E. Is an alien who is illegally or unlawfully in the United States or who has been admitted to the United States under a non-immigrant visa.

* * * * *

L. Has applied for the transfer of a firearm or for a firearms-related permit or license and has had his or her name forwarded to the NICS as part of a request for a NICS background check. (Identifying information about this category of individuals is maintained for system administration and security purposes in the ''NICS Audit Log,'' a system transaction log described below under the headings ''**CATEGORIES OF RECORDS IN THE SYSTEM**'' AND ''**RETENTION AND DISPOSAL**.'' Identifying information may also be maintained in appeals files for those individuals who have requested the reason for a denial or delay from the FBI, or from a law enforcement agency serving as a POC, and/or challenged the accuracy or validity of a disqualifying record or otherwise inquired about a NICS transaction. * * *

2. The section titled ''Categories of Records in the System'' is amended by adding a new paragraph at the end to read as follows:

**CATEGORIES OF RECORDS IN THE SYSTEM:**

* * * * *

The NICS also contains ''appeals records'' which reflect inquiries by individuals regarding the reason for a delay or denial by the FBI or a POC, and/or challenges to the accuracy or validity of a disqualifying record, or other types of inquiries made by individuals about a NICS transaction.

3. The section titled ''Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses'' is amended by adding an introductory paragraph and a new subparagraph (''I'') at the end to read as follows:

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The FBI may disclose relevant system records to the following persons or entities under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purpose for which the information was collected. (Routine uses are not meant to be mutually exclusive and may overlap in some cases.)

* * * * *

I. Information pertaining to individuals who have been *denied* a firearm by the NICS may be disclosed, either electronically or otherwise, to a federal, state, local, joint, tribal, foreign, international, or other public agency/organization where such disclosure may promote, assist, or otherwise serve law enforcement interests. By way of example and not limitation, such disclosures may, for instance, include posting all NICS denials on a centralized database that would be electronically accessible to law enforcement agencies.

[FR Doc. 00–31749 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–02–M

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review; new collection national evaluation of the safe schools/healthy students initiative.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by December 22, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–7860, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Kellie J. Dressler, Program Manager, Office of Juvenile Justice and Delinquency Prevention, 810 7th Street, NW, Washington DC 20531, or facsimile at (202) 353–9096.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information**

(1) *Type of Information Collection:* Application for new collection effort.

(2) *The Title of the Form/Collection:* The National Evaluation of the Safe Schools/Healthy Students Initiative has several information collection forms, which are: District Personnel Survey, School Personnel Surveys, Classroom Teacher Survey, Teacher Rating Scale, Coalition/Partnership Survey, Key Partners Survey, Student Survey, Project Director Survey, Archival Data Collection, Economic Data Collection, Focus Group Discussion Questions for Parents and Community, Focus Group Discussion Questions for Students.

(3) *The Agency Form Number, if any, and the Applicable Component of the Department Sponsoring the Collection:* None; Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

(4) *Affected Public Who Will be Asked or Required to Respond, as Well as a Brief Abstract:* School personnel, which includes superintendents, principals, counselors, violence prevention and drug coordinators; 1st, 3rd, 5th, 7th, 9th, and 11th grade teachers; Coalition members; Students in grades 7, 9, and 11 (15 sites only); Project Directors; Parents (15 sites only); Community members; and Chief Financial Officers (15 sites only). 42 U.S.C. 5653 authorizes the Office of Juvenile Justice and Delinquency Prevention to collect information on all aspects of the Safe Schools/Healthy Students Initiative programs. The purposes of the surveys, coalition discussion guides, focus groups, etc. are to obtain information from the respondents that will assist in evaluating the Safe Schools/Healthy Students Initiative and contribute to the development of policies and programs that reduce violence, crime, substance use, and other risk-related behaviors and that support healthy childhood development. The survey instruments focus on the nature and scope of alcohol, tobacco, and other drug use among youth; perceptions about school safety, crime and violence; educational climate; school policies and programs; and mental health development.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond/Reply:*

ANNUAL BURDEN ESTIMATES*

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| District Personnel Survey | 308 | 1 | 1.0 | 308 |
| School Personnel Surveys: | | | | |
| Principal | 1,335 | 1 | 1.0 | 1,335 |
| Mental Health Coord. | 1,335 | 1 | .50 | 667.5 |
| Substance Use Prevention Coord. | 1,335 | 1 | .50 | 667.5 |
| Violence Prevention Coord. | 1,335 | 1 | .50 | 667.5 |
| School-level Total | 5,340 | | 2.5 | 3,337.5 |
| Classroom Teacher Survey | 4,252 | 1 | .50 | 2,126 |
| Teacher Rating Scale | 1,397 | 5 | .42 | 2,933.7 |
| Student Survey | 10,184 | 1 | .75 | 7,638 |
| Archival Data Collection | 378 | 1 | **None | |
| Coalition Survey | 1,540 | 1 | .50 | 770 |
| Key Partners Survey | 231 | 1 | .50 | 115.5 |
| Project Director Survey | 77 | 1 | .75 | 57.75 |
| Economic Data Collection | 15 | 1 | 4.0 | 60 |
| Focus Groups Questions: Parents and Community Members | 150 | 1 | 2.0 | 300 |
| Focus Groups Questions: Students | 150 | 1 | 1.0 | 150 |

*All estimates are based on 77 sites except for student surveys, teacher rating scales, economic and focus groups which are drawn from the 15 Sentinel sites only.

**Data to be collected for personnel responsible for providing publicly available agency-level data; thus SS/HS data collection burden is not expected to exceed general practice.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* The total burden hours for this information collection is 17,796.45 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy, Clearance Office, United States Department of Justice, Information Management and Security Staff Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: December 8, 2000.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 00–31773 Filed 12–13–00; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–37,657A]**

### Ambar Chemical, Incorporated Division of Ambar, Incorporated Corporate Office Houston, 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 U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June

30, 2000 applicable to workers of Ambar Chemical, Incorporated, Corporate Office located in Houston, Texas. The notice was published in the **Federal Register** on July 24, 2000 (65 FR 45621).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers provide support services such as accounting, customer service and sales for the subject firms' production facility in Manistee, Michigan. Company information shows that Ambar, Incorporated is the parent firm of Ambar Chemical, Incorporated, Houston, Texas. New information provided by the State shows that workers separated from employment at the Corporate Office, Houston, Texas location of Ambar Chemical, Incorporated had their wages reported under a separate unemployment insurance (UI) tax account at Ambar, Incorporated, also located in Houston, Texas.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Ambar Chemical, Incorporated who were adversely affected by increased imports.

The amended notice applicable to TA–W–37,657A is hereby issued as follows:

All workers of Ambar Chemical, Incorporated, Ambar, Incorporated, Corporate Office, Houston, Texas who became totally or partially separated from employment on or after April 25, 1999 through June 30, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 21st day of November, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–31817 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–37,929]**

### B.F. Goodrich Aerospace (Coltec Industries, Inc.) Landing Gear Division Euless, 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 Certification of Eligibility to Apply for Worker Adjustment Assistance on November 2, 2000, applicable to workers of B.F. Goodrich Aerospace, (COLTEC), Landing Gear Division, Euless, Texas. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New findings show that the Department incorrectly identified the subject firm name in its entirety. The Department is amending the certification determination to correctly identify the subject firm title name to read ''B.F. Goodrich Aerospace, (COLTEC Industries, Inc.), Landing Gear Division''.

The amended notice applicable to TA–W–37,929 is hereby issued as follows:

All workers of B.F. Goodrich Aerospace, (COLTEC Industries, Inc.), Landing Gear Division, Euless, Texas who became totally or partially separated from employment on or after July 14, 1999 through November 2, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of November, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–31820 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of 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 Director of the Division 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 for 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 Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 26, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than December 26, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 27th day of November, 2000.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

## Appendix

PETITIONS INSTITUTED ON 11/27/2000

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 38,346 | Flowserve Corp. (Wrks) | Temecola, CA | 11/15/2000 | Seals. |
| 38,347 | Cold Metal Products Co (IAMAW) | New Britain, CT | 11/09/2000 | Steel Rolling and Slitting. |
| 38,348 | National Spinning Co (Comp) | Washington, NC | 11/13/2000 | Textile Yarns. |
| 38,349 | Dearborn Brass (GMPBA) | Tyler, TX | 11/16/2000 | Plumbing Fixtures. |
| 38,350 | Hill Knitting Mills (Comp) | Richmond Hill, NY | 11/01/2000 | Knits and Welts. |

PETITIONS INSTITUTED ON 11/27/2000—Continued

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 38,351 | Tyco Electronics (Wrks) | Sanford, ME | 11/07/2000 | Electronic Connectors. |
| 38,352 | Mulox, Inc. (Comp) | Macon, GA | 11/13/2000 | Intermediate Bulk Containers. |
| 38,353 | Langston Corp (Wrks) | Cherry Hill, NJ | 11/06/2000 | Machines to Make Corrugated Boxes. |
| 38,354 | Parker Hannifin Corp (USWA) | Lebanon, IN | 11/08/2000 | Resin Bonded Filter Cartridge. |
| 38,355 | LSC Kentucky, LLC (Wrks) | Morganfield, KY | 11/10/2000 | Administrative Functions. |
| 38,356 | Johnson Controls, Inc. (IBEW) | Poteau, OK | 11/09/2000 | Electrical Controls and Panels. |
| 38,357 | Jockey International (Wrks) | Belzoni, MS | 11/09/2000 | Men's Tee Shirts. |
| 38,358 | Tower Automotive (Wrks) | Kalamazoo, MI | 10/30/2000 | Structural Stampings, Welded Assemblies. |
| 38,359 | Johns Manville Int'l (Comp) | Corona, CA | 11/08/2000 | Flexglass. |
| 38,360 | Georgia Pacific (PACE) | Baileyville, ME | 11/07/2000 | Oriented Strand Boards. |
| 38,361 | Don Shapiro/Action West (Wrks) | El Paso, TX | 11/13/2000 | Jeans. |
| 38,362 | LTV Steel (USWA) | Cleveland, OH | 11/14/2000 | Steel. |
| 38,363 | Pratt and Whitney (IAMAW) | Middleton, CT | 11/03/2000 | Aircraft Engine Turbines. |
| 38,364 | Johnson and Johnson Med (Comp) | El Paso, TX | 11/08/2000 | Disposables Medical Products. |
| 38,365 | Agrilink Foods (Wrks) | Alamo, TX | 11/13/2000 | Frozen Foods. |
| 38,366 | Bend Millwork Co. (Comp) | Bend, OR | 11/07/2000 | Wood Mouldings and Millwork. |
| 38,367 | Key Industries, Inc. (Comp) | Erin, TN | 11/14/2000 | Shirts. |
| 38,368 | Crown Pacific (IAMAW) | Coeurd'Alene, ID | 11/13/2000 | Framing Lumber. |
| 38,369 | Dun and Bradstreet (Wrks) | Parsippany, NJ | 11/03/2000 | Software. |
| 38,370 | A.O. Smith Electrical (Comp) | Altavista, VA | 11/16/2000 | Electric Meters. |

[FR Doc. 00–31811 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–37,828]**

### Johnstown Corporation, Johnstown, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of September 26, 2000, the United Steelworkers of America requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–37,828. The denial notice was signed on August 15, 2000 and was published in the **Federal Register** on September 12, 2000 (65 FR 55049).

The petitioner presented new information concerning declining customers of the subject firm. The Department will therefore conduct further survey of the Johnstown Corporation customers.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 19th day of October 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–31812 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–37,828]**

### Johnstown, Corporation, Johnstown, PA; Notice of Revised Determination of Reconsideration

On October 19, 2000, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice soon will be published in the **Federal Register**.

The Department initially denied TAA to workers of Johnstown Corporation, Johnstown, Pennsylvania, because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department obtained additional information from the company regarding the company's lost customer bids of iron rolls during the relevant period. The survey revealed that major respondents reported awarding the contracts to foreign sources for which the subject firm was the lowest domestic bidder.

**Conclusion**

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with iron rolls contributed importantly to the declines in sales or production and to the total or partial separation of workers of Johnstown Corporation, Johnstown, Pennsylvania. In accordance with the provisions of the Act, I make the following certification:

All workers of Johnstown Corporation, Johnstown, Pennsylvania who became totally or partially separated from employment on or after June 9, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974;

Signed in Washington, DC this 16th day of November 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–31813 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[T–W–37,910]**

### Mallinckrodt, Incorporated, Nellcor Puritan Bennett, Incorporated, Puritan-Bennett Corporation, Respiratory Division Carlsbad, CA; 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 U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 5, 2000, applicable to workers of Mallinckrodt, Incorporated, Respiratory Division, Carlsbad, California. The notice was published in the **Federal Register** on November 1, 2000 (FR 65 65330).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of critical care medical equipment. New information provided by the State shows that Nellcor Puritan Bennett, Incorporated and Puritan-Bennett Corporation are business units of Mallinckrodt, Incorporated. New information also shows that workers separated from employment at the subject firm had their wages reported under two separate unemployment insurance (UI) tax accounts: Nellcor Puritan Bennett, Incorporated and Puritan-Bennett Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Mallinckrodt, Incorporated, Respiratory Division who were adversely affected by increased imports of critical care medical equipment.

The amended notice applicable to TA–W–37,910 is hereby issued as follows:

All workers of the Mallinckrodt, Incorporated, Nellcor Puritan Bennett, Incorporated, Puritan-Bennett Corporation, Respiratory Division, Carlsbad, California who became totally or partially separated from employment on or after July 5, 1999 through October 5, 2002 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 29th day of November, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–31816 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–30–M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–37,884]**

### Rycraft, Incorporated, Corvallis, OR; Notice of Revised Determination on Reconsideration

On November 2, 2000, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on November 15, 2000 (65 FR 69050).

The Department initially denied TAA to workers of Rycraft, Incorporated, Corvallis, Oregon producing terra cotta cookie stamps because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department conducted further survey of the major independent brokers of Rycraft. The survey revealed that the former customers of Rycraft imported substantial amounts of terra cotta cookie stamps while reducing purchases from Rycraft.

**Conclusion**

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with terra cotta cookie stamps, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Rycraft, Incorporated, Corvallis, Oregon. In accordance with the provisions of the Act, I make the following certification:

All workers of Rycraft, Incorporated, Corvallis, Oregon who became totally or partially separated from employment on or after June 27, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 22nd day of November 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–31814 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–38,061]**

### TRW, Valve Division, Danville, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of November 11, 2000, the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, petition TA–W–38,061. The denial notice was signed on October 10, 2000 and published in the **Federal Register** on November 1, 2000 (65 FR 65329).

The Department has reviewed the request for reconsideration and has determined that further survey of a major declining customer of the subject firm would be appropriate.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 30th day of November 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–31815 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–30–M

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–04281]**

### Greenwood Mills Inc., Greige and Denim Greenwood, SC; 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. 23331), an investigation was initiated on November 8, 2000, in response to a petition filed by a company official on behalf of workers at Greenwood Mills Inc., Greige and Denim, Greenwood, South Carolina. The workers producer lightweight textiles.

The petitioner has requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 28th day of November, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–31818 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–4020]**

### Thomson Consumer Electronics, Incorporated, A.T.O. Division, Dunmore, PA; Notice of Negative Determination on Reconsideration

On October 17, 2000, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice will soon be published in the **Federal Register.**

The Department initially denied NAFTA to workers of Thomson Consumer Electronics, Incorporated, A.T.O. Division, Dunmore, PA because the ''contributed importantly'' group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The workers at the subject firm were engaged in employment related to the production of color television picture tubes.

The petitioner presented evidence that the Department's survey of the company's customer was incomplete.

On reconsideration, the Department requested that the subject firm provide additional information concerning declining customers. Upon examination of those customers, it was discovered that the customers were located in Mexico. Those customers were the reason for the declines in sales, production and employment at the subject plant. Company sales of color television picture tubes to the domestic market did not decline during the relevant period.

**Conclusion**

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Thomson Consumer Electronics, Incorporated, A.T.O. Division, Dunmore, Pennsylvania.

Signed at Washington, DC, this 4th day of December, 2000.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 00–31819 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Applications for a Permit To Fire More Than 20 Boreholes, for the Use of Nonpermissible Blasting Units, Explosives, and Shot-Firing Units

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the application for a permit to fire more than 20 boreholes, for the use of nonpermissible blasting units, and for the use of nonpermissible explosives and nonpermissible shot-firing units, and posting of warning notices with regard to mis-fired explosives.

**DATES:** Submit comments on or before February 12, 2001.

**ADDRESSES:** Send comments to Brenda C. Teaster, Acting Chief, Records Management Division, 4015 Wilson Boulevard, Room 709A, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to bteaster@msha.gov, along with an original printed copy. Ms. Teaster can be reached at (703) 235–1470 (voice) or (703) 235–1563 (facsimile).

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed information collection request and further information may be obtained by contracting Brenda C. Teaster, Acting Chief, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 715, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Teaster can be reached at bteaster@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under Section 313 of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 873, a mine operator is required to use permissible explosives in underground coal mines. The Mine Act also provides that under safeguards prescribed by the Secretary of Labor, a mine operator may permit the firing of more than 20 shots and the use of nonpermissible explosives in sinking shafts and slopes from the surface in rock. Title 30, CFR 75.1321 outlines the procedures by which a permit may be issued for the firing of more than 20 boreholes and/or the use of nonpermissible shot-firing units in underground coal mines. In those instances in which there is a misfire of explosives, 30 CFR 75.1327 requires that a qualified person post each accessible entrance to the affected area with a warning to prohibit entry. Title 30 CFR 77.1909–1 outlines the procedures by which a coal mine operator may apply for a permit to use nonpermissible explosives and/or shot-firing units in the blasting of rock while sinking shafts or slopes for underground coal mines.

**II. Desired Focus of Comments**

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

*e.g.,* permitting electronic submissions of responses.

**III. Current Actions**

Title 30, CFR 75.1321, 75.1327 and 77.1901–1 provide MSHA District Managers with the authority to address unusual but reoccurring blasting practices needed for breaking rock types more resilient than coal and for misfires in blasting coal. MSHA uses the information requested to issue permits to mine operators or shaft and slope contractors for the use of nonpermissible explosives and/or shot-firing units under 30 CFR Part 77, Subpart T—Slope and Shaft Sinking. Similar permits are issued by MSHA to underground coal mine operators for shooting more than 20 bore holes and/or for the use of nonpermissible shot firing units when requesed under 30 CFR Part 75, Subpart N—Explosives and Blasting. The approval permits allow the use of specific equipment and explosives in limited appliations and under exceptional circumstances where standard coal blasting techniques or equipment is inadequate to the task. These permits inform mine management and the miners of the steps to be employed to protect the safety of any person exposed to such blasting while using nonpermissible items. Also, the posting of danger/warning signs at entrances to locations where an misfired blast hole or round remains indisposed is a safety precaution predating the Coal Mine Safety and Health Act.

*Type of Review:* Extension (without change).

*Agency:* Mine Safety and Health Administration.

*Title:* 30 CFR 75.1321, 75.1327, and 77.1909–1—use of nonpermissible blasting units, and for the use of nonpermissible explosives and nonpermissible shot-firing units, and posting of warning notices with regard to misfired explosives (pertains to coal mining industry).

*OMB Number:* 1219–0025.

*Affected Public:* Business or other for-profit institutions.

| Cite/reference | Total respondents | Frequency | Total responses | Average time per response | Burden (hours) |
|---|---|---|---|---|---|
| 75.1321 Permit Appl. | 51 | On Occasion | 51 | 1 hour | 51 |
| 75.1327 Misfire Notices Posted | 106 | On Occasion | 106 | 20 minutes | 35 |
| 77.1909–1 Permit APL. | 4 | On Occasion | 4 | 1 hour | 4 |
| Totals | | | 161 | | 90 |

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintaining):* $650.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 8, 2000.

**Charlene N. Barnard,**

*Acting Chief, Records Management Division.*

[FR Doc. 00–31821 Filed 12–13–00; 8:45 am]

BILLING CODE 4510–43–M

## INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO, UNITED STATES SECTION

### Corrections Notice for Notice of Availability

**AGENCY:** United States Section, International Boundary and Water Commission, United States and Mexico.

**ACTION:** Corrections Notice for Notice of Availability.

**SUMMARY:** This document corrects three text errors appearing in the Notice of Availability of the Final Environmental Impact Statement for the El Paso-Las Cruces Regional Sustainable Water Project in Sierra and Dona Ana counties, New Mexico and El Paso County, Texas published in the **Federal Register** (65 FR 71128) on November 29, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Douglas Echlin, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–310, El Paso, Texas 79902 or call 915/832–4741. E-mail: dougechlin@ibwc.state.gov.

**SUPPLEMENTARY INFORMATION:** Three corrections are indicated in the referenced Notice of Availability as follows:

Summary—The last sentence of the paragraph is corrected to read, ''No final action can be taken on this proposal during the 30 days following the filing of this FEIS, in accordance with the Council on Environmental Quality regulations, 40 CFR 1506.10(b)(2).''

Supplementary Information—The third sentence of the last paragraph is corrected to read, ''A Record of Decision will be executed on this proposal after a minimum of 30 days following the filing of the FEIS.''

Supplementary Information, last paragraph, last sentence—Correct to read, ''No final action will be taken on the proposed action before 30 days following publication of the notice of availability of the EIS by EPA.''

Dated: November 30, 2000.

**William A. Wilcox, Jr.,**

*Legal Advisor.*

[FR Doc. 00–31869 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–03–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (00–142)]**

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Prospective Patent License.

**SUMMARY:** NASA hereby gives notice that the University of Houston, Houston, TX, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,780,186, entitled ''High Performance Zinc Anode for Battery Applications.'' Written objections to the prospective grant of a license should be sent to the Johnson Space Center.

**DATES:** Responses to this notice must be received by February 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** James Cate, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 483–1001.

Dated: December 7, 2000.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 00–31872 Filed 12–13–00; 8:45 am]

BILLING CODE 7510–01–P

## NORTHEAST DAIRY COMPACT COMMISSION

### Notice of Out-of-Business New England Dairy Producer Escrow Reimbursement Program

**AGENCY:** Northeast Dairy Compact Commission.

**ACTION:** Solicitation of application claims from eligible out-of-business New England dairy producers for reimbursement of escrowed funds.

**SUMMARY:** The Northeast Dairy Compact Commission announces an Escrow Reimbursement Program for those New England dairy producers who were in business but ceased operations during the pendency of the New York Dairy Foods, Inc. litigation from July 1, 1997 through March 31, 2000. Part of the Compact Over-order Producer payment was placed in escrow monthly during the litigation and those funds have since been released by the Federal District Court for distribution to New England dairy producers.

Producers whose milk was marketed in New England either through pool plants or partially regulated plants may be eligible for payment. Those producers who had been in business during any part of the period of the litigation but had ceased operation before March 31, 2000 qualify for reimbursement if their verified claims exceed $50.00. Producers who were still in business on March 31, 2000 were reimbursed those funds in the September Compact payment and do not qualify.

The Compact Commission has determined that eligible producers who went out of business will be reimbursed on the basis of pounds of milk shipped during the period July 1, 1997 through March 31, 2000. Qualified producers must file notarized Application Claim Forms with the Commission documenting the handler and the pounds of milk shipped by month. The Forms must be filed for verification between December 1, 2000 and February 28, 2001. Payments to qualified producers for claims above $50.00 will be made in January, February or March, 2000.

**DATES:** Application Claim Forms will be available after December 1, 2000 and must be filed by February 28, 2001.

**ADDRESSES:** Application Claim Forms are available from and must be filed with the Out-of-Business Escrow Reimbursement Program, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602.

**FOR FURTHER INFORMATION CONTACT:** Daniel Smith, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941, Fax (802) 229–2028, E-mail smae@dairycompact.

**Authority:** 7 U.S.C. 7256.

Dated: November 17, 2000.

**Daniel Smith,**

*Executive Director.*

[FR Doc. 00–31792 Filed 12–13–00; 8:45 am]

BILLING CODE 4650–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–333–LT and 50–286–LT (consolidated)]**

### Power Authority of the State of New York and Entergy Nuclear Fitzpatrick LLC, Entergy Nuclear Indian Point 3 LLC, Entergy Nuclear Operations, Inc. (James A. FitzPatrick Nuclear Power Plant) and Indian Point Nuclear Generating Unit No. 3); CLI–00–22, Memorandum and Order

Commissioners: Richard A. Meserve, Chairman, Greta Joy Dicus, Nils J. Diaz, Edward McGaffigan, Jr. and Jeffrey S. Merrifield

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### I. Introduction

This proceeding involves applications which together seek the Commission's authorization to transfer the operating licenses of both the Indian Point Nuclear Generating Unit No. 3 (''Indian Point 3'') and the James A. FitzPatrick Nuclear Power Plant (''FitzPatrick''). The Indian Point plant is located in Westchester County, New York, beside the Hudson River. Its property lies partially within the Town of Cortlandt and entirely within the Hendrick Hudson School District. The FitzPatrick plant is located in the town of Scriba in Oswego County, New York.

The Power Authority of the State of New York (''PASNY'') seeks to transfer its ownership interest in, and operating/maintenance responsibility for, the Indian Point 3 plant to Entergy Nuclear Indian Point 3, LLC (''Entergy Indian Point'') and Entergy Nuclear Operations, Inc. (''Entergy Nuclear Operations''), respectively. Similarly, PASNY would transfer its ownership interest in, and operating/maintenance responsibility for, the FitzPatrick plant to Entergy Nuclear FitzPatrick, LLC (''Entergy FitzPatrick'') and Entergy Nuclear Operations, respectively.

The applications were submitted to the Commission on May 11 and 12, 2000, pursuant to Section 184 of the Atomic Energy Act of 1954 (''AEA'') [1]

[1] 42 U.S.C. 2234 (precluding the transfer of any NRC license unless the Commission both finds the transfer in accordance with the AEA and gives its consent in writing). On November 9, 2000, the NRC staff issued orders approving the two applications for license transfer. Pursuant to 10 CFR 2.1327, the petitioners in this proceeding could have asked the

and section 50.80 of the Commission's regulations.[2] On June 28, 2000, the Commission published notices of the FitzPatrick and Indian Point 3 applications in the **Federal Register**. *See* 65 FR 39953 and 39954, respectively.

The Commission received five petitions to intervene (or participate) and requests for hearing from individuals or entities wishing to address or oppose one or both of the license transfer applications. The petitioners are Citizens Awareness Network (''CAN''); the Town of Cortlandt together with the Hendrick Hudson School District (collectively ''Cortlandt''); Westchester County (''Westchester'') (petitioning to participate as a governmental entity); Local 1–2 of the Utility Workers of America (''the Union''); and the Nuclear Generation Employees Association, together with William Carano, Thomas Pulcher and Richard Wiese, Jr. (collectively ''the Association'').[3] The applicants filed an Answer to each of these hearing requests. All petitioners except Westchester submitted replies to the applicants' answers. The Union subsequently withdrew its petition. The NRC staff is not participating as a party in the adjudicatory portion of this proceeding. *See generally* 10 CFR § 2.1316(b), (c). We consider the pleadings under Subpart M of our procedural rules. 10 CFR 2.1301–2.1331.

For the reasons set forth below, we grant the requests for hearing of CAN, Cortlandt and the Association. We also grant Westchester's request to participate in a hearing as an interested governmental entity. Finally, we admit certain issues involving whether the Entergy companies have demonstrated their financial ability to operate and maintain the plants safely and whether they have provided a reasonable assurance of adequate decommissioning funding.

## II. The License Transfer Applications

As noted above, PASNY, Entergy FitzPatrick and Entergy Nuclear Operations have filed applications seeking to transfer the ownership of the FitzPatrick plant to Entergy FitzPatrick and the operating and maintenance responsibilities for the plant to Entergy Nuclear Operations. The regulatory responsibility for decommissioning the plant would also transfer to Entergy FitzPatrick. Pursuant to the Decommissioning Agreements and subject to the monetary limits of those Agreements, PASNY would retain the decommissioning funds and would have a contractual obligation to provide funds to Entergy FitzPatrick (up to a specified limit) to decommission the FitzPatrick plant.[4]

Similarly, PASNY, Entergy Indian Point and Entergy Nuclear Operations have filed applications seeking to transfer the ownership of the Indian Point plant to Entergy Indian Point and the operating and maintenance responsibilities for the plant to Entergy Nuclear Operations. The regulatory responsibility for decommissioning the plant would also transfer to Entergy Indian Point. Pursuant to the Decommissioning Agreements and subject to the monetary limits of those Agreements, PASNY would retain the Decommissioning Funds and would have a contractual obligation to provide funds to Entergy Indian Point (up to a specified limit) to decommission the Indian Point 3 plant.

Under both applications, however, PASNY would have the option of terminating this contractual obligation upon the occurrence of certain events specified in the Decommissioning Agreements. Upon such termination, PASNY would have no further contractual responsibility to its successor owner (Entergy FitzPatrick or Entergy Indian Point, as applicable) and no further involvement with the decommissioning process for that plant. At that point, PASNY would be required to transfer the decommissioning funds to its successor owner, subject to certain conditions.

If PASNY does not terminate its contractual responsibility before the decommissioning of the applicable plant begins, then PASNY's contractual responsibility would be carried out pursuant to the Decommissioning Agreements. Under those Agreements, PASNY and Entergy Nuclear, Inc. (''ENI'') must enter into an agreement whereby ENI would decommission the plants in accordance with the Decommissioning Agreements. Entergy FitzPatrick and Entergy Indian Point, through their authorized agent, Entergy Nuclear Operations, would at all times retain ultimate control over the timing and control of the decommissioning activities of ENI and its contractors.

The new owners and the new operator of the Indian Point 3 and FitzPatrick nuclear plants are not ''electric utilities'' under our rules, and thus must demonstrate financial qualifications to own and/or operate the plant. *See* 10 CFR 50.33(f). These Entergy companies have submitted five-year cost and revenue projections in accordance with our rules, *see id.,* but much of their material was submitted as confidential financial information and has been withheld from public disclosure.

Upon the closing of the purchase and sales agreements, all employees within PASNY's Nuclear Generation Department, and certain other employees supporting the Nuclear Generation Department, would become employees of Entergy Nuclear Operations. The application proposes no physical or operational changes to the FitzPatrick or Indian Point facilities, but does request certain administrative changes to the licenses that are necessary to reflect the proposed transfers. *See* 65 FR at 39953–54.

Before reaching petitioners' standing and the admissibility of their issues, we must first address certain pending procedural motions.

## III. Preliminary Procedural Issues

### *A. CAN'S Motion to Consolidate the Commission's Consideration of the Applications*

CAN moves for a joint hearing on all applications. CAN argues that there are overarching concerns that affect the transfer of both facilities—concerns stemming from the Entergy companies' joint negotiation of both sales and their intertwining of the two plants' finances, day-to-day operations and reactor decommissioning. *See* CAN's Petition, dated July 31, 2000, at 7. Conversely, Cortlandt objects to such a consolidation. Cortlandt states that the issuance of separate orders for each facility would be in the public interest because it ''would facilitate review

Commission by November 17, 2000, to stay the effect of the staff's two orders, but petitioners filed no stay motion. Consequently, PASNY and the Entergy companies were free to close the sale of the two nuclear plants, which they did on November 21, 2000. Neither the staff's approvals, nor the closing of the sale affects the instant adjudicatory proceeding. The purpose of this proceeding is to resolve whether, for the reasons raised by the petitioners, the Commission should disapprove the transfers and require the applicants to return the plant ownership to the *status quo ante* or modify the license notwithstanding the staff's orders and the applicants' actual consummation of the sale. *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station), CLI–00–17, 52 NRC 79, 82–83 (2000).

[2] 10 CFR 50.80. This regulation reiterates the requirements of AEA section 184, sets forth the filing requirements for a license transfer application and establishes the following test for approval of such an application: (1) the proposed transferee is qualified to hold the license and (2) the transfer is otherwise consistent with law, regulations and Commission orders.

[3] In addition, the County of Putnam sought and was granted an extension of time until July 31, 2000, by which to file its petition to intervene and request for hearing. However, Putnam filed no petition or request.

[4] Commitments limiting PASNY's role to holding and disbursing the decommissioning funds are contained in a letter dated Sept. 21, 2000.

thereof and action thereupon.'' [5] However, Cortlandt has offered us no rationale to justify this conclusion. Given that CAN and the Association present a number of arguments applicable to both plants, we believe that the parties' and the Commission's resources are better spent by addressing these arguments only once. We therefore grant CAN's motion to consolidate the FitzPatrick and Indian Point 3 license transfer proceedings.

*B. The Association's and CAN's Motions for Stay*

The Association seeks a stay of this NRC proceeding pending a decision by the New York courts regarding the rights, obligations and liabilities of its members, the Entergy companies, and PASNY. *See* Association's Petition to Intervene, dated July 17, 2000, at 19, 21. The Association brought that state court action on July 27, 2000.[6] In support, the Association asserts that the state court action could render void or voidable the sales transaction involving the two plants, that the outcome of the state court action could assist in clarifying the Commission record, and that consummation of the sales transaction could render irreversible many aspects of the Association members' relationship with the applicants. See Association's Reply Brief, dated Aug. 3, 2000, at 26.

Similarly, CAN seeks a stay of the adjudication until the Internal Revenue Service (''IRS''), the Federal Energy Regulatory Commission (''FERC'') and the New York State Department of Environmental Conservation (''DEC'') have completed their own proceedings involving the transfer of the two plants.[7] CAN asserts that these agencies' rulings could affect the Entergy companies' ability to own, operate and decommission the two plants,[8] and that DEC or IRS rulings adverse to Entergy could render the sales agreement void or voidable.[9]

As we indicated in a prior case, the pendency of parallel proceedings before other forums is not adequate grounds to stay a license transfer adjudication. *See Niagara Mohawk Power Corp.* (Nine Mile Point, Units 1 and 2), CLI–99–30, 50 NRC 333, 343–44 (1999). We therefore deny the motions for a stay. However, we instruct the parties to inform the Commission promptly of any court or administrative decision that might in any way relate to, or render moot, all or part of the instant proceeding. Similarly, if at any point the parties to this proceeding reach a settlement of this dispute, or if the transfer applicants decide to withdraw or postpone their application, we expect immediate notification to the Commission.

*C. Applicants' Request To Deny Cortlandt's Hearing Motion on Procedural Grounds*

Applicants assert that Cortlandt's Motion for Hearing should be denied because Cortlandt failed to serve the applicants in a manner that ensured delivery on the due date of filing. *See* Answer to Cortlandt's Petition, dated Aug. 14, 2000, at 3–4. We consider such a sanction too severe for the offense. Cortlandt has acknowledged its error, apologized, and explained that it was based on a ''communications error'' with the Commission's Office of the Secretary. *See* Cortlandt's Reply Brief, dated Aug. 21, 2000, at 8. Also, applicants do not appear to have suffered any prejudice as a result of Cortlandt's error. We therefore deny their motion.

*D. CAN's Motion For a Formal Subpart G Hearing*

In both a separate motion and throughout its presentation on standing and issues, CAN requests a formal hearing under Subpart G of our procedural regulations. *See* CAN's Petition at 9–11, 22, 23, 29, 36, 42, 47, 51, 55, 56, 64, 66; CAN's Reply Brief at 4–5, 9–10, 12. CAN's motion for a Subpart G proceeding is expressly prohibited under 10 CFR 2.1322(d). *See Vermont Yankee Nuclear Power Corp.* (Vermont Yankee Nuclear Power Station, CLI–00–20, 52 NRC at ____, slip op. at 3 (Oct. 6, 2000).

In an effort to avoid this prohibition, CAN asserts that this proceeding falls within the bounds of 10 CFR 2.1329, providing for waiver of rules under ''special circumstances'' which demonstrate that the ''application of a rule or regulation would not serve the purposes for which it was adopted.'' As ''special circumstances,'' CAN points to the fact that ''the matters in this license transfer are not strictly 'financial in nature' as contemplated in the promulgation of Subpart M.'' *See* CAN's Petition at 9.

CAN's interpretation of the appropriate scope of Subpart M procedures is, in our view, overly restrictive. Our Subpart M rules are intended to apply to more than just those cases presenting only financial issues. We expected when promulgating Subpart M that most issues would be financial,[10] and indeed this expectation has been fulfilled. However, we also predicted that petitioners would raise other categories of issues as well (such as foreign ownership, technical qualifications, and appropriate critical staffing levels)—a prediction that has also been fulfilled.[11] For that reason, when promulgating Subpart M, we expressly declined to adopt the nuclear industry trade organization's suggestion that we limit the scope of Subpart M

[1] *See* Cortlandt's Petition for Extension of Time, dated July 7, 2000, at 4 n.1. This petition, despite its name, includes both a petition to intervene and request for hearing.

[6] *See* Verified Petition, *Nuclear Generation Employees Ass'n* v. *New York Power Auth.* (Sup. Ct., Westchester Co., NY), Index No. 11129/00 (filed July 27, 2000) (appended to Association's Reply Brief as Exh. 1). *See also* Association's Reply Brief, dated Aug. 3, 2000, at 3. We note in passing that, on July 26, 2000, the Town of Cortlandt filed a separate action in New York State court, also challenging the transfer. *See* Verified Petition, *Town of Cortlandt* v. *Power Auth. of the State of N.Y.* (Sup. Ct., Westchester Co., NY), Index No. 11084–00 (filed July 26, 2000) (appended to Cortlandt's Supplemental Statement, dated July 31, 2000) (hereafter ''Cortlandt Verified Petition''), *petition denied* (Sept. 15, 2000), *appeal noticed* (Sept. 22, 2000) (court denial and appeal notice both appended to Cortlandt's Submission of Supplemental Information, dated Sept. 28, 2000). *See also* Affirmation of Peter Henner, dated July 31, 2000, at ¶ 29 (appended to Cortlandt's Supplemental Statement, dated July 31, 2000). (We cite to the paragraph rather than the page number of Mr. Henner's Affirmation because neither version of this document is paginated and because the contents of the first version appear on different pages from the same content of the second version.)

[7] On Sept. 29, 2000, FERC authorized Entergy Indian Point's and Entergy FitzPatrick's purchase of the Indian Point 3 and FitzPatrick nuclear plants, respectively, from PASNY. *See Entergy Nuclear Indian Point 3, LLC and Entergy Nuclear FitzPatrick, LLC,* Docket No. EC00–100–000, ''Order Authorizing Disposition of Jurisdictional Facilities,'' 92 FERC ¶ 61,281 (Sept. 29, 2000).

Separately, it is not at all clear whether there is any request or proceeding pending before the IRS. Such a request appears to be the assumption on which one of the Association's issues rests (*see* Association's Petition at 18, referring to the potential effects of ''[a] contrary ruling by the IRS''), and also is expressly one of the assumptions on which CAN bases its instant stay request. However, the record contains no indication that the applicants have ever sought such an IRS ruling. Conversely, the applicants' responses to the Association's (and CAN's) arguments never deny seeking an IRS ruling.

[8] *See* CAN's Petition at 1–7. *See also id.* at 14 (rapid consolidation of nuclear industry justifies a stay pending changes in NRC regulations and enforcement practices); CAN's Reply Brief, dated Aug. 17, 2000, at 5–6.

[9] CAN's Reply Brief at 6.

[10] See Nine Mile Point, CLI–99–30, 50 NRC at 345.

[11] *See Vermont Yankee,* CLI–00–20, 52 NRC at ——, slip op. at 11–14 (petitioners raised issues involving technical qualifications); *Northern States Power Co.* (Monticello Nuclear Generating Plant), CLI–00–14, 52 NRC 37 (2000) (petitioners raised issues regarding the proposed licensees' technical qualifications), *reconsid'n denied,* CLI–00–19, 52 NRC 135 (2000); *Duquesne Light Co.* (Beaver Valley Power Station, Units 1 and 2), CLI–99–23, 50 NRC 21 (1999) (petitioner raised labor issues between union and management relating to plant safety); *Duquesne Light Co.* (Beaver Valley Power Station, Units 1 and 2), CLI–99–25, 50 NRC 224 (1999) (same).

proceedings to financial matters.[12] We deny CAN's motion for essentially the same reason. The nature of petitioners' financial and technical allegations do not call for an alteration in the usual Subpart M process.

As an alternative request, CAN moves for a consolidated hearing by the Commission, FERC and DEC. *See* CAN's Petition at 11; CAN's Reply Brief at 7–8. We believe holding a consolidated hearing would be impractical in the particular circumstances of this proceeding, given that each agency would be operating under a different set of procedural rules and governing statutes. Moreover, as indicated in footnote 7, *supra,* FERC has already concluded its parallel proceeding involving the FitzPatrick and Indian Point 3 plants.

Finally, as a second alternative request, CAN asks that the Commission initiate a Subpart M hearing, but consider the possibility of converting it to a Subpart G hearing at a later date. *See* CAN's Reply Brief at 9. In our view, CAN is asking nothing more than the Commission's regulations already provide. *See* 10 CFR 2.1322(d) (''The Commission, on its own motion, or in response to a request from a Presiding Officer * * *, may use additional procedures, such as direct and cross-examination, or may convene a formal hearing under subpart G of this part on specific and substantial disputes of fact * * * that cannot be resolved with sufficient accuracy except in a formal hearing''). We deny CAN's second alternative request as unnecessary.

*E. Petitioner' Request For Access to Unredacted Versions of Financial Information*

Cortlandt asserts that its lack of access to certain confidential financial information (*e.g.*, the five-year estimates of Indian Point 3's annual operating costs, the credit agreement, and the financial statements for Entergy International Ltd., Entergy Global Investments, LLC and Entergy Indian Point) precludes it from fully presenting its arguments. *See* Cortlandt's Petition at 8; Cortlandt's Supplemental Filing, dated July 31, 2000, at 3; Cortlandt's Reply Brief at 4–7. *See generally* Affirmation of Peter Henner at ¶ 10 (''materials made available in the public record are insufficient for an assessment of [Entergy Indian Point]'s ability [to] operate under the issued license and to restore the [Indian Point 3] site to greenfield status''); Letter from George E. Sansoucy to Paul V. Nolan, Esq., dated July 28, 2000, at 1 (''Sansoucy Letter''), appended to Cortlandt's Supplemental Filing. More specifically, Cortlandt's expert notes that

> [I]t is not possible to render an opinion as to whether the income stream to Entergy will be sufficient to make the required payments. A particular problem is that the fuel payment stream cited in the application is for the combined fuel assets of [Indian Point] 3 and James A. FitzPatrick Nuclear Generating Station and does not allocate the portion of payments assigned to each site [citing Purchase and Sale Agreement, p. 14].
>
> [I]t is not possible to estimate the ability of Entergy to fund required payments to the Decommissioning Fund.

*See* Sansoucy Letter at 2, 3. CAN similarly complains about lack of access to decommissioning documents. *See, e.g.*, CAN's Petition at 3, 11, 15; CAN's Reply Brief at 18.

We find below that Cortlandt and CAN have made sufficient showings of standing and have raised admissible issues. We also recognize that the lack of access to the applicants' full financial information could affect their ability to present their substantive case at the hearing. *E.g.,* pages 19, 22, 23, *infra.* Cortlandt and CAN (along with the Association and Westchester, if they wish) should discuss access to proprietary information with the applicants and thereafter file with the Presiding Officer a mutually-agreeable protective order. If the parties cannot agree on a protective order, CAN and Cortlandt may move for issuance of such an order.[13] Moreover, we note that portions of the hearing (which we herein grant) may have to be closed to the public when issues involving proprietary information are being addressed.

## IV. Discussion

To intervene as of right in any Commission licensing proceeding, a petitioner must demonstrate that its ''interest may be affected by the proceeding,'' *i.e.,* it must demonstrate ''standing.'' *See* AEA, Section 189a, 42 U.S.C. section 2239(a). The Commission's rules for license transfer proceedings also require that a petition to intervene raise at least one admissible issue. *See* 10 CFR 2.1306. For the reasons set forth below, we conclude that CAN, the Association and Cortlandt have demonstrated standing, and that Westchester is entitled to governmental participant status in this proceeding. We also conclude that CAN, the Association and Cortlandt have each raised at least one admissible issue. We therefore set the case for hearing.

*A. Standing*

To demonstrate standing in a Subpart M license transfer proceeding, the petitioner must (1) identify an interest in the proceeding by

(a) Alleging a concrete and particularized injury (actual or threatened) that

(b) is fairly traceable to, and may be affected by, the challenged action (e.g., the grant of an application to approve a license transfer), and

(c) is likely to be redressed by a favorable decision, and

(d) lies arguably within the ''zone of interests'' protected by the governing statute(s).

(2) specify the facts pertaining to that interest.

*See* 10 CFR 2.1306, 2.1306; *Nine Mile Point,* CLI–99–30, 50 NRC at 340–41 and n.5 (and cited authority). Moreover, an organization which seeks representational standing must demonstrate how at least one of its members may be affected by the licensing action, must identify that member by name and address, and must show (preferably by affidavit) that the organization is authorized to request a hearing on behalf of that member. *See Vermont Yankee,* CLI–00–20, 52 NRC at____, slip op. at 4; Oyster Creek, CLI–00–6, 51 NRC at 202 (and cited authority).

1. CAN

CAN seeks permission to represent the interests of two of its members—Linda Downing, who lives 5½ miles from the FitzPatrick plant, and Marilyn Elie, who lives the same distance from the Indian Point 3 plant. *See* Declaration of Linda Downing, dated July 31, 2000; Declaration of Marilyn Elie, dated July 31, 2000. On Ms. Downing's and Ms. Elie's behalf, CAN alleges potential health-and-safety impacts on them if the Commission approves the two license transfers, seeks specific relief to prevent such injuries (disapproval of the transfers or imposition of conditions), and asserts that the safety-related issues fall within the zone of interests protected by the AEA and the National Environmental Policy Act (''NEPA''). *See* CAN's Petition at 14, 22, 28–29, 25–26, 34, 36, 40–41, 46–47, 50–51, 55–56, 63–64, 65–66; CAN's Reply Brief at 10–

[12] See Final Rule, ''Streamlined Hearing Process for NRC Approval of License Transfers,'' 63 Fed. Reg. 66,721, 66,724 (Dec. 3, 1998).

[13] *See GPU Nuclear Inc.* (Oyster Creek Nuclear Generating Station), CLI–00–6, 51 NRC 193, 211 (2000); *North Atlantic Energy Serv. Corp.* (Seabrook Station, Unit 1) & Northeast Nuclear Energy Co. (Millstone Station, Unit 3), CLI–99–27, 50 NRC 257, 268 (1999); *North Atlantic Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI–99–6, 49 NRC 201, 225 (1999); North Atlantic Energy Serv. Corp. (Seabrook Station, Unit 1), unpublished Protective Order of Presiding Officer, 1999 WL 202690 (March 24, 1999). *Cf.* 10 CFR 2.740(c)(6).

11. We recently granted standing in the *Vermont Yankee, Oyster Creek* and *Monticello* license transfer proceedings to petitioners who (like CAN) raised similar assertions and who (again like CAN) were authorized to represent members living or active quite close to the site.[14] Based on these similarities, we conclude that CAN has satisfied our standing requirements and is granted standing with respect to both the FitzPatrick and Indian Point 3 license transfers.

2. The Association

The Association is a group of about 400 technical and management employees (*e.g.,* reactor operators, reactor engineers) in the nuclear generation component of PASNY.[15] The Association is concerned that the proposed transfer will directly and materially affect (and, in fact, is already affecting) its members' morale and economic interests (salaries, benefits, pensions), as well as their working conditions, professional roles and safety culture—factors the Association believes will affect performance, attrition and operational safety at the two plants. The Association also argues that its members' health and safety may suffer as a direct result of the license transfer if an insufficient amount of revenue were to preclude the Entergy companies from adequately funding both occupational radiation protection and safe decommissioning activities. *See* Association's Petition at 17; Association's Reply Brief at 7–8, 25–26. The Association supports its assertions with notarized affirmations of the three individual petitioners, and it requests both intervenor status and a hearing. As relief, it seeks an order declining to approve the license transfer.

The Association's submission satisfies our standing requirements. Given that we have found that people (like CAN's members here) living or active within a few miles of a nuclear plant have shown standing in license transfer cases, it follows that employees who work inside a plant should ordinarily be accorded standing as well, as long as the alleged injury is fairly traceable to the license transfer. Here the Association has made a sufficient linkage to establish standing. The Association's concerns, if substantiated at a hearing, would be redressed by a favorable decision, *i.e.,* a decision declining to approve the transfer.

3. Local Governmental Entities

Cortlandt and the Hendrick Hudson School District collectively seek standing in the Indian Point 3 license transfer proceeding on the grounds that the Indian Point 3 plant is located within the boundaries of both governmental entities and that the plant's safe operation and decommissioning is of great concern to the safety and long-term economic well-being of the Town and School District communities. We find that, for these reasons, Cortlandt has demonstrated standing with respect to the Indian Point 3 license transfer application. *See Vermont Yankee,* CLI–00–20, 52 NRC at ____, slip op. at 5. Moreover, Cortlandt is the locus of the Indian Point 3 plant and therefore is in a position analogous to that of an individual living or working within a few miles of a plant whose license may be transferred. *See* discussion of CAN's standing, at page 14, *supra.*

Westchester, the County where the Indian Point 3 plant is located, seeks participant (but not intervenor) status in this proceeding, citing 10 CFR 2.715(c). *See* Westchester's Petition, dated July 31, 2000, at 2–3. As we indicated in *Nine Mile Point,* CLI–99–30, 50 NRC at 344, ''the Commission has long recognized the benefits of participation in our proceedings by representatives of interested states, counties, municipalities, etc.'' We therefore grant Westchester's request for participant status regarding the Indian Point 3 license transfer.

*B. Admissibility of Issues*

To demonstrate that issues are admissible under Subpart M, a petitioner must

(1) Set forth the issues (factual and/or legal) that petitioner seeks to raise,
(2) demonstrate that those issues fall within the scope of the proceeding,
(3) demonstrate that those issues are relevant and material to the findings necessary to a grant of the license transfer application,
(4) show that a genuine dispute exists with the applicant regarding the issues, and
(5) provide a concise statement of the alleged facts or expert opinions supporting petitioner's position on such issues, together with references to the sources and documents on which petitioner intends to rely.

*See* 10 CFR 2.1308; *Nine Mile Point*, CLI–99–30, 50 NRC at 342 (and cited authority). These standards do not allow mere ''notice pleading;'' the Commission will not accept ''the filing of a vague, unparticularized'' issue, unsupported by alleged fact or expert opinion and documentary support. *See Seabrook*, CLI–99–6, 49 NRC at 219 (citation and internal quotation marks omitted). General assertions or conclusions will not suffice. This is not to say, however, that our threshold admissibility requirements should be turned into a ''fortress to deny intervention.'' *Cf. Duke Energy Corp.* (Oconee Nuclear Station, Units 1, 2, and 3), CLI–99–11, 49 NRC 328, 335 (1999), quoting *Philadelphia Elec. Co.* (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB–216, 8 AEC 13, 20–21 (1974).

1. General Concerns

We initially touch on two general concerns raised by the Association and CAN. The first is a claimed decline in the educational opportunities and talent necessary for an effective nuclear workforce in the United States. *See* Association's Petition at 19–20. The second is an alleged over-concentration in the ownership of nuclear power plants. *See* CAN's Petition at 12–18. These may well be significant questions warranting Commission inquiry. Indeed, as we recently pointed out in *Vermont Yankee*, the NRC staff, at Commission direction, already is examining the industry consolidation question. *See* CLI–00–20, 52 NRC at__, slip op. at 17. But an individual license transfer adjudication is not an appropriate forum for a legislative-like inquiry into issues affecting the entire nuclear industry. *See id.* We therefore decline to admit for hearing petitioners' general issues on a declining nuclear workforce and on overly concentrated ownership.[16]

2. Financial Qualifications Issues

Cortlandt and CAN question whether Entergy FitzPatrick and Entergy Indian Point will have the necessary level of financial qualifications to run the FitzPatrick and Indian Point 3 plants safely. *See* Cortlandt's Petition at 5–6;

[14] *See Vermont Yankee,* CLI–00–20, 52 NRC at ____, slip op. at 4–5; *Oyster Creek,* CLI–00–6, 51 NRC at 202–03; *Monticello,* CLI–00–14, 52 NRC at 47.

[15] Messrs. Carano and Pulcher (both cosignatories on the Association's Petition to Intervene and Request for Hearing) are managers at the Indian Point 3 plant; Mr. Wiese (also a cosignatory) is a manager at the FitzPatrick plant. *See* Association's Petition at 2–6.

[16] Entergy's acquisition of the Indian Point and FitzPatrick plants, if the proposed deals are consummated, would give the ''Entergy family'' control over approximately 7.9 nuclear plants. If Entergy then merges with the FPL Group and purchases the Indian Point 2 facility, as has been proposed, the Entergy conglomerate will then control 12.75 nuclear power plants. To place this in perspective, Commonwealth Edison historically (and currently) has held an ownership interest in 12.5 plants. *See Vermont Yankee*, CLI–00–20, 52 NRC at____, slip op. at 20 n.20. There are over 100 nuclear power reactor units in the United States. Petitioners have not explained why adding two reactors to Entergy's current fleet, in and of itself, poses a unique health and safety risk warranting an adjudicatory hearing.

CAN's Petition at 54–55. We admit Cortlandt's issue as discussed below insofar as it argues that Entergy Indian Point's potential joint and several liability for Entergy FitzPatrick's fuel and plant purchase expenses could draw into question the ''reasonable assurance'' that Entergy Indian Point has ''the funds necessary'' to operate the Indian Point plant safely. *See* 10 CFR 50.33(f)(2). In addition, we give Cortlandt and CAN an opportunity to formulate a challenge to Entergy's cost-and-revenue projections for both plants, after a protective order is entered making Entergy's confidential financial data available. *See generally Seabrook,* CLI–99–6, 49 NRC at 219–21. We turn now, briefly, to petitioners' specific claims.

a. Joint and Several Liability. Cortlandt asserts that several of the agreements underlying the transfer impose liability on Entergy Indian Point for certain financial obligations of Entergy FitzPatrick. *See* Cortlandt's Petition at 6–8 and Affirmation of Peter Henner at ¶ 14, both of which refer to a $586 million Facilities Payment Note (Exh. A to Indian Point Application) and a $171 million Fuel Payment Note (Exh. B to Indian Point 3 Application). Cortlandt is worried that these joint and several liability obligations would place the Indian Point 3 plant in financial jeopardy in the event of an accident at either Indian Point 3 or FitzPatrick.

Such financial jeopardy could, according to Cortlandt, leave the Indian Point plant in an unsafe condition which would place at risk both the environment and the public health. *See* Cortlandt's Petition at 7; Cortlandt's Supplemental Filing at 3; Affirmation of Peter Henner at ¶¶ 13, 60. In support, Cortlandt points to the fact that Entergy Indian Point has agreed to sell its entire output of electricity to PASNY for 3.6 cents per kilowatt-hour through 2004—a revenue level Cortlandt considers sufficient to cover Unit 3's operating costs, but insufficient to simultaneously satisfy any obligations arising from activities at the FitzPatrick plant. *See* Affirmation of Peter Henner at ¶ 15. According to Cortlandt, the problem is exacerbated by the Entergy companies' ostensible failure to allocate between the Indian Point 3 and FitzPatrick plants the payment for those plants' combined fuel assets.[17]

The applicants respond only briefly to this general line of argument, stating merely that Cortlandt's assertions of joint and several liability are vague and baseless. *See* Answer to Cortlandt's Petition at 13–14. We disagree with the applicants.[18] Cortlandt points specifically to two financial obligations (the Facilities Payment Note and the Fuel Payment Note) as sources of joint and several liability and asserts that PASNY's 3.6 cent per kilowatt hour payments would be insufficient to satisfy the transferees' obligations at both FitzPatrick and Indian Point 3. Moreover, Cortlandt's expert (Mr. Sansoucy) concludes that the estimated net operating income from Indian Point 3 for the next seven years would, under certain assumptions, be insufficient to cover the facility and fuel payments during that time. *See* Sansoucy Letter at 2. These allegations, backed by an expert's affidavit, create a genuine dispute warranting a hearing.[19]

b. *Limited Liability Corporation.* As a second line of argument regarding financial qualifications, Cortlandt asserts that Entergy Indian Point, as a limited liability company, may not have the necessary resources to protect the environment and meet its legal, contractual and regulatory obligations to its employees, PASNY (pursuant to the Indian Point 3 and FitzPatrick sales contracts), and those who may be injured or suffer property damage in a nuclear accident. *See* Affirmation of Peter Henner at ¶ 25(e). Cortlandt anticipates that Entergy Indian Point could lack the necessary resources to respond to these obligations if it were to face an accident, a shortfall in operating revenue due to fluctuations in the market, or changes in the energy market or in the cost of producing nuclear power. *See* Affirmation of Peter Henner at ¶ 54. Cortlandt asserts that the newly-formed Entergy Indian Point should be subject to the stricter financial requirements of 10 CFR 50.33(f)(3) and (4). *See* Affirmation of Peter Henner at ¶ 53.

Cortlandt acknowledges that we have issued reactor operating licenses to limited liability corporations in the past and that we have recently approved a transfer of such a license to an LLC whose only asset was the generating facility. *See* Affidavit of Peter Henner at ¶ 55, citing *Oyster Creek,* CLI–00–6, 51 NRC at 208. However, Cortlandt considers *Oyster Creek* factually distinguishable inasmuch as the transferor in that proceeding was an investor-owned utility while the transferor in the instant proceeding is a public entity. *See* Affirmation of Peter Henner at ¶ 59. Cortlandt also considers *Oyster Creek* to have been wrongly decided and argues that it creates a ''fortress to deny intervention.'' *See* Affirmation of Peter Henner at ¶ 62.

We decline to admit this issue. The applicants have already provided the financial data called for by the requirements of 10 CFR 50.33(f)(3) and (4). Moreover, Cortlandt has offered us no convincing reason to reconsider our legal ruling in *Oyster Creek,*[20] and we find equally unconvincing its effort to distinguish that case factually. The issue at bar is the financial qualifications of the *transferee.* Cortlandt has not explained why the public status of the *transferor* is relevant to this issue.

c. *Baseline Funding.* CAN contends that we should decline to approve the license transfers until Entergy FitzPatrick and Entergy Indian Point, together with their parent corporations, establish ''baseline funding'' that is clearly defined and substantially increased over the current level. *See* CAN's Petition at 54. This general line of argument is quite similar (and, in some cases, identical) to an issue raised by CAN in *Vermont Yankee.* As we noted in that decision, CAN ''nowhere defines the term ['baseline funding']; nor is it a term with which we are familiar.'' *See* CLI–00–20, 52 NRC at ____, slip op. at 16. However, from the context of CAN's references to baseline funding, it appears in the instant proceeding that CAN is referring to the $90 million line of credit that the Entergy companies are offering as supplemental funding, if necessary. For the reasons set forth below, we find that CAN has failed to provide an adequate basis for most of this issue, but may

[17] *See* Affirmation of Peter Henner at ¶ 17. *See also* Sansoucy Letter at 2 (''[I]t is not possible to render an opinion as to whether the income stream to Entergy will be sufficient to make the required payments. A particular problem is that the fuel payment stream cited in the application is for the combined fuel assets of [Indian Point] 3 and James A. FitzPatrick Nuclear Generating Station and does not allocate the portion of payments assigned to each site [citing Purchase and Sale Agreement, p. 14].''

[18] We do, however, agree with the applicants on one point. We see no factual basis (*e.g.,* affidavits or other documents) in the record for Cortlandt's assertion regarding the inadequacy of Entergy's proposed $50 million letter of credit. *See* Cortlandt's Petition at 7. This aspect of the financial qualifications issue is therefore not admitted for hearing.

[19] *See Yankee Atomic Elec. Co.* (Yankee Nuclear Power Station), CLI–96–7, 43 NRC 235, 249 (1996) (citations and internal quotation marks omitted):

Although section 2.714 imposes on a petitioner the burden of going forward with a sufficient factual basis, it does not shift the ultimate burden of proof from the applicant to the petitioner. Nor does section 2.714 require a petitioner to prove its case at the contention stage. For factual disputes, a petitioner need not proffer facts in formal affidavit or evidentiary form, sufficient to withstand a summary disposition motion. On the other hand, a petitioner must present sufficient information to show a genuine dispute and reasonably indicating that a further inquiry is appropriate.

[20] We recently reaffirmed our *Oyster Creek* holding. *See Monticello,* CLI–00–14, 52 NRC at 57.

submit a revised issue regarding one facet of the ''baseline funding'' question within twenty days of issuance of a protective order that provides CAN access to the applicants' proprietary information.

CAN initially argues that the applicants have failed to explain whether the $50 million letter of credit from Entergy Global Investments, Inc., is to support all of Entergy's current nuclear holdings and future acquisitions, and whether those funds are immediately available to Entergy FitzPatrick and Entergy Indian Point or whether instead they are available only upon repayment of a $50 million letter of credit from Entergy Corp. *See* CAN's Petition at 54–55. In response, the applicants explain that the Entergy Corp.'s $50 million line of credit is part of the $90 million supplemental funding that various Entergy companies are making available to meet contingencies for both Entergy FitzPatrick and Entergy Indian Point. The funds, according to the applicants, are not available to the entire fleet of Entergy reactors. *See* Answer to CAN's Petition at 26 n.20. In our view, the applicants' explanation fills the informational gap about which CAN complains, leaving no ''genuine dispute'' on this point. *See* 10 CFR 2.1306(b)(2)(iv). We therefore do not admit this portion of CAN's ''baseline funding'' issue.[21]

CAN next argues that (a) neither FitzPatrick nor Indian Point 3 has ever met, on a sustained basis, the revenue generation standards required under the Purchase and Sale Agreement; (b) maintenance outage costs could easily exceed the $90 million in supplemental funding available to the two plants; and therefore (c) the applicants must provide additional assurance as to the health and safety of both the workers and the public. *See* CAN's Petition at 55. Applicants respond that CAN has provided no affidavits, supporting documents or other evidence to support this claim. *See* Answer to CAN's Petition at 26. However, CAN explains that the applicants' exclusion of certain financial information from the two applications precludes CAN from comparing the anticipated operating costs with the anticipated revenues and thereby assessing the transferees' ability to plan for maintenance outages or to build up sufficient funds for unexpected outages. *See* CAN's Reply Brief at 18.

Regarding part (b) of this argument, the ''sufficiency'' *vel non* of the $90 million supplemental funding does not constitute grounds for a hearing. In *Vermont Yankee,* we recently declined to admit essentially the same issue (also raised by CAN) on the ground that NRC rules do not mandate supplemental funding. ''The parent company guarantee is supplemental information and not material to the financial qualifications requirements of 10 CFR 50.33(f)(2).''[22] CAN has given us no reason to reach a different conclusion in the instant proceeding.

Regarding the remainder of CAN's argument, however, we reach a somewhat different conclusion. CAN's claim of revenue shortfalls essentially challenges the Entergy companies' cost and revenue projections—precisely the kind of challenge we have indicated would be acceptable if based on sufficient facts, expert opinion or documentary support. *See Oyster Creek,* CLI–00–6, 51 NRC at 207, 208, citing *Seabrook,* CLI–99–6, 49 NRC at 219–21. In fact, we have already ruled that Cortlandt's somewhat different financial qualifications issue meets our threshold requirements for a hearing. It is true that CAN's version of the issue appears only in its Petition, without back-up support. However, we believe that CAN's explanation regarding the unavailability of relevant data entitles it to gain access to the data through a protective order (*see* page 12, *supra*) before being held to our usual specificity requirements.[23] The same is true of Cortlandt insofar as it also chooses to challenge Entergy's cost-and-revenue projections. We therefore authorize CAN and Cortlandt to submit a properly formulated and supported financial qualifications issue within 20 days of the entry of a protective order.

We caution CAN, and Cortlandt as well, that ''absolute certainty'' in financial forecasts is impossible, and that we do not require it. *See Seabrook,* CLI–99–6, 49 NRC at 221–22. Challenges to Entergy's financial qualifications ''ultimately will prevail only if [they] can demonstrate relevant uncertainties significantly greater than those that usually cloud business outlooks.'' *Id.* at 222.

Finally, CAN asserts that Entergy's supplemental $90 million will prove inadequate to cover Entergy's various potential liabilities, including its Price-Anderson Act responsibility. We have already explained why the $90 million in supplemental funds is not part of this license transfer case. And, in our recent *Vermont Yankee* decision, we rejected an identical Price-Anderson claim by CAN:

> [N]othing about Price-Anderson coverage changes as a result of this license transfer. The same coverage will exist after license transfer as exists today. Moreover, contrary to what CAN suggests, Price-Anderson indemnification agreements continue in effect even after plants have ceased permanent operation and are engaged in decommissioning. *See* 10 CFR 140.92 (NRC Indemnification Agreement, Article VII); 10 CFR 50.54(w). Thus, CAN's Price-Anderson argument is ill-conceived. . . .[24]

In sum, we will consider a revised issue submitted by CAN regarding the applicants' cost and revenue projections, but we reject CAN's claims regarding the $90 million supplemental fund and the Price-Anderson Act.

3. Decommissioning Issues

a. *Consistency of Decommissioning Funding Arrangement with 10 CFR 50.75.* As explained at pages 5–6, *supra,* the applicants have structured an unusual arrangement whereby the transferor (PASNY) keeps the decommissioning fund after transferring the FitzPatrick and Indian Point 3 plants to the Entergy companies. Ordinarily, a transferee would receive the decommissioning fund along with the nuclear plant with which it was associated.

The Association raises the question whether the applicant's arrangement is

[21] Entergy Global Investments, Inc., has offered two $20 million lines of credit to Entergy FitzPatrick and Entergy Indian Point, respectively. However, contrary to CAN's representations, it has not issued a $50 million dollar letter of credit.

[22] *See* CLI–00–20, 52 NRC at ____, slip op. at 21–22, citing *Oyster Creek,* CLI–00–6, 51 NRC at 205. *See also Vermont Yankee,* CLI–00–20, 52 NRC at ____, slip op. at 25:

> [A]lthough AmerGen's $200 million reserve fund provides significant assurance of sufficient operating and decommissioning funds in the event of a problem, the fund is not, strictly speaking, required by our rules. It therefore lies outside the bounds of our license transfer hearing process—which focuses on whether AmerGen Vermont meets the required financial and technical qualifications.

[23] Subpart M calls for ''specificity'' in pleadings. *See Northeast Nuclear Energy Co.* (Millstone Nuclear Power Station, Units 1, 2, and 3), CLI–00–18, 52 NRC 129, 131–32 (2000). However, in the unusual setting here, where critical information has been submitted to the NRC under a claim of confidentiality and was not available to petitioners when framing their issues, it is appropriate to defer ruling on the admissibility of an issue until the petitioner has had an opportunity to review this information and submit a properly documented issue.

[24] CLI–00–20, 52 NRC at ____, slip op. at 22. In that same decision, we further commented on the analogous Price-Anderson argument of another petitioner (Vermont) that:

> . . . our regulations only require it to show that it has sufficient cash equivalents (such as the parent company guarantee) to cover the retroactive $10 million premium required by our regulations at 10 CFR 140.21(e)–(f). *See Oyster Creek,* CLI–00–6, 51 NRC at 206. . . . Vermont's argument that the applicant must meet financial requirements in addition to those imposed by our regulations constitutes, in effect, a demand for additional rules, but it does not provide an adequate basis for a hearing. *Id.* Moreover, * * *, prior to issuance of the amended license to AmerGen Vermont, it must obtain all regulatorily-required property damage insurance.

consistent with the Commission's own decommissioning requirements of 10 CFR 50.75(e) which, according to the Association, requires the transferee (here, the Entergy companies) to hold the decommissioning funds. *See* Association's Petition at 18; Affidavit of Stephen Prussman. The Association disputes applicants' claim that the license transfer request meets the requirements of 10 CFR 50.75(e)(1)(vi), *i.e.,* that the applicant provide financial assurance ''equivalent'' to that offered by the decommissioning devices (*e.g.,* a surety or insurance arrangement) specified in the earlier portions of section 50.75(e)(1). In support, the Association asserts that outstanding questions of tax liability limit the availability of the decommissioning funds and also that the applicants impose various contractual limitations upon the availability of the funds (*i.e.,* limits based upon plants owned, limits on the Authority's liability, and provisions to pay less than the full decommissioning funding). *See* Prussman Affidavit at 2. The Association also asserts that the arrangement contravenes 10 CFR 50.75(e)(1)(v), which specifies that the terms of the contract must be with the licensee's customers and include provisions that the electricity buyers will pay for decommissioning. *See* Prussman Affidavit at 2.

At bottom, the issue here is whether the applicants' financial assurance arrangement is lawful under 10 CFR 50.75 and the ''equivalent'' of those otherwise prescribed in the regulations (10 CFR 50.75(e)(1)(i)–(v)). The issue raises genuine disputes of law and fact and we admit it for hearing.[25] We now move to the remaining decommissioning issues. None of these is admissible.

b. *Commitment and Ability to Decommission Indian Point 3 to Greenfield Condition.* Cortlandt's first substantive issue regarding decommissioning funding is whether the Entergy companies are both committed and financially able to decommission the Indian Point 3 facility to ''greenfield'' condition[26] and thereby give Cortlandt the benefits of the greenfield decommissioning of not only Unit 3 but also Units 1 and 2 (whose decommissioning awaits the decommissioning of Unit 3).[27]

Concerning the Entergy companies' commitment, Cortlandt maintains that the transfer documents do not commit Entergy Indian Point to greenfield decommissioning, even though the planning for greenfield decommissioning must begin soon if it is to be achieved.[28] Cortlandt does not trust Entergy Indian Point, as a for-profit entity, to spend more than the minimum amount possible to decommission the facility, even if this means decommissioning it to less than greenfield conditions.[29]

Concerning the Entergy companies' ability to fund decommissioning, Cortlandt questions the adequacy of the decommissioning fund in light of Entergy Indian Point's joint and several liability for Entergy FitzPatrick's obligations.[30] It also challenges the applicants' reliance on the decommissioning cost estimate established in the NRC's regulations, arguing that the actual costs may be higher than the regulations envision.[31] Cortlandt objects that the applicants have not made enough information available for Cortlandt to determine the sufficiency of the decommissioning fund.[32] Cortlandt explains that ''greenfielding'' is particularly important to it because the plant property is a prime area for either residential/commercial development or recreational use.[33]

The principal difficulty Cortlandt faces with this issue is that our regulations do not require Entergy Indian Point to decommission the plant to greenfield condition. Although Cortlandt may have grounds for an action in a State Court against PASNY for breach of a contractual commitment to return the facility land to greenfield condition,[34] Cortlandt has provided no basis for us to question Entergy Indian Point's ability or willingness to comply with the NRC's decommissioning requirements.

Cortlandt's argument has other flaws as well. Its challenge to the applicants' use of the very decommissioning cost estimate methodology sanctioned by our rules amounts to an impermissible collateral attack on 10 CFR 50.75.[35] Cortlandt has not attempted to justify a waiver here of our rule prohibiting such attacks. *See* 10 CFR 2.1329. Notably, the fund's current assets *exceed* regulatory requirements.[36] Finally, the decommissioning funds are held in a special fund, separate and apart from Entergy Indian Point's other assets, and are therefore unaffected by any joint and several liability that Entergy Indian Point may have for the obligations of Entergy FitzPatrick.

For the reasons set forth above, this issue is not admissible.

c. *Extension or Renewal of Indian Point 3 License.* Cortlandt's next substantive issue is whether the Entergy

[25] CAN raises related issues: whether NRC approval of the transfers will deprive the Commission of authority to require PASNY to conduct remediation under decommissioning, and whether, under those circumstances, PASNY would no longer have access to the decommissioning trust fund for the remediation it would need to complete. *See* CAN's Reply Brief at 14. These issues relate to the admitted issue involving 10 CFR 50.75, *supra,* and CAN may address them at the hearing in that context.

CAN and the Association should be aware, however, that the decommissioning trust agreement has been modified somewhat by the NRC staff's November 9, 2000 orders. *See* both Staff Orders at 6 ¶ 9.

[26] *See* Cortlandt's Petition at 8; Cortlandt's Supplemental Filing at 2; Affirmation of Peter Henner at ¶9, 26(a), 31–32, 35–36, 52, 61; Sansoucy Letter at 4. Cortlandt is particularly concerned about whether the transferees have the financial ability to remove permanently the spent fuel rods from the site upon decommissioning, without using dry cask storage. *See* Affirmation of Peter Henner at ¶ 12; Sansoucy Letter at 3; Cortlandt Verified Petition at 16. PASNY estimates that the fund for decommissioning both the FitzPatrick and Indian Point 3 plants will contain $1.9 billion at the time of license expiration. See Cortlandt Verified Petition at 11.

[27] *See* Affirmation of Peter Henner at ¶ 7. Although it is less than clear, Cortlandt appears to argue that the full decommissioning of Indian Point Unit 1 was postponed to coincide with the decommissioning of Units 2 and 3. *See* Affirmation of Peter Henner at ¶¶ 43–46; Cortlandt's Reply Brief at 14. Units 1 and 2 are not owned by PASNY and are not the subject of this proceeding.

[28] *See* Affirmation of Peter Henner at ¶ 35.

[29] *See* Affirmation of Peter Henner at ¶¶ 36, 41; Cortlandt Verified Petition at 11.

[30] *See* Cortlandt's Reply Brief at 11.

[31] *See* Cortlandt's Reply Brief at 11–12.

[32] *See* Cortlandt's Petition at 8; Cortlandt's Supplemental Filing at 3.

[33] *See* Affirmation of Peter Henner at ¶ 33; Cortlandt Verified Petition at 10.

[34] *See* note 6, *supra.* Cortlandt refers to a ''social compact'' between Cortlandt and PASNY. According to Cortlandt, PASNY agreed in this compact to decommission Indian Point Units 1, 2 and 3 to greenfield condition in return for Cortlandt agreeing to permit the siting of Indian Point 3 at its current location. *See* Cortlandt's Reply Brief at 10–11. Similarly, Cortlandt asserts that ''[t]he monies in the decommissioning fund were contributed based on [PASNY's] commitment to the surrounding community, including [Cortlandt], to restore the site to greenfield conditions.'' Cortlandt asserts that the applicants cannot legitimately argue that greenfielding is beyond the scope of the transfer proceeding yet, at the same time, transfer the money that was placed in the decommissioning fund on the understanding that it would be used to ''greenfield'' the site. *See* Cortlandt's Reply Brief at 15.

[35] *See Vermont Yankee,* CLI–00–20, 52 NRC at __, slip op. at 8. CAN also challenges Entergy's use of our generic decommissioning cost formula. *See* CAN's Petition at 18–23; CAN's Reply Brief at 12–13. For the reasons we gave in *Vermont Yankee,* 52 NRC at __, slip op. at 8, we find CAN's claim inadmissible.

[36] As we indicated in *Seabrook,* CLI–99–6, 49 NRC at 218 n.9, power reactor licensees will occasionally set aside more funds than the NRC requires—generally to cover activities such as the removal and subsequent disposal of spent fuel or non-radioactive structures and materials beyond the level necessary to reduce residual radioactivity to the levels required under our regulations. Moreover, other governmental agencies, such as the FERC and state public utilities commissions, may also impose funding requirements which licensees may have to satisfy, over and above those of the NRC.

companies would seek to extend or renew the Indian Point 3 operating license (which expires in 2015) [37] and thereby delay Cortlandt's enjoyment of the full panoply of health-and-safety benefits associated with the expected decommissioning of all three units.[38] Specifically, Cortlandt refers to its expectations that PASNY would dismantle and move the facility (*i.e.,* Unit 3) offsite and that any onsite storage of spent fuel by PASNY would be of limited duration.[39] Cortlandt claims that any delay in decommissioning Unit 3 (and any consequent postponement of the decommissioning of Units 1 and 2) will adversely affect Cortlandt's health and safety interests [40] by subjecting Cortlandt and its citizens to the possibility of increased radiological exposure as a result of both the continued operation of the plant and the continued (and possibly expanded) onsite storage of spent fuel.[41] By contrast, Cortlandt expects Entergy Indian Point, as a for-profit entity, to run the plant as long as possible, in order to continue generating revenue.[42] For this reason, Cortlandt asserts that, with the time for decommissioning planning so near, the NRC staff's assessment of financial ability must not be truncated, but should instead include an evaluation of the transferees' ability to decommission Indian Point 3—both as currently licensed and as that license may be renewed or extended.[43]

These concerns do not fall within the scope of this license transfer proceeding. Entergy Indian Point does not here seek in its application to renew or extend the Indian Point 3 operating license, nor does its pending application assume such a request. Moreover, a request to renew or extend the license would seem just as likely from PASNY as from Entergy Indian Point, assuming the plant remains profitable. Finally, in posing this issue, Cortlandt overlooks its right to seek intervenor status in any application for license renewal or license extension that Entergy Indian Point may file. These grounds for rejection apply equally to Cortlandt's concerns regarding delayed decommissioning of the three units, the resulting need both to store additional spent fuel onsite during the plant's extended life and the resulting need to continue the storage of current spent fuel for a longer time than Cortlandt had anticipated.[44]

In a related vein, Cortlandt expresses concern that the Indian Point 3 facility will be used as a temporary repository for spent fuel from other nuclear facilities owned by the Entergy family of companies.[45] This is pure speculation. The transfer application does not seek such authority, and the Indian Point 3 facility could not accept spent fuel from other facilities without transshipment license authority. Should Entergy ever seek such authority, Cortlandt would have the right to seek intervenor status.

d. *Management of Indian Point 3 Decommissioning Fund.* Cortlandt next questions whether sufficient controls exist regarding the management of the decommissioning fund.[46] It suggests that the decommissioning agreements contain ill-defined and uncertain liabilities for the public, and expresses concern that any such additional liabilities or costs incurred by PASNY will have to be absorbed either by PASNY customers or the New York taxpayers.[47] Also, Cortlandt (through its expert, Mr. Sansoucy) claims that PASNY may be retaining decommissioning funds in excess of the amount required and that the application is silent as to the distribution of any excess money remaining after decommissioning.[48]

With the exception of Mr. Sansoucy's assertion concerning excess funds, the issue is overly vague. Cortlandt nowhere identifies the liabilities about which it is concerned. Nor does it explain why it believes they would fall on the public's shoulders. Mr. Sansoucy's claim, while sufficiently specific, lies beyond the scope of this proceeding. The Commission does not have statutory authority to determine the recipient of excess decommissioning funds. For these reasons, we decline to admit this issue.[49]

e. *Scope of Commission's Consideration of Indian Point 3 Decommissioning Issues to Include Indian Point 2 Matters.* In addition to raising these substantive issues regarding decommissioning funding, Cortlandt requests that the Commission consider the transfer in light of both the fact that Units 2 and 3 share common facilities and the possibility that Entergy Indian Point (or one of its affiliates) may acquire Indian Point Unit 2—a possibility which Cortlandt states is specifically contemplated in the Indian Point 3 transfer agreements.[50] We decline to expand the scope of this proceeding in the two ways that Cortlandt requests. Cortlandt has not explained how either the commonality of facilities or Entergy's possible purchase of Unit 2 bears on the acceptability of the Indian Point 3 transfer.

f. *Entergy's Intention to Make a Profit on the Decommissioning Fund.* CAN objects to Entergy's espoused intent to make a profit on the decommissioning trust funds and to return that profit to its shareholders. To accomplish this, Entergy would, according to CAN, have to cut corners and thereby risk public health and safety. *See* CAN's Petition at 21. CAN believes that Entergy will try to turn a profit by minimizing the onsite remediation by constructing new power plants on the decommissioning sites and rotating the decommissioning work schedules at simultaneously decommissioning facilities. *See* CAN's Petition at 21, 22.

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[37] *See* Affirmation of Peter Henner at ¶ 3. Cortlandt explains that certain other Entergy companies are already in the process of renewing the licenses of other nuclear plants (*e.g.,* Arkansas One), thereby purportedly increasing the likelihood that Entergy Indian Point would likewise seek to renew the Indian Point 3 license. *See* Affirmation of Peter Henner at 25(b).

Along similar lines, Cortlandt also asks the Commission to consider the impact of the proposed transfers on possible requests for extensions and/or renewals of the licenses for Unit 2 at Indian Point. *See* Cortlandt's Petition at 8–9; Cortlandt's Supplemental Filing at 2, 4. Cortlandt explains that the operating license for this unit expires in 2013. *See* Affirmation of Peter Henner at ¶ 3. According to Cortlandt, the instant license transfer application will affect whether and by whom a future application for license renewal is ultimately made. *See* Affirmation of Peter Henner at ¶ 39.

[38] *See* Affirmation of Peter Henner at ¶ 6, 7, 11, 44; Cortlandt's Supplemental Filing at 3; Cortlandt's Reply Brief at 12–14. Cortlandt explains that Indian Point Unit 1 has not been an operating facility since 1974 but has yet to be fully decommissioned (*see* Affirmation of Peter Henner at ¶ 3) and claims that Consolidated Edison Inc. of New York (''ConEd,'' the owner of Indian Point Units 1 and 2) has committed to decommission its units for unrestricted use at the same time as PASNY decommissions Unit 3 for unrestricted use. *See* Cortlandt's Petition at 8–9; Cortlandt's Supplemental Filing at 2, 4.

[39] *See* Cortlandt's Petition at 5; Cortlandt's Supplemental Filing, at 4; Cortlandt Verified Petition at 16.

[40] *See* Affirmation of Peter Henner at ¶ 11.

[41] *See* Affirmation of Peter Henner at ¶¶ 25(b), 34; Cortlandt Verified Petition at 16.

[42] *See* Affirmation of Peter Henner at ¶¶ 36, 40; Cortlandt Verified Petition at 11.

[43] *See* Affirmation of Peter Henner at ¶ 6; Cortlandt's Reply Brief at 12–14.

[44] *See* Cortlandt's Petition at 5; Cortlandt's Supplemental Filing at 4; Affirmation of Peter Henner at ¶¶ 11–13, 61; Sansoucy Letter at 3; Cortlandt Verified Petition at 16; Cortlandt's Reply Brief at 12, 14.

[45] *See* Affirmation of Peter Henner at ¶ 25(c); Cortlandt Verified Petition at 16.

[46] *See* Cortlandt's Petition at 8.

[47] *See* Cortlandt's Petition at 9.

[48] *See* Sansoucy Letter at 3.

[49] To the extent that Mr. Sansoucy intended here to argue that such retention of decommissioning funds was a way of making a profit off of the fund, we address that issue at page 33, below.

[50] *See* Affirmation of Peter Henner at ¶¶ 8, 42, 46; Cortlandt's Reply Brief at 14. In fact, Entergy recently announced that it had contracted to purchase from ConEd both Indian Point Units 1 and 2. *See* ''Entergy to Purchase 2 Nuclear Power Plants in New York State,'' *Wall Street Journal* at A–6 (Nov. 10, 2000).

In support, CAN refers us to page 23 of Entergy's 1999 Annual Report.[51] We have checked the cited page on Entergy's web page and find no such statement. Although page 24 of the Annual Report does contain a reference to ''manag[ing] decommissioning of nuclear plants . . . as a source of earnings,'' the reference is made in the context of Entergy's contracts to decommission plants owned by other entities. We conclude that CAN has provided no basis for this issue, and we decline to admit it.

g. *Lack of Provision for Off-Site Remediation.* CAN asserts that, despite both plants having an incontestible record of off-site releases of hazardous radioactive and non-radioactive material, neither the Decommissioning Cost Estimates, the Purchase and Sale Agreement nor the License Transfer Applications contain a provision addressing off-site remediation. *See* CAN's Petition at 20, 23–26. In support, CAN points specifically to section 2.4(b) of the Purchase and Sale Agreement, which provides that Entergy will not assume decommissioning responsibility for the remediation of off-site contamination occurring during PASNY's ownership of the plants. Although CAN acknowledges that it may be unfair to hold Entergy accountable for contamination occurring under PASNY's ownership, it points out that the Purchase and Sales Agreement contains no provision holding PASNY liable for that contamination. CAN is concerned that an NRC approval of the transfer could absolve both Entergy and PASNY of such responsibility. *See* CAN's Petition at 23–24.

To resolve this problem, CAN proposes that the Commission impose one of the following two conditions on the transfer:

> ''Through the Environmental Impact Statement requested [elsewhere in CAN's Petition, the NRC staff should] establish an accurate and detailed study of [the off-site] contamination . . . which PASNY must remediate before the license can be transferred.''
>
> or
>
> PASNY ''should not simply be released from all licensee responsibility, but rather issued a ''decommissioning'' license until [PASNY] has completed'' whatever remediation for which Entergy is not assuming responsibility.

*See* CAN's Petition at 24. If the Commission imposes either of these conditions, CAN requests that it also address how to fund this partial remediation. CAN is concerned that PASNY's accountability for partial site remediation and cleanup not compromise the quantity of funds available to complete the decommissioning after the license expires. *See* CAN's Petition at 24. CAN also provides a third alternative condition:

> The Commission disregard ''clause 2.4(b) . . . insofar as [it affects] decommissioning responsibilities . . .;, and Entergy should be required to conduct a complete . . . decommissioning without regard to whether the off-site contamination was caused by [PASNY] or Entergy, but [with] Entergy . . . allowed to recover those [actual] costs from [PASNY that] . . . exceed the amount in the Decommissioning Trust.''

*See* CAN's Petition at 24–25.

Applicants respond that nothing in the purchase and sales agreement relieves PASNY of any liabilities not assumed by the Entergy applicants, and that PASNY ''retains liability for off-site disposal, storage, etc. that occurred prior to closing.'' *See* Answer to CAN's Petition at 14. Our review of the agreement gives us no reason to question the applicants' interpretation. We therefore see no reason to impose the conditions CAN has requested. Moreover, we see no basis for CAN's concern that this retained liability will somehow deplete the FitzPatrick and Indian Point 3 decommissioning trust funds. Those funds are set aside in a trust specifically and exclusively dedicated to the purpose of decommissioning the plant sites; the trust cannot be used for offsite remediation.[52] In short, we see nothing in CAN's offsite remediation argument that raises a material issue of fact or law meriting a hearing.

h. *Environmental Impact Statements.* CAN requests the Commission to prepare environmental impact statements (''EIS'') regarding the adequacy of the decommissioning funding. *See* CAN's Petition at 26–27. CAN later refines this request to cover only the levels of on- and off-site contamination. *See* CAN's Reply Brief at 18. CAN points out that, prior to 1980, plants throughout the United States buried radioactive waste both on- and off-site, with poor documentation and few safeguards. CAN would like the Commission to prepare EIS's for the two plants to determine the extent of contamination and to set realistic funding requirements. CAN points to the experimental nature of decommissioning and to the decommissioning cost overruns at every decommissioned plant to date. *See* CAN's Petition at 26–27. CAN doubts Entergy's claim that, with experience, it can decrease its decommissioning costs by developing special techniques. CAN also doubts that Entergy will have garnered that experience by the time it needs to decommission both Indian Point 3 and FitzPatrick starting in 2013 and 2015, respectively.[53] CAN further asserts that the Entergy companies' inability to recoup their decommissioning expenses from ratepayers constitutes yet another obstacle to successful decommissioning. *See* CAN's Petition at 28. We decline to admit this issue for the same reasons set forth in our recent decision in *Vermont Yankee*:

> CAN's ''NEPA'' issue amounts to another effort to litigate site-specific decommissioning cost estimates. CAN's position rests on the assumption that our regulations require AmerGen Vermont, in its license transfer application, to provide an estimate of the actual decommissioning and site clean-up costs. As explained in the previous section of this order, our regulations impose no such requirement. Our decommissioning funding regulation (10 CFR 50.75(c)) generically establishes the amount of decommissioning funds that must be set aside.[47] CAN cannot challenge the regulation in this proceeding. As noted above, the NRC's decommissioning funding rule reflects a deliberate decision not to require site-specific estimates in setting decommissioning funding levels. CAN has not sought a waiver of that rule in this proceeding. *See* 10 CFR 2.1329 * * *; *Seabrook,* CLI–99–6, 49 NRC at 217 n.8. Nor has CAN reconciled its demand for a NEPA review with our rules' ''categorical exclusion'' of license transfers from NEPA requirements. *See* 10 CFR 51.22(c)(21).
>
> [47] CAN's supporting argument that decommissioning technology is still in an experimental stage fails for the same reason, *i.e.,* it is a collateral attack on 10 CFR 50.75(c) establishing the amount of decommissioning funds that must be set aside. It is worth noting that the NRC rule which CAN attacks, 10 CFR 50.75(c), is in fact supported by a

[51] CAN's Petition at 21 and n.22. However, CAN provides us a copy of neither the report nor the cited page. Even after Entergy denied ever expressing such an intent (Answer to CAN's Petition at 13 n.9), CAN in its Reply Brief still failed to support its claim with the necessary documentation.

[52] Decommissioning trusts are reserved for decommissioning as defined in 10 CFR § 50.2. Thus, offsite remediation would not be an accepted expense. However, some licensees use the decommissioning trust to accumulate funds for both ''decommissioning'' as NRC defines it and decommissioning in the broader sense that includes interim spent fuel management, non-radioactive structure demolition, and site remediation to greenfield status. The Commission accepts this approach as long as the NRC-defined ''decommissioning'' funds are clearly earmarked. Also, once the funds are in the decommissioning trust, withdrawals are limited by 10 CFR § 50.82, so that non-''decommissioning'' funds (again, as defined by the NRC) could only be spent after the NRC-defined ''decommissioning'' work had been finished or committed.

[53] *See* CAN's Petition at 27–28. The FitzPatrick license actually expires in 2014.

generic environmental impact statement. *See* Generic Environmental Impact Statement, NUREG–0586 (August 1988) (issued in conjunction with the promulgation of 10 CFR 50.75 and 50.82). *See generally* Final Rule, ''General Requirements for Decommissioning Nuclear Facilities,'' 53 FR 24018, 24051 (June 27, 1988).[54]

CAN also seeks an EIS on two grounds unrelated to decommissioning: that the problems at Indian Point 3 which persuaded Entergy to pass up an opportunity to become the plant's operator in 1996 still exist (*see* CAN's Petition at 48–51), and that the Commission's failure to conduct an antitrust review constitutes a major federal action affecting the quality of the environment (*see* CAN's Petition at 61). CAN later broadens the first of these so as to seek an EIS on the new owners' operation of both plants. *See* CAN's Reply Brief at 17–18. We reject these two EIS issues on the same grounds as set forth immediately above. In addition, we exclude the first EIS issue (as broadened) on the ground that the scope of this proceeding does not include the new owners' operation of the plants—but includes only the transfer of their operating licenses. Further, we exclude the antitrust EIS issue on same ground we used to reject CAN's same argument in *Vermont Yankee.*[55]

4. CAN's Non-Labor Related Technical Qualifications Issues

CAN raises an array of challenges to the technical qualifications of the workforce that will be employed at FitzPatrick and Indian Point 3 once the Entergy companies take over those plants. CAN's claims, however, are not directly linked to the license transfers at issue here, but rest largely on current operational issues at the two plants and on Entergy's operation of other plants, including non-nuclear plants. As in our recent *Vermont Yankee* and *Oyster Creek* decisions, where we rejected claims all but identical to CAN's, we find here that CAN has provided no documents, facts or expert opinion establishing a genuine issue concerning technical qualifications. *See also Millstone,* CLI–00–18, 52 NRC at 131–32, citing 10 CFR 2.1306(b)(2)(iii).

a. *Age-Related Defects at Both Plants.* CAN asserts that the Entergy companies lack the ability to manage FitzPatrick (a boiling-water reactor or ''BWR'') and Indian Point 3 (a pressurized-water reactor or ''PWR''). CAN claims that FitzPatrick is older and subject to more age-related degradation than Entergy's other BWRs. *See* CAN's Petition at 29–36. CAN concludes that Entergy is significantly overstating its claim of experience in maintaining and operating BWRs and that Entergy's spotty record in managing PWRs (such as Indian Point 3) suggests the company's ability to manage an increasing number of aging reactors may be stretched past the breaking point. *See id.* at 29–30. Based on these arguments, CAN asks the Commission to ''take into consideration the effect of consolidating a large number of aging, mismanaged and otherwise troubled facilities under a single corporate umbrella, especially given the rigors of operating those facilities in a deregulated electricity market without the flexibility of returning to ratepayers to reimburse unexpected operating and maintenance costs.'' *See id.* at 30.

CAN ignores Entergy Nuclear Operations' stated intent to employ the same personnel as are currently working at the two plants. Nor does CAN's Petition challenge these individuals' technical qualifications. Its discussion of Entergy's experience in operating other BWRs and PWRs and the age of other Entergy plants does not bear on the technical qualifications of the transferees and their intended employees at FitzPatrick and Indian Point 3. *See Vermont Yankee,* CLI–00–20, 52 NRC at ____, slip op. at 11–13 (declining to admit a similar issue where CAN failed to challenge the technical qualifications of the plant's intended employees). We therefore decline to admit this issue.

b. *Leak-Detection Problems at Both Plants.* CAN points to alleged leak detection problems at the two plants and asks the Commission to require Entergy to modify inspections and leak detection equipment and to institute programs to study the rate of crack propagation. CAN further asks the Commission to oversee the development of systems and procedures necessary to provide an objective review of these actions. *See* CAN's Petition at 32–33. Moreover, CAN asks the Commission to deny the license transfer application on the ground that Entergy, with a tightly-packed maintenance schedule and a depleted workforce (due to ''profitability'' cuts), lacks the flexibility necessary to react quickly to surprises at two or more generating plants. *See* CAN's Petition at 33. In a similar technical challenge to the two applications, CAN points to certain evidence that the Updated Final Safety Analysis Reports (''UFSAR'') for both plants have not been kept up-to-date, and argues that it would be premature to approve a transfer of licenses for reactors which were in an unanalyzed condition. *See* CAN's Petition at 34–36.

We recently addressed a quite similar argument from CAN in *Vermont Yankee* concerning another company's ability to discern cracks and leaks. We consider our response there equally dispositive of CAN's contention in this proceeding:

> These arguments address the adequacy of the plant's ongoing safety-related programs. Operational issues of this kind will remain the same whether or not the license is transferred. The Commission has indicated that a license transfer hearing is not the proper forum in which to conduct a full-scale health-and-safety review of a plant.[14]
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> [14] ''A license transfer proceeding is not a forum for a full review of all aspects of current plant operation.'' *See Oyster Creek,* CLI–00–6, 51 NRC at 213, 214 * * * CAN may, of course, file a petition for staff enforcement action pursuant to 10 CFR 2.206 if it is concerned about current safety issues at Vermont Yankee.

*See Vermont Yankee,* CLI–00–20, 52 NRC at ____, slip op. at 13. Moreover, in *Vermont Yankee,* we rejected a similar request from CAN (that the Commission require special training as a condition for its approval of the transfer) on the ground that CAN ''failed to demonstrate that a genuine dispute exists, with requisite specificity, on this basis.'' *See* CLI–00–20, 52 NRC at ____, slip op. at 13. *See also* 10 CFR 2.1306(b)(2)(iv). This ruling applies equally to CAN's similar argument here.[56]

c. *Issues of Management ''Character''.* CAN asserts that Entergy's license transfer applications rely on the resources and experience of the parent company (Entergy Corp.), its public utility subsidiaries (Entergy Arkansas Inc., Entergy Gulf States Inc., Entergy Louisiana Inc., and System Energy Resources Inc.), and its operations subsidiary (Entergy Operations Inc.) to establish a track record as a nuclear operator. CAN describes the operating records of these affiliates as ''mixed at best, irrelevant in some regards, and alarming in many others.'' *See* CAN's Petition at 37. CAN further argues that, because the majority of Entergy Nuclear

[54] CLI–00–20, 52 NRC at____, slip op. at 8–10 (final footnote omitted). *See also Monticello,* CLI–00–14, 52 NRC at 59.

[55] CLI–00–20, 52 NRC at____, slip op. at 11 (footnote omitted): The fact that a particular license transfer may have antitrust implications does not remove it from the categorical exclusion. In any event, because the AEA does not require, and arguably does not even allow, the Commission to conduct antitrust evaluations of license transfer applications, our purported ''failure'' to conduct such an evaluation cannot constitute a Federal action warranting a NEPA review.

[56] CAN indicated, for the first time in its Reply Brief, that it was raising the cracks-and-leaks and UFSAR arguments not only as technical and administrative problems meriting the Commission's attention and correction, but also as an indication of the lack of technical qualifications of the existing plants' staff, on whose technical qualifications Entergy Nuclear Operations is relying in the applications. *See* CAN's Reply Brief at 16. CAN's effort to recast its claim is unavailing. As indicated in *Vermont Yankee* (quoted in the text immediately above), any ongoing operational deficiencies at nuclear plants subject to a license transfer must be addressed regardless of the transfer.

Operations'', Entergy FitzPatrick's and Entergy Indian Point's corporate officers hold positions in other Entergy companies, these two new companies will inevitably inherit the existing companies' record and operational style. See CAN's Petition at 37; CAN's Reply Brief at 16. According to CAN, this record and style are reflected in the facts that Entergy has among the highest number of NRC violations in the United States and that the company's improved capacity factors are ''shadowed by questionable maintenance practices and inadequate procedures, work performance, and operator training.'' *See* CAN's Petition at 38. CAN relies not only on Entergy's record as a nuclear generator; it also points to findings that, in the electrical transmission and delivery business, Entergy has a record of marginalizing safe operations by chronically postponing maintenance and reducing the skilled workforce to levels that compromise worker and public safety. *See* CAN's Petition at 38–40, citing findings of the Texas Public Utility Commission (''Texas PUC'') and the Council of the City of New Orleans, both in 1998.[57]

Absent strong support for a claim that difficulties at other plants run by a corporate parent will affect the plant(s) at issue before the Commission, we are unwilling to use our hearing process as a forum for a wide-ranging inquiry into the corporate parent's general activities across the country. Here, CAN's various references to problems of other Entergy subsidiaries, including the non-nuclear subsidiaries, tell us little if anything about Entergy Nuclear Operations' technical qualifications to operate FitzPatrick and Indian Point 3 using the same workforce that is already there. *See Vermont Yankee,* CLI–00–20, 52 NRC at ____, slip op. at 14–15, (concluding that ''claims of staffing deficiencies at other nuclear facilities owned by AmerGen'' were insufficient to trigger our hearing process). *See also Oyster Creek,* 51 NRC at 209–10.

Nor do we believe a hearing is merited by CAN's conclusory assertions that the corporate culture of Entergy Nuclear Operations will be tainted by the influence of high-level officials from the parent company and other subsidiaries. CAN does not identify which officials will undercut safety at Indian Point and FitzPatrick or explain how they will do so. CAN's claims are too broad and too vague to be suitable for adjudication. We therefore decline to admit this issue.

d. *Cost-Cutting Pressures.* CAN questions whether Entergy FitzPatrick and Entergy Indian Point can safely accomplish the goals necessary for the companies to reduce costs to a level sufficiently low for the plants' electric rates to be competitive, *i.e.,* reducing maintenance and outage times and workforce size.[58] According to CAN, Entergy's applications indicate a goal of 85-percent capacity (or 15-percent downtime). CAN acknowledges that PASNY was able to meet the same refueling schedule at Indian Point 3 that Entergy will need to maintain, but says that PASNY did so only by unnecessarily exposing its workforce to radiation. *See* CAN's Petition at 41–42. Finally, CAN draws the Commission's attention to ConEd's decision not to replace the steam generators at Indian Point Unit 2, warning that Entergy will experience cost-cutting pressures similar to those which led to ConEd's problems.[59]

CAN has failed to provide adequate support or basis for its general ''cost-cutting'' issue. It has not provided the necessary nexus between the problems at other plants (some not even in this country) operated by different companies and the difficulties it anticipates from Entergy FitzPatrick, Entergy Indian Point and Entergy Nuclear Operations. *See Oyster Creek,* CLI–00–6, 51 NRC at 209–10. Nor does it offer any factual support for its claim that the Entergy companies will subordinate safety to production goals or profits. *See Oyster Creek,* CLI–00–6, 51 NRC at 207 (''Absent [documentary] support, this agency has declined to assume that licensees will contravene our regulations'') and cited authority. Finally, CAN's speculation about the likelihood and ramifications of staff reductions is insufficient to trigger a hearing on this issue. CAN points to no information suggesting that Entergy plans to reduce its staff below NRC requirements. As we stated in *Oyster Creek:*

> For key positions necessary to operate a plant safely, the Commission has regulations requiring specific staffing levels and qualifications. *See* 10 CFR § 50.54(m). Other than those specific positions, the licensee has a responsibility to ensure that it has adequate staff to meet the Commission's regulatory requirements. If a licensee's staff reductions or other cost-cutting decisions result in its being out of compliance with NRC regulations, then (as noted above) the agency can and will take the necessary enforcement action to ensure the public health and safety. The Oyster Creek application does not on its face suggest any likelihood of a cost-driven lapse in compliance with NRC safety rules.

CLI–00–6, 51 NRC at 209. *See also id.* at 214 (''so long as personnel decisions do not impose [a] risk [to the public health and safety], our regulations and policy do not preclude a licensee from reducing or replacing portions of its staff'').

5. *The Association's Labor-Related Technical Qualifications Issues*

The Association raises labor-related issues which, it claims, bear directly on the question whether the transfer will ensure the presence of ''sufficient management personnel, and appropriate working conditions, so as to assure continued safe operation of the facilities.'' See Association's Petition at 9. As noted in the discussion of standing, supra, the Association alleges a precipitous decline in morale among the members of the Association; a high level of confusion regarding future rights and benefits; a significantly increased attrition rate among Association members; a general belief that the transfer will markedly reduce their rights and benefits; and a developing uneasiness with, and unwillingness to trust, or communicate safety-related problems to, senior executive nuclear management or corporate management. *See* Association's Petition at 17.

The Association's claims arise out of what it says is the ''increasingly adversarial nature of the dialogue (or lack thereof) between its members and the proposed transferor and transferees concerning the putative rights and benefits that will be available to petitioners following the proposed transfer.'' *See id.* A contest over ''putative rights and benefits'' amounts, of course, to a labor dispute rooted in economic concerns. Indeed, the Association has brought state-court litigation to adjudicate the labor controversy and, as if to stress the labor relations nature of its claims, the Association has included its lengthy

[57] *See* CAN's Petition at 39–40 (citing and quoting Public Utility Commission of Texas, Docket No. 18249, *Entergy Gulf States, Inc., Service Quality Issues* (Feb. 1998); Groesch, *Report to New Orleans City Council for the Alliance for Affordable Energy* (Aug. 13, 1999); and Groesch, *Statement before the New Orleans City Council Utility Committee* (Aug. 12, 1999)). The second and third of these three documents are included in Exh. 9 to CAN's Petition.

[58] *See* CAN's Petition at 41–47. CAN points to the problems of a foreign nuclear plant owner, British Energy, as an example of how public safety can be adversely affected by over-reduction of the workforce. *See* CAN's Petition at 44–46. *See also* Declaration of David A. Lochbaum, dated July 31, 2000, at 2 (¶ 9(a)), appended as Attachment 3 to CAN's Petition.

[59] *See* CAN's Petition at 42. ConEd has informed the NRC that it has replaced these steam generators. *See* Letter from John A. Zwolinski (NRC) to A. Alan Blind (ConEd) (Oct. 11, 2000).

state-court complaint in the record before us.[60]

As a nuclear safety agency, however, we are loath to step into the middle of a labor dispute. The Association seemingly expects us to consider whether Entergy's commitments regarding salary, benefits and job security are so unjust as to ruin employee morale and cause excessive attrition at FitzPatrick and Indian Point 3. But we have neither the expertise nor the legislative charter of a National Labor Relations Board or labor mediator. We see no natural limits to the labor issues the Association wants us to consider. We thus find the Association's labor grievances unsuitable for a license transfer hearing.

The Association, apparently sensitive to the Commission's reluctance to enmesh itself in management-worker conflicts at nuclear facilities, attempts to argue that its labor dispute with PASNY and Entergy translates into a health and safety problem that the Commission should consider at a hearing. But, while the Association's pleadings frequently allude to alleged health and safety effects of the labor controversy, what the Association has given us, at bottom, consists of specific accusations of bad faith in labor relations and that are tied to vague or conclusory assertions about health and safety. On the latter issue, the only one falling within the NRC's jurisdiction, the Association provides no expert support, no concrete facts, and no claims of specific rule violations.

Further, the specific concerns about pay, benefits and conditions that the Association points to as the source for morale issues are potential (not certain) changes in pay, benefits and conditions that would not occur for between one and three years after completion of the transfer. The Commission is particularly reluctant to engage in prognostication of the impact of changes in current working conditions that the Association has in its own pleadings and affidavits acknowledged may occur years in the future. Unsupported hypothetical theories or projections, even in the form of an affidavit, will not support invocation of the hearing process. In short, the Association has not provided tangible regulatory issues around which to organize a hearing.

The Association's most specific health and safety claims are charges that the labor controversy will provoke high attrition and poor morale. But neither claim raises a genuine controversy for hearing. As for the purported increase in attrition, the Association merely says that it is so. The Association does not provide factual data, expert witnesses, or even affidavits of employees who have or will quit as a result of the license transfer.[61] As for morale, we do not see how we could adjudicate such an abstract concept at a hearing absent some allegation of specific rule violations or specific safety challenges arising out of lower morale. Notably, the Association has submitted no evidence, such as inspection reports or other indicators, suggesting an increase in safety problems at the two plants.

We add a cautionary note. Today's decision does not hold that economic concerns, whether of a labor, commercial or other nature, are categorically excluded from the NRC hearing process. Such concerns, if closely tied to specific health and safety concerns or to potential violations of NRC rules, can be admitted for hearing. *See, e.g., North Atlantic Energy Serv. Corp.* (Seabrook Station, Unit 1), CLI–99–27, 50 NRC 257, 262–63 (1999). Indeed, in our Subpart M rulemaking, which established our current license transfer hearing process, we expressed a willingness to review labor-type issues to a limited extent:

> [I]f a significant loss and replacement of critical plant personnel can be anticipated as the result of a particular license transfer[,] this might well be a reason not to approve the transfer or to condition the transfer on the maintenance of adequate technical qualifications.
>
> * * * * *
>
> If, in a particular license transfer case, a need is identified for submission of a critical staff retention plan in order to address the applicant's technical qualifications, this matter can readily be addressed in the hearing process and can ultimately result in a condition on license transfer approval.

Final Rule, ''Streamlined Hearing Process for NRC Approval of License Transfers,'' 63 FR 66721, 66723 (Dec. 3, 1998).

Claims resting on the loss and replacement of ''critical'' staff derive directly from our rules, which specify both minimum staffing requirements for trained operators at reactors and the technical qualifications of such employees. *See* 10 CFR § 50.54(m). *See also Oyster Creek,* CLI–00–06, 51 NRC at 209 (NRC staffing regulations cover ''key positions necessary to operate the plant safely''). Here, the Association asserts no current or future section 50.54(m) violations arising out of the PASNY-Entergy license transfer. (Nor, frankly, would we expect such a challenge from the Association, some of whose members hold the very staff positions covered by section 50.54(m).)

Notwithstanding the narrow exception in the rulemaking language quoted above, the Commission generally does not involve itself in the personnel decisions of licensees. As we indicated in *Oyster Creek:*

> The Commission is interested in whether the plant poses a risk to the public health and safety, and so long as personnel decisions do not impose that risk, our regulations and policy do not preclude a licensee from reducing or replacing portions of its staff. . . .

CLI–00–6, 51 NRC at 214. *See also Vermont Yankee,* CLI–00–20, 52 NRC at ____, slip op. at 14 n.16 and accompanying text. We would require personnel claims considerably more concrete than the Association's—*i.e.,* specific indications of a potential rule violation or of deteriorating safety conditions linked to the license transfer—before we would consider admitting plant staffing questions into an NRC license transfer hearing.

We by no means intend to denigrate the concerns of the Association's members, who work at FitzPatrick and Indian Point 3 and have an understandable interest in working conditions at the two plants. The question whether those conditions are fair and lawful is an important one. But our license transfer hearings under Subpart M are designed solely to adjudicate genuine health and safety disputes arising out of license transfers. The grant of hearings merely on the broad assertion that contentious labor controversies will lead to deleterious health and safety consequences would have no stopping point and would risk converting our agency into a labor relations forum, contrary to our statutory mission and at a significant cost in resources and effort.

For these reasons, we decline to admit for hearing the Association's labor-related issues.[62]

[60] *See* Verified Petition, *Nuclear Generation Employees Ass'n* v. *New York Power Auth.* (Sup. Ct., Westchester Co., NY), Index No. 11129/00 (filed July 27, 2000) (appended to Association's Reply Brief as Exh. 1). *See also* Association's Reply Brief, dated Aug. 3, 2000, at 3.

[61] The Association's failure to provide actual data on departing employees renders virtually meaningless its reference to a ''more than doubl[ing]'' of the normal attrition rate for its members. *See* Joint Declaration at 6. By way of extreme example, if the normal attrition rate were one person per year per plant, a doubling of this rate would provide no conceivable basis for health-and-safety concerns.

[62] Like the Association, CAN raises the issue that much of the plants' existing staff will quit their jobs as a result of the transfer. *See* CAN's Petition at 44; CAN's Reply Brief at 16. But CAN has provided little detail, and no back-up support, for this claim. For the reasons stated in the text, CAN's claims on this score are inadmissible. *See also Oyster Creek,* CLI–00–6, 51 NRC at 209–10, 214.

6. Issues Involving Emergency Evacuation Plans

Cortlandt asks the Commission to consider the impact of the proposed transfers on the need for changes to the Emergency Evacuation Plans. *See* Cortlandt's Supplemental Filing at 2. It expresses similar concerns about whether the transferees for Indian Point 3 will discontinue the emergency warning program, emergency preparedness training program, and health impact training program currently run by PASNY.[63]

The new licensees will have to meet all of the requirements of 10 CFR 50.47 and Appendix E to 10 CFR part 50 concerning emergency planning and preparedness. The emergency notification system is required by the regulations and will remain in place. Cortlandt has not alleged, with supporting facts, that Entergy is likely to violate the NRC's emergency planning rules. Under these circumstances, we see no basis for further pursuit of this issue.

7. Appropriateness of Indian Point 3 Transfer, Given Its Location

Cortlandt asks the Commission to consider the appropriateness of the proposed Indian Point 3 transfer in light of the plant's proximity to metropolitan areas (New York City, White Plains and Peekskill) and to locations for sporting and cultural events. *See* Cortlandt's Supplemental Filing at 4. Cortlandt explains that the plant is located 24 miles north of New York City in the heavily-populated Westchester County, and that it is two miles from the City of Peekskill (population 20,000), 2 miles from a military reservation (Camp Smith), and eight miles from West Point. *See* Affirmation of Peter Henner at ¶¶2–3. We do not see how Indian Point 3's proximity to these locations is relevant to the question whether to approve the license transfer for that plant. We therefore decline to admit this issue.

8. Antitrust Issue

Cortlandt expresses an antitrust concern that, if Entergy merges with Florida Power and Light Company (FPL Group), the combined entity's market share will give it an inordinate amount of control over the nation's nuclear industry. Cortlandt's Reply Brief at 17. As we have explained in prior cases, the Commission no longer conducts antitrust reviews in license transfer proceedings.[64]

CAN also raises the antitrust issue, acknowledging our precedents but disagreeing with them. CAN criticizes the Commission for having declined to conduct further antitrust review in these cases, calls that decision an abdication of the agency's antitrust responsibilities under the AEA, and predicts that such abdication will lead to a rapid consolidation of nuclear power ownership through premature acceptance of this and other Entergy applications and overly-accelerated hearing schedules. CAN's Petition at 13. *See also id.* at 14–15, 56–64; CAN's Reply Brief at 18–20. For the reasons set forth in both the *Wolf Creek* decision and the rulemaking, *supra,* we do not agree with CAN's characterization that we are abdicating our statutory authority. Nor do we believe we are acting precipitously in giving expedited treatment to license transfer applications. We therefore find this issue inadmissible.[65]

9. Independent Evaluation of the Plants

CAN asserts that, given the historical problems in NRC's Region I, the Commission should arrange for an independent analysis of the two plants' conditions. *See* CAN's Petition at 51–54. We decline to do so for the same reasons we gave in *Vermont Yankee* when rejecting CAN's similar issue:

> An inquiry such as the one CAN advocates would go considerably beyond the scope of our inquiry in this proceeding, *i.e.,* AmerGen Vermont's qualifications to own and operate the Vermont Yankee plant. We also note that Region I's overall performance in overseeing Vermont Yankee is far outside the scope of a license transfer proceeding. CAN does not explain how any action taken with respect to this license transfer, whether it be denial of the license or the imposition of conditions on the transferee, could remedy CAN's broad complaints that NRC's Region I has abdicated its oversight responsibilities.[66]

## V. Other Procedural Matters

### *A. Designation of Issues*

Our opinion in this case has considered in some detail numerous concerns raised by the various petitioners. Some issues we have found admissible, and some inadmissible. To avoid confusion, and to delineate the boundaries of the admitted issues, we direct the parties to organize their presentations at the hearing around the following two issues:

> Whether Entergy Indian Point's liability for certain financial obligations of Entergy FitzPatrick would place the Indian Point 3 plant in financial jeopardy in the event of an accident at either Indian Point 3 or FitzPatrick and would thereby call into question whether Entergy Indian Point has the funds necessary to operate the Indian Point plant safely, within the meaning of 10 CFR 50.33(f)(2), 50.33(f)(3) and 50.80(b)?
>
> Whether the transfer applicants' plan for handling decommissioning funds for the FitzPatrick and Indian Point nuclear plants—whereby control of the decommissioning funds will remain with PASNY but responsibility for decommissioning the plants will reside with the Entergy companies—provides reasonable assurance of adequate decommissioning funding, within the meaning of 10 CFR 50.75(b) and 50.75(e)(1)(vi).

The precise contours of these two admitted issues are set forth above at pages 18–20 (issue 2a, raised by Cortlandt regarding the effect of joint and several liability on the Entergy companies' financial qualifications) and 25–26 (issue 3a, raised by the Association and CAN regarding whether the decommissioning funding arrangement is consistent with the requirements of 10 CFR 50.75), respectively. The parties' filings and arguments must be confined to the contours of these two issues. In addition, as indicated on page 23, we permit CAN and Cortlandt to submit a revised issue challenging the Entergy companies' cost-and-revenue projections, such issue to be filed within 20 days of the issuance of a protective order giving CAN and Cortlandt access to applicants' proprietary information.

The parties should be prepared to offer pre-filed testimony and exhibits containing specific facts and/or expert opinion in support of their positions on these issues. All parties should keep their pleadings as short, and as focused on the admitted issues, as possible. The Commission will not consider new issues or new arguments or assertions related to the admitted issues at the hearing, unless they satisfy our rules for

[63] *See* Affirmation of Peter Henner at ¶25(d); Cortlandt Verified Petition at 5, 8, 19 (referring to ''emergency planning and health impact training programs;'' ''emergency preparedness plans, local preparedness resources, and the Four County Notification System;'' and ''the payment of the State Emergency Management Office, bus driver training and reception centers, public education programs, including emergency planning and radiological training and medical drills'').

[64] *See Vermont Yankee,* CLI–00–20, 52 NRC at ____, slip op. at 11, 19–20; *Oyster Creek,* CLI–00–06, 51 NRC at 210; *Kansas Gas and Elec. Co.,* (Wolf Creek Generating Station, Unit 1), CLI–99–19, 49 NRC 441 (1999). *See also* Final Rule, ''Antitrust Review Authority: Clarification,'' 65 Fed. Reg. 44,649 (July 19, 2000).

[65] Regarding CAN's prediction of industry consolidation, see note 16, *supra.*

[66] CLI–00–20, 52 NRC at ____, slip op. at 15. *See also Curators of the University of Missouri,* CLI–95–1, 41 NRC 71, 121 (1995); Final Rule, ''Rules of Practice for Domestic Licensing Proceedings—Procedural Changes in the Hearing Process,'' 54 FR 33168, 33171 (Aug. 11, 1989) (''With the exception of NEPA issues, the sole focus of the hearing is on whether the application satisfies NRC regulatory requirements, rather than the adequacy of the NRC Staff performance'').

late-filed issues (10 CFR 2.1308(b)), and will not consider claims rejected in the course of this opinion. Redundant, duplicative, unreliable or irrelevant submissions are not acceptable and will be stricken from the record. *See* 10 CFR 2.1320(a)(9). We also direct the intervenors to state explicitly exactly what remedial measures (if any) they believe the Commission should take in addition to those specified in their intervention petitions.

*B. Designation of Presiding Officer*

The Commission directs the Chief Administrative Judge promptly to appoint a Presiding Officer for this proceeding. Until the appointment of a presiding officer, the parties should file any written submissions with the Office of the Secretary.

*C. Notices of Appearance*

To the extent that they have not already done so, each counsel or representative for each party shall, not later than 11:59 p.m. on December 7, 2000 (*i.e.,* ten days after the issuance date of this order), file a notice of appearance complying with the requirements of 10 CFR 2.713(b). In each such notice of appearance, the counsel or representative should specify his or her business address, telephone number, facsimile number, and e-mail address. Any counsel or representative who has already entered an appearance but who has not provided one or more of these pieces of information should do so not later than the date and time specified above.

*D. Filing Schedule*

If the parties agree to a non-oral hearing, they must file their joint motion for a ''hearing consisting of written comments'' no later than 11:59 p.m. (Eastern Time) on December 12, 2000 (*i.e.,* fifteen days of the date of this order). 10 CFR 2.1308(d)(2). No later than that same date, the parties should complete any necessary negotiations on a protective order regarding any proprietary data and should submit a joint protective order to the presiding officer. If they are unsuccessful in negotiating such an order, they should inform the Presiding Officer by that date and indicate any areas in which they were able to agree.[67] We also direct the parties to confer promptly on whether this proceeding might be settled amicably without conducting a hearing.

All initial written statements of position and written direct testimony (with any supporting affidavits) must be filed no later than 11:59 p.m. on December 27, 2000 (thirty days after the issuance date of this order). 10 CFR 2.1309(a)(4), 2.1310(c), 2.1321(a), 2.1322(a)(1). All written responses to direct testimony, all rebuttal testimony (with any supporting affidavits) and all proposed questions directed to written direct testimony must be filed no later than 11:59 p.m. on January 16, 2001 (the first working day following the twentieth day after the submission of written statements of position and written testimony). 10 CFR 2.1309(a)(4), 2.1310(c), 2.1321(b), 2.1322(a)(2)–(3). All proposed questions directed to written rebuttal testimony must be submitted to the Presiding Officer no later than 11:59 p.m. on January 26, 2001 (ten days after the submission of rebuttal testimony).[68]

If the parties do not unanimously seek a hearing consisting of written comments, the Presiding Officer will hold an oral hearing beginning at 9:30 a.m on February 2, 2001, at the Commission's headquarters in Rockville, MD. The subject of the hearing will be the issues designated above, along with any admissible financial qualifications issue regarding the Entergy companies' cost-and-revenue projections that CAN and/or Cortlandt may choose to submit within 20 days of the entry of a protective order. Portions of the hearing may have to be closed to the public when issues involving proprietary information are being addressed.

Any party or participant submitting pre-filed direct testimony should make the sponsor of that testimony available for questioning at the hearing. The Presiding Officer will issue an order establishing the amount of time available for the initial and reply presentations of the parties and participant. Given the expedited nature of license transfer proceedings, the Commission anticipates that the hearing will take no longer than one day. The hearing will not include opportunities for cross-examination, although the Presiding Officer may question any witness proffered by any party. *See* 10 CFR 2.1309, 2.1310(a), 2.1322(b).

Finally, all written post-hearing statements of position must be filed no later than 11:59 p.m. on February 22, 2001 (twenty days after the oral hearing). *See* 10 CFR 2.1322(c). The Commission expects to issue a final memorandum and order on the merits of this proceeding by March 26, 2001 (50 days after the oral hearing).

The Commission is confident that the proceeding can be resolved fairly and efficiently within the prescribed time schedule.

*E. Participants in the Hearing and the Proceeding; Service List*

The parties to this proceeding will be CAN, Cortlandt, the Association, the Power Authority of the State of New York, Entergy Nuclear Operations, Entergy FitzPatrick, and Entergy Indian Point. Westchester will be a governmental participant in the proceeding. The recipients on the service list will be:

Timothy L. Judson, Citizens Awareness Network, Inc., 162 Cambridge Street, Syracuse, NY 13210, phone: (315) 475–1203, e-mail: *can@shaysnet.com*

Thomas F. Wood, Esq., Town of Cortlandt, 153 Albany Post Road, Buchanan, NY 10511, phone: (914) 736–0930, fax: (914) 736–9082, e-mail: *tfwesq@aol.com*

Paul V. Nolan, Esq. (Attorney for Town of Cortlandt and Hendrick Hudson School District), 5515 N. 17th Street, Arlington, VA 22205–2207, phone: (703) 534–5509, fax: (703) 538–5257, e-mail: *pvnpvn@aol.com*

Nancy T. Bocassi, Hendrick Hudson School District, 61 Trolley Road, Montrose, NY 10548, phone: (914) 737–7500, fax: (914) 736–5242, e-mail: *nbocassi@henhud.lhric.org*

Alan D. Scheinkman, Esq., County Attorney, Westchester County, Department of Law, Room 600, 148 Martine Avenue, White Plains, NY 10601, phone: (914) 285–2690, fax: (914) 285–5858, e-mail: *ads2@westchestergov.com*

Stewart M. Glass, Esq., Senior Assistant County Attorney, County of Westchester, Department of Law, Room 600, 148 Martine Avenue, White Plains, NY 10601, phone: (914) 285–3134, fax: (914) 285–2495, e-mail: *smg4@westchestergov.com*

Joseph R. Egan, Esq., Egan & Associates, P.C. (Attorney for Nuclear Generation Employees Association), 1500 K Street, N.W., Suite 200, Washington, DC 20005, phone: (703) 871–5012, fax: (703) 871–5013[69], e-mail: *eganpc@aol.com*

[67] Separately, we have directed CAN and Cortlandt to formulate and submit a properly-supported financial qualifications issue within 20 days of the entry of a protective order. *See* page 23, *supra.* CAN's failure to do so will preclude its participation with regard to the financial qualifications issue. If such an issue is submitted, the Presiding Officer should establish a supplemental briefing schedule to permit answers and replies thereto. *Cf.* 10 CFR 2.1307.

[68] *See* 10 CFR 2.1309(a)(4), 2.1310(c), 2.1321(b), 2.1322(a)(4). The seven-day filing period specified in the last two of these regulations is, pursuant to 10 CFR 2.1314(b), extended by three days, because the period includes a Saturday and Sunday.

[69] Mr. Egan's office is located in Washington, DC, but his phone number has a Northern Virginia area code. There appears to be an error here. If so, the Commission requests Mr. Egan to correct it.

John Valentino, Esq., Green & Seifter (Attorney for Nuclear Generation Employees Association), One Lincoln Center, 9th Floor, Syracuse, NY 13202, phone: (315) 422–1391, fax: (315) 423–2839, e-mail: *jvalentino@greenseifter.com*

Douglas E. Levanway, Esq. (Attorney for Entergy Nuclear FitzPatrick LLC, Entergy Nuclear Indian Point 3 LLC, and Entergy Nuclear Operations, Inc.), Wise, Carter, Child and Caraway, P.O. Box 651, Jackson, MS 39205–0651, phone: (601) 968–5524, fax: (601) 968–5519, e-mail: *del@wisecarter.com*

Gerald C. Goldstein, Esq., Arthur T. Cambouris, Esq., David E. Blabey, Esq., The Power Authority of the State of New York, 1633 Broadway, New York, NY 10019, phone: (212) 468–6131, fax: (212) 468–6206, e-mail: *goldstein.g@nypa.gov*

Jay E. Silberg, Esq., William R. Hollaway, Esq. (Attorneys for the Power Authority of the State of New York), Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128, phone: (202) 663–8000, fax: (202) 663–8007, e-mail: *jay.silberg@shawpittman.com*

Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, phone: (301) 415–1537, fax: (301) 415–3725, e-mail: *OGCLT@NRC.gov*

Office of the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings & Adjudications Branch, Washington, DC 20555, phone: (301) 415–1966/1679, fax: (301) 415–1101, e-mail: *SECY@NRC.gov*

George E. Sansoucy, P.E. (representing Hendrick Hudson school District), 260 Ten Rod Road, Rochester, NH 03867, phone: (603) 335–3167, fax: (603) 335–0731, e-mail: *sansoucy@nh.ultranet.com*

We direct the parties immediately to supplement or correct the above information to the extent that it is incomplete or inaccurate, and immediately to notify all recipients of any such changes.

Pursuant to 10 CFR 2.1316(b)–(c), the NRC staff has indicated that it will not be a party to this proceeding. Notwithstanding this fact, the staff is still expected both to offer into evidence its SER and to proffer one or more sponsoring witnesses for that document. *See* 10 CFR 2.1316(b).

*F. Service Requirements*

Although the parties and Westchester have a number of options under 10 CFR 2.1313(c) by which to serve their filings, the preferred method of filing in this proceeding is electronic (*i.e.*, by e-mail). Electronic copies should be in WordPerfect format (in a version at least as recent as 6.0). Service will be considered timely if sent not later than 11:59 p.m. of the due date under our Subpart M rules. However, we also require the parties to submit a single signed hard copy of any such filings [70] to the Rulemakings and Adjudications Branch, Office of the Secretary, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Room O–16–H–15, Rockville, MD 20852. As noted above, the fax number for this office is (301) 415–1101 and the e-mail address is secy@nrc.gov.

**VI. Conclusion**

For the reasons set forth above:

(1) The license transfer adjudications involving FitzPatrick and Indian Point 3 license transfers are consolidated.

(2) CAN's, Cortlandt's and the Association's petitions to intervene and requests for hearing are granted;

(3) Westchester's petition for governmental participant status is granted;

(4) The Association's and CAN's motions for stay are denied;

(5) Cortlandt's motion to expand this adjudication's scope of review is denied;

(6) CAN's motion for a Subpart G hearing is denied;

(7) CAN and Cortlandt may formulate and submit a properly-supported financial qualifications issue within 20 days of the entry of a protective order.

(8) The parties are required to inform the Commission of any court or administrative orders, settlements or business decisions that may in any way relate to, or render moot, part or all of the instant proceeding.

(9) Within fifteen days of the issuance date of this order, the parties shall complete any necessary negotiations on a protective order regarding any proprietary data and shall submit a joint protective order to the Presiding Officer. If they are unsuccessful in negotiating such an order, they shall so inform the Presiding Officer by that date and shall indicate any areas in which they were able to agree.

*It is so ordered.*

Dated at Rockville, Maryland, this 27th day of November, 2000.

For the Commission.[71]

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 00–31875 Filed 12–13–00; 8:45 am]

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[70] We draw the attention to the difference between this requirement and that of Subpart G, which provides that any service whether by fax or e-mail on the Secretary should be followed with an original and two conforming copies of the service by regular mail in accordance with 10 CFR 2.708(d).

[71] Commissioner Dicus was not present for the affirmation of this Order. Had she been present, she would have affirmed her prior vote to approve this Order.

## NUCLEAR REGULATORY COMMISSION

**[IA–00–028]**

## In the Matter of Garner W. Reed; Order Prohibiting Involvement in NRC-Licensed Activities

**I**

Garner W. Reed was employed by Public Service Electric & Gas Company (Licensee) at the Salem Nuclear Power Plant (Salem) from on or about August 13, 1996, to November 12, 1997. The licensee is the holder of Licenses No. DPR–70 and DPR–75 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 50 on June 30, 1977, and October 13, 1981, respectively. The Salem facility is located near Wilmington, DE.

Mr. Reed was employed by the Wisconsin Electric Power Company (Licensee) at the Point Beach Nuclear Power Plant, Units 1 and 2 (Point Beach), from on or about November 17, 1997 to April 30, 1999. The Licensee is the holder of Licenses No. DPR–24 and DPR–27 issued by the Commission pursuant to 10 CFR part 50 on October 5, 1970 and March 8, 1973, respectively. The Point Beach facility is located near Manitowoc, WI.

On May 13, 1999, Mr. Reed, applied for unescorted access to the Donald C. Cook Nuclear Power Plant, Units 1 and 2 (D.C. Cook), which is operated by the American Electric Power Company (Licensee or AEP). The Licensee is the holder of Licenses No. DPR–58 and DPR–74, issued by the Commission pursuant to 10 CFR part 50 on October 28, 1975 and July 1, 1978, respectively. The D.C. Cook plant is located near Bridgeman, MI.

**II**

In applying for unescorted access to the D.C. Cook Plant, on May 13, 1999, Mr. Reed was required to explain any arrests, pending charges, or convictions within the five years prior to the date of application. While Mr. Reed indicated that he had been convicted of operating a motor vehicle while intoxicated (OWI) prior to his employment at the Point Beach, Mr. Reed failed to disclose that

he had been arrested while he was employed at the Point Beach Plant. Representatives of the D. C. Cook Plant learned of the potentially false information provided by Mr. Reed and contacted personnel at the Point Beach Plant about Mr. Reed's arrest record. It was determined by the D. C. Cook licensee that Mr. Reed had not notified officials at the Point Beach Plant about his arrest in Two Rivers, WI, while he was employed at that facility. The NRC learned of Mr. Reed's failure to report arrests during a routine security inspection at the Point Beach Plant on July 30, 1999. As a result of this information, the NRC Office of Investigations (OI) conducted an investigation into the apparent deliberate failures by Mr. Reed to fully disclose his arrest information to NRC Licensees.

Information obtained during the OI investigation indicated that Mr. Reed was arrested and subsequently convicted of:

Possession of marijuana, receiving and concealing stolen property in Mobile, AL, on or about June 22, 1976,

Driving under the influence of alcohol in Louisiana on May 13, 1993,[1]

Operating while intoxicated (OWI) in Huntsville, AL, during November 1993,

OWI in Hamilton County, TN, on November 16, 1994,

OWI in Hamilton County, Chattanooga, TN, on October 17, 1995, alternately reported as Ringgold, GA,[2]

OWI in Woodstown, NJ, on October 5, 1997,

OWI in New Jersey on January 11, 1998,[3] and

OWI in Two Rivers, WI, on April 10, 1999.

Other information gathered during the OI investigation indicated that:

Mr. Reed failed to notify, as required by the Licensee's NRC approved physical security plan, the Salem Plant of at least one arrest, (the arrest that occurred in Woodstown, N.J. on October 5, 1997), while he was employed at that facility,

Mr. Reed failed to notify, as required by the Licensee's NRC approved physical security plan, the Point Beach Plant of his arrest on April 10, 1999 in Two Rivers, WI, while he was employed at that facility, and

Mr. Reed failed to list, as required by the Licensee's NRC approved physical security plan, his arrests on November 16, 1994 (in Hamilton County, TN), October 17, 1995 (in Chattanooga, TN), and April 10, 1999 (in Two Rivers, WI), on his application for unescorted access to the Cook Plant.

During his sworn, transcribed interview with the OI investigator on November 4, 1999, Mr. Reed admitted that he knew he was required to report his arrests to the Licensees, but stated that he was afraid he would lose his job in the nuclear industry if the Licensees learned of all of his OWI arrests.

10 CFR 73.56(b) requires NRC licensees[4] to establish and maintain access authorization programs to grant individuals unescorted access to the protected and vital areas of nuclear power plants. These programs and the implementing procedures at each plant require individuals seeking unescorted access to divulge their criminal history for evaluation and to identify to the licensee any subsequent arrests after having been granted unescorted access to the facility. Furthermore, 10 CFR 50.5(a)(2) provides that an employee of a licensee or an employee of a contractor of any licensee may not deliberately submit to the NRC or a licensee or a licensee's contractor information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. An individual's criminal history is material to the NRC because it is part of the information a licensee evaluates to provide high assurance that individuals granted unescorted to NRC licensed facilities are trustworthy and reliable, and do not constitute an unreasonable risk to the health and safety of the public including a potential to commit radiological sabotage (10 CFR 73.56(b)).

Based on the information developed during the OI investigation, it was concluded that Mr. Reed deliberately submitted information concerning his criminal history to the licensees operating Salem, Point Beach and D.C. Cook facilities that he knew was incomplete and inaccurate.

Furthermore, Mr. Reed provided inaccurate information to the OI investigator during a sworn, transcribed interview on November 4, 1999. Mr. Reed stated that his arrest on June 22, 1976, was for possession of stolen property, the charges against him were dropped and he was subsequently cleared of the charges. Mr. Reed failed to disclose that he was arrested for possession of marijuana, along with receiving and concealing stolen property. Mr. Reed also failed to divulge that he was convicted on both of those charges with a suspended jail sentence of 36 months and placed on probation for a period of 36 months.

## III

Based on the above, it appears that Garner W. Reed, a former employee of the Licensees, has engaged in deliberate misconduct in violation of 10 CFR 50.5. The NRC must be able to rely on its licensees and the employees of its licensees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all respects material to the NRC. Garner W. Reed's deliberate actions in making deliberate misrepresentations and omissions to the Licensees and to the NRC have raised serious doubt as to whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to the NRC and NRC licensees.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Garner W. Reed were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Garner W. Reed be prohibited from any involvement in NRC-licensed activities for a period of one year from the date of this Order. Additionally, Garner W. Reed for a period of one year is required to notify the NRC of his employment in NRC-licensed activities following the prohibition period.

## IV

Accordingly, pursuant to sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, 10 CFR 73.56, and 10 CFR 150.20, it is hereby ordered that:

1. Garner W. Reed is prohibited for one year from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

[1] Mr. Reed admits to having held a driver's license issued by the State of Louisiana, but denies having been arrested for OWI in that statement. However, official records indicate the existence of this arrest in the State of Louisiana.

[2] Chattanooga, TN, Hamilton County, TN, and Ringgold, GA, are nearby communities.

[3] Mr. Reed alternately indicates that this arrest occurred in early 1997 and on January 11, 1998, in the State of New Jersey, but does not recall the specific jurisdiction. This arrest was not listed on official records.

[4] These programs were required to be implemented at Salem, Point Beach and D.C. Cook by April 27, 1992. *See* 10 CFR 73.56(a).

2. If Garner W. Reed is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of one year after the one year period of prohibition has expired, Garner W. Reed shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the first notification, Garner W. Reed shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Garner W. Reed of good cause.

**V**

In accordance with 10 CFR 2.202, Garner W. Reed must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Garner W. Reed or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Associate General Counsel for Hearings, Enforcement & Administration at the same address, to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351 and to Garner W. Reed if the answer or hearing request is by a person other than Garner W. Reed. If a person other than Garner W. Reed requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Garner W. Reed or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received.

Dated: Dated this 4th day of December 2000.

For the Nuclear Regulatory Commission,

**Frank J. Miraglia, Jr.,**

*Deputy Executive Director for Reactor Programs.*

[FR Doc. 00–31878 Filed 12–13–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–445 and 50–446]**

## TXU Utilities Electric Company, et al.; Comanche Peak Steam Electric Station, Units 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Consideration; correction.

**SUMMARY:** This document corrects a notice relating to the consideration of issuance of amendments to Facility Operating License Nos. NPF–87 and NPF–89 issued to TXU Electric Company, et. al., appearing in the **Federal Register** on December 4, 2000 (65 FR 75737). This action is necessary to correct the websites listed in the notice for viewing the electronic copies of documents related to this notice.

**FOR FURTHER INFORMATION CONTACT:** David H. Jaffe, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1439 (e-mail: *DHJ@nrc.gov*).

In the **Federal Register** dated December 4, 2000, page 75739, first column, fifth paragraph, third sentence, the last line is corrected to read (*http://www.nrc.gov*), first column, seventh paragraph, third sentence, the last line is corrected to read (*http://www.nrc.gov*), and page 75740, second column, first paragraph, last line is corrected to read (http://www.nrc.gov).

Dated at Rockville, Maryland, this 8th day of December, 2000.

For the Nuclear Regulatory Commission.

**David L. Meyer,**

*Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 00–31877 Filed 12–13–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

## Request for Public Comment on the First Year of Initial Implementation of the Reactor Oversight Process

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Request for public comment.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is approaching completion of the first year of initial implementation of the Reactor Oversight Process (ROP). In response to the Commission's Staff Requirements Memorandum (SRM–00–0049), dated May 17, 2000, the NRC is preparing a report summarizing the lessons learned during the first year of initial implementation of the ROP. The NRC is requesting comments/information from members of the public, licensees, and interest groups related to the initial implementation of the ROP which began at the 103 commercial nuclear power plant sites (except D.C. Cook which is being phased into the ROP) on April 2, 2000.

The NRC is specifically requesting comments on the questions listed at the end of this notice. The NRC is also conducting a public workshop, tentatively scheduled for late March

2001, to discuss lessons learned. In support of this workshop, the NRC is seeking public feedback on key issues that should be considered during the workshop.

**DATES:** (1) Submit potential topic areas for consideration during the public ROP workshop by February 23, 2001. (2) Submit comments on the ROP's first year of initial implementation by April 13, 2001. Comments received after these dates will be considered if it is practical to do so, but the Commission is able to only ensure consideration for comments received on or before these dates.

**ADDRESSES:** Comments may be sent to David Meyer, Chief, Rules and Directives Branch, Office of Administration, Mail Stop T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001or electronically to e-mail: *REACTOROVERSIGHT@nrc.gov*

Deliver comments to: 11554 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

Certain documents related to this notice, including comments received, may be examined and/or copied for a fee at the NRC Public Document Room, One White Flint North, Room O1–F15, 11555 Rockville Pike, Rockville, Maryland.

Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at http://www.nrc.gov/NRC/ADAMS/index.html. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

**FOR FURTHER INFORMATION CONTACT:** August K. Spector, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, telephone (301) 415–2140, e-mail: *REACTOROVERSIGHT@nrc.gov*

**SUPPLEMENTARY INFORMATION:**

## Program Overview

The mission of the NRC is to regulate the civilian uses of nuclear materials in the United States to protect the public health and safety, protect the environment, and promote the common defense and security by preventing the proliferation of nuclear material. This mission is accomplished through:

- Licensing nuclear facilities and the possession, use and disposal of nuclear materials;
- Developing and implementing requirements governing licensed activities; and
- Inspection and enforcement of licensee activities to assure compliance with these requirements and the law.

While the responsibility of the NRC is to monitor and regulate the performance of the licensee, primary responsibility for safe operation and handling of nuclear materials rests with the licensee.

During the past 25 years, the nuclear industry in the United States has matured to one where licensees and the NRC have learned much about how to safely operate nuclear facilities and handle nuclear materials. Recently, the NRC has begun to implement more effective and efficient inspection, assessment, and enforcement approaches which apply insights from years of regulatory oversight and nuclear facility operation. The NRC has also incorporated risk-informed principles and techniques into its oversight activities. A risk-informed approach to oversight enables the NRC to more appropriately apply its resources to oversight of operational areas which contribute most to safe operation at nuclear facilities.

After conducting a six-month pilot program in 1999, assessing the results, and incorporating the lessons learned, the NRC began implementation of the revised reactor oversight process (ROP) at all 103 nuclear facilities (except D. C. Cook) on April 2, 2000. Inherent in the ROP are the following key NRC performance goals:

1. Maintain safety by establishing and implementing a regulatory oversight process that assures that plants are operated safely;
2. Enhance public confidence by increasing the predictability, consistency, and objectivity of the oversight process, providing timely and understandable information, and providing opportunities for meaningful involvement by the public;
3. Improve effectiveness, efficiency, and realism of the oversight process by implementing a process of continuous improvement; and
4. Reduce unnecessary regulatory burden through the consistent application of the process and incorporation of lessons learned.

Key elements of the ROP include revised NRC inspection procedures, plant performance indicators, a significance determination process and an assessment program which incorporates various risk-informed thresholds to help determine the level of NRC oversight and enforcement. Since process development began in 1998, the NRC has frequently communicated with the public by various means. These have included conducting public meetings in the vicinity of each licensed commercial nuclear power plant, issuing **Federal Register** Notices soliciting feedback on the process, publishing press releases about the new process, conducting multiple public workshops, placing pertinent background information in the NRC's Public Document Room, and establishing an NRC website containing easily accessible information about the new program and licensee performance. Information about specific aspects of the reactor oversight process may be obtained electronically from the following source:

*www.nrc.gov/NRR/OVERSIGHT/index.html.*

## NRC Reactor Oversight Public Workshop

In late March 2001, the NRC is planning a public workshop intended to bring together all interested stakeholders to discuss key issues that have emerged during the first year of initial implementation of the ROP. The NRC is soliciting feedback from its public stakeholders on what topic areas should be considered during this workshop. The NRC will consider this feedback along with its own insights gained during initial implementation to develop the agenda for the workshop. Some of the areas currently under consideration include selected performance indicators, approaches to inspecting and assessing problem identification and resolution activities, inspection report thresholds, and the efficacy of certain elements of the significance determination process.

## NRC Public Stakeholder Comments

The NRC continues to be interested in receiving feedback from members of the public, various public stakeholders and industry groups on their insights on the first year of initial implementation of the reactor oversight process. The NRC is specifically seeking responses to the questions listed below, which will provide the NRC with vital information regarding the initial implementation of the reactor oversight process, which can be used in continuing program improvement. A summary of responses and how the responses were considered will be included in the report submitted to the Commission on the implementation of the ROP, currently planned for June 2001.

## Questions

I. *Questions related to the efficacy of the overall process* (As appropriate,

please provide specific examples and suggestions for improvement.):

1. Does the ROP provide adequate assurance that plants are being operated safely?

2. Does the ROP provide sufficient regulatory attention to utilities with performance problems?

3. Does the ROP reduce unnecessary regulatory burden on licensees?

4. Does the ROP improve the efficiency, effectiveness, and realism of the regulatory process, focusing NRC resources on those issues with the most safety significance?

5. Has the public information associated with the ROP been appropriate to keep the public informed, in a timely and understandable fashion, of NRC activities related to plant safety?

(Examples: NRC plant performance web page, Plant Performance Indicators, NRC Inspection Reports, Assessment Letters, ROP guidance documents and implementation procedures, the NRC ROP website, press releases)

6. Does the ROP increase the predictability, consistency, clarity and objectivity of the NRC's oversight activities?

7. Has the public been afforded adequate opportunity to provide input/comments and involvement in the ROP development process?

8. Has NRC been responsive to input/comments provided by the public regarding the ROP development process?

9. Please provide any additional (brief) information or issues related to the reactor oversight process.

II. *Questions related to specific ROP program areas* (As appropriate, please provide specific examples and suggestions for improvement.):

1. Do the performance indicators or other aspects of the ROP create unintended consequences? (Please comment on the potential of unintended consequences associated with the counting of manual scrams in the Initiating Event Cornerstone Performance Indicators.)

2. Do any aspects of the ROP inappropriately increase regulatory burden? (Please comment on any unnecessary overlap between ROP reporting requirements with those associated with INPO, WANO, or the Maintenance Rule.)

3. Is the Significance Determination Process (SDP) usable and does it produce consistent and accurate results?

4. Are there areas of unnecessary overlap between the inspection program and the performance indicators?

5. Does the ROP assessment program provide timely, consistent, and relevant assessment information?

6. Has the NRC implemented the ROP as defined by program documents?

7. Please provide any additional (brief) information or comments on other program areas related to the reactor oversight process. Other areas of interest may be: the treatment of cross-cutting issues in the ROP, the risk-based evaluation process associated with determining event response, and the reduced subjectivity and elevated threshold for documenting issues in inspection reports.

Dated at Rockville, Maryland, this 8th day of December 2000.

For the Nuclear Regulatory Commission.

**William M. Dean,**

*Chief, Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–31876 Filed 12–13–00; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### Proposed Revision to OMB Guidance on Implementation of FAIR Act

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Proposed Revision to OMB Guidance on the Implementation of the FAIR Act.

**SUMMARY:** The Office of Management and Budget (OMB) publishes a request for agency and public comments on a proposed technical change to the OMB Circular A–76 Revised Supplemental Handbook to clarify the scope of the challenge-and-appeals process that is available under the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270) (the ''FAIR Act''). The FAIR Act requires each Federal agency to submit to OMB, annually, a ''list'' (inventory) of all its activities that ''are not inherently governmental functions'' (i.e., activities that are ''commercial'' in nature) and that are performed by Federal employees. Under the FAIR Act, OMB reviews each agency's list and consults with the agency regarding its content. Upon the completion of this review and consultation, the agency transmits a copy of the inventory to Congress and makes the inventory available to the public. An ''interested party,'' as defined by the FAIR Act, may then submit to the agency a challenge (and, if that is denied, an appeal) ''of an omission of a particular activity from, or an inclusion of a particular activity on,'' the agency's inventory. The agency must respond to the challenge (and appeal), and the agency must notify Congress of any changes to the inventory and must make them publicly available.

In June 1999, OMB issued guidance on the FAIR Act, through revisions to OMB's Circular A–76 and its Revised Supplemental Handbook. 64 FR 33927 (June 24, 1999). This guidance addressed, among other things, the scope of the FAIR Act's challenge-and-appeal process. Recently, OMB issued a revision to its FAIR Act guidance, regarding the timetable for the FAIR Act's challenge-and-appeal process. 65 FR 54568 (September 8, 2000).

OMB is requesting public and agency comment on a further revision to OMB's guidance on the FAIR Act. The purpose of the proposed revision is to provide additional clarification regarding the scope of the statutory challenge-and-appeal process. Although Congress in the FAIR Act clearly defined the scope of that process, and OMB provided guidance on this point in June 1999, the General Accounting Office in a recent report found that a significant number of ''interested parties'' submitted challenges and appeals (regarding the 1999 FAIR Act inventories) on matters for which Congress had not authorized challenges and appeals. OMB hopes, by providing additional clarification, to eliminate any confusion that may still exist about the scope of the challenge-and-appeal process that Congress established in the FAIR Act.

**DATES:** Agency and public comments on the proposed change are due to OMB not later than January 16, 2001.

**ADDRESSES:** Address all comments to the Office of Federal Procurement Policy, NEOB, Room 9013, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, FAX Number (202) 395–5105.

**FOR FURTHER INFORMATION CONTACT:** Mr. David C. Childs, Office of Federal Procurement Policy, NEOB, Room 9013, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Telephone No. (202) 395–6104.

*Availability:* Copies of the OMB Circular A–76, its Revised Supplemental Handbook, currently applicable Transmittal Memoranda and additional information regarding the FAIR Act and its implementation may be obtained at the OMB home page. The online address (URL) http://www.whitehouse.gov/OMB/procurement/fair-index.html. Paper copies of this information can also be obtained by contacting the Office of Federal Procurement Policy, NEOB, Room 9013, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Telephone No. (202) 395–7579.

**SUPPLEMENTARY INFORMATION:**

## 1. Background—The FAIR Act and OMB's Implementation Guidance

The Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270) (the ''FAIR Act'') was enacted into law in October 1998. Section 2 of the FAIR Act requires each Federal agency to submit to OMB, annually, a ''list'' (inventory) of all its activities that ''are not inherently governmental functions'' (i.e., activities that are ''commercial'' in nature) and that are performed by Federal employees. Under the FAIR Act, OMB reviews each agency's inventory of commercial activities and consults with the agency regarding its content. Upon the completion of this review and consultation, each agency transmits a copy of its FAIR Act inventory to Congress and also makes the inventory available to the public. Section 3 of the FAIR Act establishes a challenge-and-appeal process under which an ''interested party'' may submit to the respective agency a challenge to ''an omission of a particular activity from, or an inclusion of a particular activity on,'' the agency's FAIR Act inventory of commercial activities. Under the FAIR Act, challenges to an agency's FAIR Act list may be submitted by ''interested parties,'' which the Act defines to be, basically, federal employees (and their representatives) and existing and prospective federal contractors (and their representatives). The agency must respond to the challenge. If the agency provides an ''adverse'' response, the interested party may file an appeal, to which the agency must also respond. At the end of the process, the agency must notify Congress of any changes that it has made to its FAIR Act inventory and must make the changes available to the public.

In March 1999, OMB requested public and agency comment on proposed guidance for implementing the FAIR Act. 64 FR 10031 (March 1, 1999). The proposed guidance consisted of revisions to OMB Circular A–76 (''Performance of Commercial Activities'') and the Circular's Revised Supplemental Handbook, and it addressed a number of issues involving the FAIR Act, including the statute's challenge-and-appeal process. In June 1999, OMB issued final guidance for implementing the FAIR Act. 64 FR 33927 (June 24, 1999). Among other things, the final guidance addressed the scope of the FAIR Act's challenge-and-appeals process. The OMB guidance was based on the FAIR Act itself, which as noted above provides that a challenge may be submitted regarding ''an omission of a particular activity from, or an inclusion of a particular activity on,'' the agency's FAIR Act inventory. In its June 1999 guidance (64 FR 33930), OMB stated in Paragraph G.2 (''Challenges and Appeals'') of Appendix 2 that:

''Under Section 3 of the FAIR Act, an agency's decision to include or exclude a particular activity from the Commercial Activities Inventory is subject to administrative challenge and, then, possible appeal by an ''interested party.' ''

In the June 1999 guidance, OMB also went on to provide additional explanation, in Paragraph G.3, regarding the scope of the challenge-and-appeal process (64 FR 33930):

> ''An interested party may submit to an executive agency an initial challenge to the inclusion or exclusion of an activity within 30 calendar days after publication of OMB's **Federal Register** notice stating that the inventory is available. The challenge must set forth the activity being challenged with as much specificity as possible, and the reasons for the interested party's belief that the particular activity should be reclassified as inherently Governmental (and therefore be deleted from the inventory) or as commercial (and therefore be added to the inventory) in accordance with OFPP Policy Letter 92–1 on inherently Governmental functions (see Appendix 5) or as established by precedent (such as when other agencies have contracted for the activity or undergone competitions for this or similar activities).''

Earlier this year, OMB requested public and agency comment on revisions to the June 1999 OMB guidance, focusing on the timetable for the FAIR Act challenge-and-appeal process. 65 FR 25966 (May 4, 2000). In response to concerns that the timetable for the 1999 challenge-and-appeal process had not provided sufficient time for interested parties to submit challenges and for agencies to respond to them, OMB proposed to revise the 30-day and 28-day time periods (for submitting and responding to challenges) by converting them from calendar days to working days. OMB recently finalized this revision to the guidance. 65 FR 54568 (September 8, 2000).

## 2. GAO's Report on the FAIR Act Challenge-and-Appeal Process

Most recently, on September 29, 2000, the General Accounting Office (GAO) issued a report that evaluated the history of the challenges and appeals that ''interested parties'' submitted for the Federal Government's FAIR Act inventories for 1999. GAO Report No. GGD/NSIAD–00–244, B–283779, ''Competitive Contracting: Agencies Upheld Few Challenges and Appeals Under the FAIR Act'' (September 2000), available at www.gao.gov. As explained above, the FAIR Act allows challenges and appeals to be filed by federal employees (and their representatives) and by existing and prospective federal contractors (and their representatives), who challenge ''an omission of a particular activity from, or an inclusion of a particular activity on,'' the agency's FAIR Act inventory of commercial activities. In its report, GAO analyzed the challenges and appeals that were filed in connection with the 1999 FAIR Act inventories of the 24 agencies that are subject to the Chief Financial Officers Act (the 14 Cabinet Departments and 11 other major agencies).

In its analysis, GAO distinguished between ''employee challenges'' and ''industry challenges.'' According to GAO (p. 3), ''almost all of the employees'' challenges and appeals were within the provisions of the act, because they concerned the inclusion of activities that the employees contended should have been omitted because they were inherently governmental.'' The industry challenges presented a different picture. According to GAO (pp. 2–3), ''Many of the issues that industry raised in their challenges and appeals went beyond the provisions of the FAIR Act, because they concerned issues other than the inclusion or omission of an activity from an agency's inventory.'' As GAO later explained (p. 9), ''About one-third of industry's challenges cited the omission of activities from agencies' inventories, with many of the remainder citing issues that went beyond the provisions of the FAIR Act because they did not involve either the inclusion of an activity on or its omission from an inventory.'' GAO outlined the issues that industry raised, which ''did not meet the challenge provisions of the FAIR Act'' (p. 11):

> ''The remaining issues raised by industry did not meet the challenge provisions of the FAIR Act. As shown in table 4, these issues included (1) the agency's use of OMB's reason codes for categorizing commercial activities; (2) the format of the agency's inventory; (3) the agency's use of OMB's function codes; and (4) a general dissatisfaction with OMB guidance or the act, or agency compliance with either.''

Since such challenges were outside the scope of the challenge-and-appeal process that Congress had established, these challenges were unsuccessful. As GAO noted (p. 14), ''Because most of industry's challenges and appeals did not involve either the inclusion, or omission of, an activity from an agency's inventory, agencies dismissed them.''

**3. The Proposed Revision to OMB's FAIR Act Guidance**

As GAO noted in its report, most of the ''employee challenges'' to the 1999 FAIR Act inventories were within the scope of the statutory challenge-and-appeal process, but only one-third of the ''industry challenges'' fell within the scope of the statute. In light of the experience gained during the 1999 challenge-and-appeal process, including the agencies' denials of those challenges that ''did not meet the challenge provisions of the FAIR Act'' (GAO Report, p. 11), it would be reasonable to expect that ''interested parties'' have now developed a better understanding of what matters may, and may not, be raised during the challenge-and-appeal process that Congress established in the FAIR Act.

As was noted above, and in GAO's report, the FAIR Act itself provides the operative test: Section 3 of the FAIR Act states an interested party may submit challenges and appeals to ''an omission of a particular activity from, or an inclusion of a particular activity on,'' the agency's FAIR Act inventory of commercial activities. In accordance with this test, OMB in its June 1999 guidance stated that ''an agency's decision to include or exclude a particular activity from the Commercial Activity Inventory is subject to administrative challenge and, then possible appeal by an 'interested party,' '' and OMB further stated that the challenge ''must set forth the activity being challenged with as much specificity as possible, and the reasons for the interested party's belief that the particular activity should be reclassified as inherently Governmental (and therefore be deleted from the inventory) or as commercial (and therefore be added to the inventory).'' (Paragraphs G.2 and G.3 of Appendix 2 of the Revised Supplemental Handbook for Circular A–76.)

OMB believes that it is in the interest of all affected parties—namely, the interested parties that may file challenges and appeals, and the agencies that must respond to them—to eliminate any remaining confusion that may still exist about the scope of the challenge-and-appeal process that Congress established in the FAIR Act. Accordingly, OMB proposes to revise its implementation guidance for the FAIR Act to provide additional clarification regarding what matters are, and are not, subject to challenge and appeal. Specifically, OMB proposes to revise the introductory paragraph of Paragraph G.2 of Appendix 2 to the Revised Supplemental Handbook for Circular A–76 so that it reads as follows (the proposed new language is in italics):

2. Challenges and Appeals: Under Section 3 of the FAIR Act, an agency's decision to include or exclude a particular activity from the Commercial Activity Inventory is subject to administrative challenge and, then, possible appeal by an ''interested party.'' *In other words, if an agency has not included an activity on its Inventory, then an ''interested party'' may submit a challenge and appeal contending that the activity is commercial and, therefore, should be added to the Inventory. Conversely, if an agency has included an activity on its Inventory, then an ''interested party'' may submit a challenge and appeal contending that the particular activity is inherently governmental and, therefore, should be deleted from the Inventory. The FAIR Act does not authorize any other types of challenges and appeals. Thus, for example, in the case of an activity that an agency has included in its Inventory, an ''interested party'' may not submit a challenge and appeal that agrees with the agency's decision that the activity is commercial but disagrees with how the agency has described the activity (with respect to, for example, the Function Codes and Reason Codes that the agency used in describing the activity).* Section 3(b) of the FAIR Act defines ''interested party as . . .''

OMB requests comment on the proposed revisions.

**Jacob J. Lew,**

*Director.*

**Circular No. A–76 (Revised); Proposed Transmittal Memorandum No. 23**

*TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES*

SUBJECT: Performance of Commercial Activities

This Transmittal Memorandum implements changes to the OMB Circular A–76 Revised Supplemental Handbook, in furtherance of the requirements of the Federal Activities Inventory Reform Act (''The FAIR Act''), Public Law 105–270. The March 1996 Revised Supplemental Handbook was issued through Transmittal Memorandum No. 15 (61 FR 14338). The March 1996 Revised Supplemental Handbook was further revised to implement the requirements of the FAIR Act through Transmittal Memorandum No. 20 (64 FR 33927) and Transmittal Memorandum No. 22 (65 FR 54568).

To clarify that the FAIR Act's administrative challenge and appeal process is limited to the inclusion or the omission of an activity on or off the list, the following change at Appendix 2, paragraph G. 2, of the OMB Circular A–76 Supplemental Handbook is proposed (see italics):

''2. Challenges and Appeals: Under Section 3 of the FAIR Act, an agency's decision to include or exclude a particular activity from the Commercial Activity Inventory is subject to administrative challenge and, then possible appeal by an ''interested party.'' *An agency's decision with regard to the application of appropriate Function Codes, Reason Codes and agency decisions regarding the aggregation or dis-aggregation of FTE for purposes of reporting commercial activities on the inventory are not subject to administrative challenge or appeal by an ''interested party.''* Section 3(b) of the FAIR Act defines ''interested party as...''

This change is effective immediately. Current A–76 and FAIR Act implementation guidance can be accessed at OMB's homepage at http://www.whitehouse.gov/OMB/procurement/fair-index.html.

Jacob J. Lew,

*Director.*

[FR Doc. 00–31881 Filed 12–13–00; 8:45 am]

BILLING CODE 3110–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### Public Availability of Year 2000 Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Public Law 105–270) (''FAIR Act'')

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of Public Availability of Commercial Activities Inventories.

**SUMMARY:** Year 2000 FAIR Act Commercial Activities Inventories are now available to the public from the agencies listed below. The Office of Federal Procurement Policy has prepared and is making available a summary FAIR Act User's Guide through its Internet site:

*http://www.whitehouse.gov/OMB/procurement/index.html.*

This User's Guide will help interested parties review Year 2000 FAIR Act inventories, and will also include the web-site addresses to access agency inventories.

The ''Federal Activities Inventory Reform Act of 1998'' (Public Law 105–270) (''FAIR Act'') requires that OMB publish an announcement of public availability of agency Commercial Activities Inventories upon completion of OMB's review and consultation process concerning the content of the agencies' inventory submissions. OMB has completed this process for the agencies listed below. Further

announcements will be published as OMB and the agencies complete their review and consultation process.

The attached Commercial Activities Inventories are now available.

**Jacob J. Lew,**

*Director.*

| Agency | Contact |
|---|---|
| African Development Foundation | Tom Wilson, 202–673–3948. Website: *www.adf.gov.* |
| Agency for International Development | Deborah Lewis, 202–712–0936. Website: *www.usaid.gov/procurement—bus—opp.* |
| Agency for International Development (OIG) | Deborah Lewis, 202–712–0936. Website: *www.usaid.gov/procurement—bus—opp* |
| Agriculture | Richard Guyer, 202–690–0291. Website: *www.usda.gov/ocfo.* |
| | Richard Kodl, 202–884–7666. Website: *www.arc.gov/infopubs/infomain.htm.* |
| Appalachian Regional Commission | Hubert Sparks, 202–884–7675. Website: *www.arc.gov/infopubs/infomain.htm.* |
| Appalachian Regional Commission (OIG) | Richard Guyer, 202–690–0291. Website: *www.usda.gov/ocfo.* |
| Architectural and Transportation Barriers Compliance Board | Lawrence W. Roffee, 202–272–5434, ext. 113 Website: *www.access-board.gov.* |
| Barry Goldwater Scholarship and Excellence in Education Foundation | Gerald J. Smith, 703–756–6012. Website: *www.act.org/goldwater* |
| Christopher Columbus Fellowship Foundation | Judith M. Shellenberger, (315) 258–0090 Website: *www.columbusfdn.org* |
| Commerce | Edna Campbell, 202–482–0585. Website: *www.doc.gov/oebam/fair.* |
| Commission on Fine Arts | Jeff Carson, 202–504–2200. No Website currently available. |
| Committee for Purchase from People who are Blind or Severely Disabled. | Lee Wilson, 703–603–7740. Website: *www.jwod.gov.* |
| Council on Environmental Quality | Ellen Athas, 202–456–6541.Website: *www.whitehouse.gov/CEQ.* |
| Consumer Product Safety Commission | Edward E. Quist, 301–504–0029. ext. 2240.Website: *www.cpsc.gov/businfo/businfo.html.* |
| Education Department | Gary Weaver, 202–401–3848. Website: *www.ed.gov/offices/OCFO/2000fair.html.* |
| Federal Election Commission | John O'Brien, 202–694–1215. Website: *www.fec.gov.* |
| Federal Emergency Management Agency | Colleen Kennedy-Roberts, 202–646–2988. Website: *www.fema.gov.* |
| Federal Retirement Thrift Investment Board | Richard White, 202–942–1633. Website: *www.frtib.gov/eread.html.* |
| General Services Administration | Tom Fitzpatrick, 202–501–0324. Website: *www.cfo.gsa.gov.* |
| Harry S. Truman Scholarship Foundation | Louis H. Blair, 202–395–4831. Website: *www.truman.gov.* |
| Health and Human Services | Michael Colvin, 202–690–7887. Website: *www.hhs.gov/progorg/oam/fair* |
| Housing and Urban Development | Janice W. Blake-Green, 202–708–0638. Website: *www.hud.gov/cfo/cforept.html.* |
| Institute of Museum and Library Services | Linda Bell, 202–606–8637. Website: *www.imls.gov.* |
| Inter-American Foundation | Linda Borst, (703) 306–4308. Website: *www.iaf.gov.* |
| James Madison Memorial Fellowship Foundation | Steve Weiss, 202–653–6109. Website: *www.jamesmadison.com.* |
| Japan-United States Friendship Commission | Eric Ganloff, 202–418–9800. Website: *www.jusfc.gov.* |
| Kennedy Center for the Performing Arts | Jared Barlage, 202–416–8721. Website: *www.kennedy-center.org/about/administration.html.* |
| Marine Mammal Commission | Suzanne Montgomery, 301–504–0087. No Website currently available. |
| National Commission on Libraries and Information Science | Judith C. Russell, 202–606–9200. Website: *www.nclis.gov.* |
| National Council on Disability | Ethel D. Briggs, 202–272–2004. Website: *www.ncd.gov/newsroom/correspondence (pull up lew 7–14–00.html).* |
| National Education Goals Panel | John Masaitis, 202–724–0015. Website: *www.negp.gov* (hit search and type in A–76). |
| National Endowment for the Arts | Mike Burke, 202–682–5497. Website: *www.arts.gov/learn/commercial2000.html.* |
| National Labor Relations Board (OIG) | Emil T. George, 202-273–1960. Website: *www.nlrb.gov/active.html.* |
| Office of U.S. Trade Representative | Barbara Ferguson, 202–456–6001 *www.ustr.gov.* |
| Peace Corps | Susan Hancks, 202–692–1612 Website: *www.peacecorps.gov.* |
| Railroad Retirement Board | Henry M. Valiulis, 312–751–4520 Website: *www.rrb.gov/emaillink.html.* |
| Railroad Retirement Board | Martin J. Dickman, 312–751–4690. Website: *www.rrb.gov/emaillink.html.* |
| Smithsonian Institution | L. Carole Wharton, 202–357–2917. Website: *www.si.edu/si_fairact.htm.* |
| U. S. Trade and Development Agency | Julie Norton, 703–875–6066 Website: *www.tda.gov.* |

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## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–24788; File No. 812–12256]**

## Integrity Life Insurance Company, et al.

December 8, 2000.

**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 exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder.

*Applicants:* Integrity Life Insurance Company (''Integrity''), National Integrity Life Insurance Company (''National Integrity,'' together with Integrity, the ''Companies''), Separate Account I of Integrity Life Insurance Company, Separate Account I of National Integrity Life Insurance Company (together with Separate Account I of Integrity Life Insurance Company, the ''Accounts''), and Touchstone Securities, Inc. (''Touchstone'').

*Summary of Application:* Applicants seek an order of exemption pursuant to Section 6(c) of the 1940 Act to the extent necessary to permit the recapture, under specified circumstances, of credits applied to contributions made under certain flexible premium variable annuity contracts that the Companies will issue through the Accounts (the ''Contracts''), as well as other contracts that the Companies may issue in the future through their existing or future separate accounts (''Other Accounts'') that are substantially similar to the Contracts in all material respects (''Future Contracts''). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. (''NASD'') member broker-dealer controlling or controlled by, or under common control or affiliated with, Touchstone, whether existing or created in the future, that serves as distributor or principal underwriter for the Contracts or Future Contracts (''Affiliated Broker-Dealers'').

*Filing Date:* The application was filed on September 15, 2000, and amended and restated on December 4, 2000.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on January 2, 2001, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o G. Stephen Wastek, Esq., Assistant General Counsel, Integrity Life Insurance Company, 515 West Market Street, Louisville, Kentucky 40202.

**FOR FURTHER INFORMATION CONTACT:** Ronald A. Holinsky, Senior Counsel, or Lorna J. MacLeod, 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 is available for a fee from the SEC's Public Reference Branch at (202) 942–8090.

### Applicants' Representations

1. Integrity is a stock life insurance company organized under the laws of the State of Ohio. It is authorized to sell life insurance and annuities in 47 states and the District of Columbia. Integrity is a subsidiary of Western and Southern Life Insurance Company (''Western and Southern''), a mutual life insurance company organized under the laws of the State of Ohio.

2. National Integrity is a stock life insurance company organized under the laws of New York. It is authorized to sell life insurance and annuities in four states and the District of Columbia. National Integrity is a direct subsidiary of Integrity and an indirect subsidiary of Western and Southern.

3. Separate Account I of Integrity Life Insurance Company was established in 1986 as a separate account under Ohio law for the purpose of funding variable annuity contracts issued by Integrity. It is a segregated asset account of Integrity and is registered with the Commission as a unit investment trust under the Act (File No. 811–04844).

4. Separate Account I of National Integrity Life Insurance Company was established in 1986 as a separate account under New York law for the purpose of funding variable annuity contracts issued by National Integrity. It is a segregated asset account of National Integrity and is registered with the Commission as a unit investment trust under the Act (File No. 811–04846).

5. The Accounts will fund the variable benefits available under the Contracts. Each Company's offering of the Contracts is registered under the Securities Act of 1933. That portion of the assets of the Accounts that is equal to the reserves and other Contract liabilities with respect to the Accounts is not chargeable with liabilities arising out of any other business of the Companies. Any income, gains or losses, realized or unrealized, from assets allocated to the Accounts are, in accordance with the Contracts, credited to or charged against the Accounts, without regard to other income, gains or losses of the Companies.

6. Touchstone is the principal underwriter of the Contracts. Touchstone is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD. The Contracts are sold by registered representatives of broker-dealers that have entered into distribution agreements with Touchstone. Touchstone is a wholly owned subsidiary of Western and Southern.

7. The minimum initial contribution is $1,000. An owner may make additional contributions of at least $100 at any time. The Companies may limit total contributions to $1,000,000 if the owner is under age 76 and to $250,000 if the owner is over age 76.

8. The Added Value Option is an optional credit to the Contracts of between 1% and 5% of the total first year contributions (the ''Credit''). If an owner selects the Added Value Option at the time of application, the Companies will credit an extra amount to a Contract each time the owner makes a contribution within the first twelve months after the contract is issued. The owner may select a Credit form 1% to 5%. The Companies will allocate Credits pro rata among the investment options in the same ratio as the contribution. The Companies will fund Credits from their general account assets.

9. The annual charge for the Added Value Option is .15% for each percentage of Credit an owner selects. The charge is assessed against the Accounts and the fixed accounts. For example, if the owner selects the 3% Credit, the annual charge is .45%. The charge is subject to a minimum and maximum dollar amount. The minimum, amount is .145% multiplied

by the first year total contributions. The maximum amount is .182% multiplied by first year total contributions. The prospectuses for the Contracts contain a chart of percentages the Companies will use in calculating the range of dollar amounts. The Companies assess the charge quarterly on the assets in the investment options to which an owner's contributions are allocated. The Companies will discontinue deducting the charge seven years from the date a Contract is issued.

10. The Credit is not part of the amount an owner will receive if he or she exercises the free look provision. In addition, all or part of the Credit will be recaptured if the owner makes a withdrawal in excess of the annual 10% free withdrawal amount during the first seven contract years. The 10% free withdrawal provision allows an owner to withdraw up to 10% annually of the account value without any contingent withdrawal charge or a market value adjustment being assessed. Regardless of whether or not the Credit is vested, all gains or losses attributable to such Credit are part of the owner's contract value and are immediately vested.

11. The free look period is the 10-day period (or longer if required by state law) during which an owner may return a Contract after it has been delivered and receive a full refund of the Contract value, less any Credits applied. Unless the law requires that the full amount of the contribution be refunded, less any withdrawals, the owner bears the investment risk from the time of purchase until he or she returns a Contract and the refund amount may be more or less than the contribution the owner made. The Credit is not part of the amount an owner will be paid if the free look provision is exercised.

12. An owner may make withdrawals from a Contract at any time before annuitization. The minimum withdrawal amount is $300. Assuming the owner has selected the Added Value Option, any withdrawal in excess of the annual 10% free withdrawal amount during the first seven contract years will be subject to the recapture of all or part of any Credit applied to the Contract and will also be subject to contingent withdrawal charges. Only amounts withdrawn in excess of the 10% free withdrawal amount are subject to recapture or contingent withdrawal charges. The amount that will be recaptured depends on the contract year in which the withdrawal is made. The chart below shows what portion of the Added Value Option as credited will be recaptured in connection with a partial withdrawal in excess of the free withdrawal amount or a complete withdrawal.

AMOUNT OF CREDIT RECAPTURED

| Contract year | Integrity (in percent) | National integrity (in percent) |
|---|---|---|
| 1 | 100 | 100 |
| 2 | 85 | 100 |
| 3 | 65 | 85 |
| 4 | 55 | 70 |
| 5 | 40 | 55 |
| 6 | 25 | 40 |
| 7 | 10 | 25 |
| 8+ | 0 | 0 |

The contingent withdrawal charge is a percentage of contributions withdrawn by the owner. The contingent withdrawal charge for each Company is as follows:

| Number of years from date of contribution | Integrity charge (in percent) | National integrity charge (in percent) |
|---|---|---|
| 1 | 8 | 7 |
| 2 | 7.5 | 6 |
| 3 | 7 | 5 |
| 4 | 6 | 4 |
| 5 | 5 | 3 |
| 6 | 4 | 2 |
| 7 | 3 | 1 |
| 8+ | 0 | 0 |

For purposes of calculating the contingent withdrawal charge, the Companies treat withdrawals as coming from the oldest contribution first (*i.e.,* first-in, first-out). In the case of partial withdrawals, the Companies deduct the contingent withdrawal charge, if any, from the value remaining in a Contract, not from the withdrawal amount requested by the owner.

13. Owners of the Contracts may allocate their contributions among 42 investment options—40 variable investment options and two fixed investment options. Each subaccount of the Accounts is a variable investment option that will invest in shares of a corresponding portfolio of Janus Aspen Series, Fidelity's Variable Insurance Product Funds, The Legends Fund, MFS Variable Insurance Trust, Putnam Variable Trust Funds, or Van Kampen Life Portfolios.

14. The Companies, at a later date, may decide to create additional subaccounts to invest in any additional funding media as may now or in the future be available. The Companies, from time to time, also may combine or eliminate subaccounts or transfer assets to and from subaccounts.

15. The Contracts provide for a death benefit, various death benefit options, annuity benefits and annuity payout options, as well as transfer privileges, dollar cost averaging, and other features. The Contracts have the following charges: (a) a deferred sales charge as a percentage of contributions withdrawn as described above; (b) an annual administrative charge of $30; (c) a mortality and expense risk charge of .85%; (d) an administrative expense charge of .15%; (e) a transfer fee of $20 after twelve transfers made during a Contract year; (f) any applicable charge for the Added Value Option; (g) any applicable death benefit option fee; and (h) any applicable state premium tax. In addition, assets invested in the subaccounts are charged with the annual operating expenses of the underlying portfolios.

16. Applicants seek exemption pursuant to Section 6(c) of the 1940 Act from sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to the extent deemed necessary to permit the Companies to recapture part or all of a Credit in the following instances: (a) when an owner exercises the Contract's free look provision; and (b) when an owner makes a withdrawal in excess of the annual 10% free withdrawal amount within the first seven Contract years.

**Applicants' Legal Analysis**

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or 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. Applicants request that the Commission pursuant to section 6(c) of the 1940 Act grant the exemptions requested below with respect to the Contracts and any Future Contracts issued by the Companies, funded by the Accounts or Other Accounts, and underwritten or distributed by Touchstone or Affiliated Broker-Dealers. Applicants undertake that Future Contracts will be substantially similar to the Contracts in all material respects. Applicants believe 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.

2. Applicants represent that it is not administratively feasible to track a

Credit in the Accounts after the Credit is applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amount held in the Accounts, including the Credit, during the free look period and the recapture period. As a result, during such periods, the aggregate asset-based charges assessed against an owner's account value will be higher than those that would be charged if the owner's account value did not include the Credit. The account value includes all assets in the Accounts and the fixed accounts, including any Credit.

3. Subsection (i) of section 27 of the 1940 Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) of the 1940 Act defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants assert that the recapture of a Credit in the circumstances set forth in the application would not deprive an owner of his or her proportionate share of the issuer's current net assets. An owner's interest in a Credit allocated to his or her Contract value upon receipt of a contribution made during the first twelve months after issuance is not fully vested until the eighth contract year. Unless and until the full amount of a Credit is vested, the Companies retain at least partial right and interest in the Credit, although not in the earnings attributable to the amount. Thus, Applicants argue that when the Companies recapture a Credit, in part or in full, they are merely retrieving their own assets and the owner has not been deprived of a proportionate share of the applicable Accounts' assets because his or her interest in the Credit has not vested.

5. In addition, Applicants state that permitting an owner to retain a Credit under a Contract upon the exercise of the free look provision would not only be unfair, but would also encourage individuals to purchase a Contract, with no intention of keeping it, and return it for a quick profit. Furthermore, Applicants state that the recapture of Credits applied to contributions made within the first twelve months after issuance is designed to provide the Companies with a measure of protection against anti-selection. The risk here is that, rather than spreading contributions over a number of years, an owner might make very large contributions during the first Contract year, thereby leaving the Companies little time to recover the cost of the Credits. As noted earlier, the amounts recaptured equal the Credits provided by the Companies from their general account assets and any gain would remain a part of the owner's contract value.

6. Applicants assert that the Credit will be attractive to and in the interest of investors because it will permit owners to put between 100% and 105% of each of their contributions to work for them in the selected investment options. In addition, the owner will retain any earnings attributable to the Credit, as well as the principal amount of the Credit once vested.

7. Applicants further assert that the recapture of any Credit only applies in relation to the risk of anti-selection against the Companies. Anti-selection can generally be described as a risk that owners obtain an undue advantage based on elements of fairness to the Companies and the actuarial and other factors taken into account in designing the Contracts and Future Contracts. The Companies provide the Credit from their general account assets on a guaranteed basis. Thus, they undertake a financial obligation that contemplates the retention of the Contracts and Future Contracts by their owners over an extended period, consistent with the long-term nature of retirement planning. The Companies generally expect to recover their costs, including Credits, over an anticipated duration while a Contract or Future Contract is in force. The right to recapture Credits applied to contributions made within the first twelve months after issuance protects the Companies against the risk that an owner will purchase a Contract or Future Contract or make larger or additional contributions with the knowledge that the contingency that triggers payment of a benefit is likely or about to occur. With respect to refunds paid upon the return of a Contract or Future Contract during the free look period, the amount payable by the Companies must be reduced by the amount of the Credit. Otherwise, investors could purchase a Contract or Future Contract for the sole purpose of exercising the free look provision and making a quick profit.

8. Applicants submit that the provisions for recapture of Credits under the Contracts and Future Contracts do not violate sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act. Sections 26(e) and 27(i) were added to the 1940 Act to implement the purposes of the National Securities Markets Improvement Act of 1996 and Congressional intent. The application of a Credit to contributions made under the Contracts should not raise any questions as to the Companies' compliance with the provisions of Section 27(i). However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Credit under the circumstances summarized herein without the loss of relief from Section 27 provided by Section 27(i).

9. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by section 22(a). Rule 22c–1 under the 1940 Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security next computer after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. The Companies' recapture of a Credit might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current accumulation unit value of the Accounts. Applicants contend, however, that the recapture of the Credit does not violate section 22(c) or Rule 22c–1. To effect a recapture of a Credit, the Companies will redeem interests in a Contract at a price determined on the basis of the current accumulation unit value(s) of the subaccount(s) to which the owner's contract value is allocated. The amount recaptured will equal the amount of the Credit paid out of the Companies' general account assets. Although the owner will be entitled to retain any investment gain attributable to the Credit, the amount of that gain will be determined on the basis of the current accumulation unit values of the applicable subaccounts. Thus, no

dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. Because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Credit, Rule 22c–1 and section 22(c) should not apply to any Credit. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and Future Contracts.

**Conclusion**

Applicants submit that their request for an order that applies to the Accounts and any Other Accounts established by the Companies, in connection with the issuance of the Contracts and Future Contracts, is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants state that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in the application. Applicants submit that having Applicants file additional applications would impair Applicants' ability to take advantage of business opportunities as they arise. Further, Applicants state that if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in the application described herein, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive requests meet the standards set out in section 6(c) of the 1940 Act and that the Commission should, therefore, grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–31897 Filed 12–13–00; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–24787: File No. 812–11940]**

## The Travelers Insurance Company, et al.

December 8, 2000.

**AGENCY:** Securities and Exchange Commission (''SEC'' or ''Commission'')

**ACTION:** Notice of Application for an Order under section 6(c) of the Investment Company Act of 1940 (''1940 Act'' or ''Act'') granting exemptions from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits added to purchase payments of certain variable annuity contracts.

*Applicants:* The Travelers Insurance Company (''The Travelers''), The Travelers Life and Annuity Company (''Travelers Life,'' together with The Travelers, ''Insurers''), the Travelers Fund BD III for Variable Annuities (''Fund BD III''), The Travelers Fund BD IV for Variable Annuities (''Fund BD IV'') (Fund BD III, together with Fund BD IV, the ''Separate Accounts'' or ''Accounts'') and Travelers Distribution LLC (''Travelers Distribution'').

*Summary of Application:* Applicants seek an order section 6(c) of the Act to the extent necessary to permit the recapture of credits added to purchase payments of certain variable annuity contracts (the ''Contracts''). Applicants also request that the order being sought extend to (i) any other contracts that may be issued in the future by the Insurers that are substantially similar in all material respects to the Contracts (''Future Contracts'') but are issued through the Accounts or through separate accounts of the Insurers to be established in the future (''Future Accounts''), and (ii) any other National Association of Securities Dealers, Inc. (''NASD''), member broker-dealers controlling or controlled by, or under common control with the Insurers, whether existing or created in the future, that acts as a distributor of and/or principal underwriter for the Contracts or Future Contracts offered through the Insurer's Accounts or Future Accounts (''Future Underwriters'').

*Filing Date:* The application was filed on January 19, 2000, and was amended and restated on November 1, 2000. Applicants represent that they will file an amended and restated application during the notice period to conform to the representations set forth herein.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission 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 January 2, 2001, 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 may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Kathleen A. McGah, Esq., The Travelers Insurance Company, One Tower Square, Hartford, CT 06183.

**FOR FURTHER INFORMATION CONTACT:** Keith A. O'Connell, Senior Counsel, or Lorna J. MacLeod, 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 is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

**Applicant's Representations**

1. The Travelers, a Connecticut stock insurance company, is licensed to conduct life insurance business in all of the states of the United States, the District of Columbia, Puerto Rico, Guam, the British and U.S. Virgin Islands, and the Bahamas. The Travelers is an indirect wholly owned subsidiary of Citigroup Inc. Citigroup Inc. consists of businesses that include a broad range of financial services, including asset management, banking and consumer finance, credit and charge cards, insurance investments, investment banking, and trading.

2. Travelers Life, a Connecticut stock insurance company, is licensed to conduct life insurance because in a majority of states of the United States. Travelers Life is a wholly owned subsidiary of The Travelers.

3. Fund BD III and Fund BD IV were established under the laws of Connecticut as separate investment accounts by The Travelers and Travelers Life, respectively. Assets allocated to each Separate Account support the benefits payable under group and individual annuity contracts offered by the Insurers. Each Separate Account is

registered with the Commission as a unit investment trust, and meets the definition of a ''separate account'' in section 2(a)(37) of the 1940 Act.

4. Travelers Distribution is registered as a broker-dealer under the Securities Exchange Act of 1934 (''1934 Act'') and is a member of the NASD. Travelers Distribution serves as the principal underwriter for the Contracts, and is affiliated with the Insurers.

5. The Contracts are flexible premium variable annuity contracts that may be purchased by individuals or groups in connection with certain retirement plans on a tax-qualified or a non-tax-qualified basis. Each Contract permits an owner to allocate funds to one or more variable funding options and/or to the fixed account. Each Contract provides an owner special features such as purchase payment credits, systematic withdrawals, dollar-cost averaging, and automatic rebalancing as well as a choice of a standard death benefit or an enhanced death benefit.

6. During the first Contract year, for each purchase payment made, the relevant Insurer will add a credit to the owner's Contract value. This credit will be funded from the Insurer's general account assets. The credit will equal a percentage of each purchase payment made and will depend upon the greater age of the owner or annuitant at issue. If the greater age is 69 or under, the credit will be 5%. If the greater age is 70 or over, the credit will be 4%.

7. Each Insurer will apply the credit to the investment options selected by the owner in the same ratio as the applicable purchase payment. However, the Insurer will deduct the credit from the contract value if: (i) The owner returns the Contract during the right to return period; (ii) the owner (or the annuitant, with no contingent annuitant surviving) dies within 12 months after the credit is applied; or (iii) the owner surrenders or annuitizes the Contract within 12 months after the credit is applied. The amount of credit deducted from any surrender, any contract value applied to an annuity option, or death benefit made by the Insurer will not include the amount attributable to the credit's investment pains or losses. An Insurer will not recapture purchase payment credits from any partial withdrawal.

8. Each owner may elect a standard death benefit or an enhanced death benefit. Under the standard death benefit, an Insurer will pay the beneficiary an amount equal to the greater of (1) and (2) below, each reduced by the any applicable premium tax and withdrawals (and charges) not previously deducted where: (1) is the contract value, less any purchase payment credits applied within 12 months of the death; or (2) is the total purchase payments made under the Contract.

9. Under the enhanced death benefit, an Insurer will pay the beneficiary an amount equal to the greatest of (1), (2), and (3) below, each reduced by any applicable premium tax and withdrawals (and charges) not previously deducted where: (1) is the contract value, less any purchase payment credits applied within 12 months of the death; (2) is the total purchase payments made under the Contract; or (3) is the ''step-up'' value that reflects the highest anniversary calculation of cash value (before the annuitant's 80th birthday or death) after adjustment for purchase payments and withdrawals.

10. An owner may make a withdrawal at any time before the maturity date. However, each Insurer will apply a withdrawal charge if purchase payments and associated credits are withdrawn before they have been in a contract for ten years. The withdrawal charge is assessed as a percentage of each purchase payment and associated credit as follows: 0–4, 5, 6, 7, 8, 9, 10 years since purchase payment made will be assessed a withdrawal charge of 8%, 7%, 6%, 5%, 3%, 1%, and 0%, respectively.

11. For purposes of the withdrawal charge calculation, the Insurers will take the withdrawal first from: (a) any purchase payments and associated credits to which no withdrawal charge applies; then from (b) any remaining free withdrawal allowance (after being reduced by (a)); then from (c) any purchase payment and associated credits to which a withdrawal charge applies (on a first-in, first-out basis); and then from (d) any Contract earnings.

12. Purchase payment credits, however, are not considered in the calculation of the withdrawal charge if the withdrawal is taken within 12 months after the credit is applied—therefore, purchase payment credits are never subject to withdrawal charges during that 12-month period. Unless the owner requests otherwise, each Insurer will deduct the withdrawal charge from the amount withdrawn.

13. The Insurers will not deduct a withdrawal charge if purchase payments are distributed: due to the death of the owner or the annuitant (with no contingent annuity surviving); under the Travelers Minimum distribution Program (under which an owner may instruct an Insurer to make minimum distributions that may be required by the IRS upon reaching age 70½); or under the Nursing Home Confinement provision (this provision is only available if the owner elects the enhanced death benefit).

14. Beginning in the second Contract year, an owner may withdraw up to 10% of contract value annually without a withdrawal charge. The free withdrawal amount is calculated as of the end of the previous Contract year.

15. Certain other charges are made in connection with the Contracts. Among these charges are an annual $40 administrative charge (waived if contract value is $100,000 or more), asset-based mortality and expense risk and administrative expense charges, and fund fees and expenses.

16. The mortality and expense risk and administrative expense charges are deducted daily. On an annual basis, the mortality and expense risk and administrative expense charges combined, total 1.40% of the average daily net assets of the Separate Account (if the owner selects the standard death benefit) or total 1.60% of the average daily net assets of the Separate Account (if the owner selects the enhanced death benefit).

**Applicants' Legal Analysis**

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule, or regulation of the Act to the extent that the exemption is necessary or 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. Because the provisions described below may be inconsistent with certain aspects of the recapture of the purchase payment credits, Applicants seek exemptions from Sections 2(a)(32), 22(c), 27(i)(2)(A) and Rule 22c–1 thereunder, to the extent necessary, pursuant to Section 6(c) to recapture the credits from those owners who surrender during the right to return period, or who surrender, annuitize or die before the expiration of the relevant 12-month time period. For the reasons discussed below, Applicants submit that the recapture of the purchase payment credits is in the public interest and consistent with the protection of investors and purposes fairly intended by the 1940 Act.

2. Applicants note that because the credit is added to contract value, the asset-based mortality and expense charge and administrative charge are higher than they would have been had the Insurer not added the credit to the owner's Contract value. Applicants submit that it is not administratively

feasible to track the credit amount in the Separate Account once the credit is applied. Nevertheless, each Insurer represents that the fees and charges, in the aggregate, are reasonable within the meaning of Section 26(e).

3. Section 27(i)(2)(A) of the 1940 Act, in pertinent part, makes it unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless such contract is a redeemable security. Section 2(a)(32) of the 1940 Act defines a ''redeemable security'' as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. To the extent the recapture of the purchase payment credits could be seen as a discount from net asset value or could result in the return of less than the proportionate share of the issuer's net assets, the recapture of the credits would trigger the need for relief absent some exemption from the 1940 Act.

4. The purchase payment credits are part of the overall pricing structure for each Contract. When the Contracts were designed, the pricing actuaries established the credits at a set level assuming the Insurer could recover its costs associated with the credits if the owner remained in the Contract for a certain period of time. Applicants submit that should the owner surrender, annuitize, or die before that period, the Insurer must recover the credits to help offset its costs. Therefore, Applicants seek relief from Section 2(a)(32).

5. Applicants assert that the owner's interest in the credit amount does not vest until the expiration of both the right to return period and the 12-month period following the credits' application to the owner's account. Until such time, the Insurer retains the right to and interest in the credit amount, although not the earnings attributable to the credit. Therefore, Applicants argue that when an Insurer recaptures the purchase payment credit, the Insurer is simply taking back what rightfully belongs to the Insurer—its own assets. Accordingly, Applicants argue that the credit recapture is a legitimate ''charge'' for a benefit under the Contracts, and does not reduce the amount of Fund BD III's or Fund BD IV's current net assets that an owner otherwise would be entitled to receive.

6. Moreover, Applicants represent that the recapture of the purchase payment credits is consistent with the long-term nature of the Contracts. The recapture acts as an ''anti-selection'' device by discouraging an owner to invest in the Contract simply to make a quick profit. In other words, the recapture prevents an owner from making a very large contribution one day and then surrendering the contract the next day (and thereby depriving the Insurer of opportunity to recover the cost of the credits applied). As stated above, the credits are contributed by the Insurer from its own general account assets, and any gain attributable to the credits would remain as part of the owner's contract value.

7. Consistent with Section 2(a)(32), therefore, Applicants argue that the Contracts will be ''redeemable securities.'' The Contracts provide for withdrawals and surrenders of contract value. The prospectuses for the Contracts disclose the contingent nature of the credit recapture. Accordingly, Applicants argue that there will be no restriction on, or impediment to, withdrawals or surrenders that should cause the Contracts to be considered other than redeemable securities within the meaning of the 1940 Act and rules thereunder, and that an owner upon taking a withdrawal from a Contract or surrendering or annuitizing a Contract will receive his ''proportionate share'' of the relevant Separate Account: *i.e.,* the amount of the purchase payment reduced by the amount of all charges and increased or decreased by the amount of investment performance credited to the Contract.

8. Rule 22c–1, promulgated under Section 22(c) of the 1940 Act, imposes requirements with respect to both the amount payable on redemption and the time as of which such amount is calculated. Specifically, Rule 22c–1, in pertinent part, prohibits a registered investment company issuing a redeemable security and its principal underwriter from selling, redeeming, or repurchasing any such security, except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption, or of an order to purchase or sell such security. To the extent that the credit recapture can be viewed as causing a Contract to be redeemed at a price that is computed at less than current net asset value, Applicants request relief from Section 22(c) and Rule 22c–1.

9. Applicants argue that the purchase payment credit recapture will comply with the requirements of Rule 22c–1. Regarding the amount payable, Applicants argue that the recapture of the credits upon surrender, annuitization, or death of an owner during the right to return period and the 12-month period following the credits' application to the owner's Contract value, does not alter the owner's current net asset value. Furthermore, regarding the timing requirement of Rule 22c–1, Applicants, consistent with their current procedures, represent that they will determine the net cash surrender value under a Contract in accordance with Rule 22c–1 on a basis next computed after receipt of an owner's request for surrender or annuitization or a beneficiary's death report date. Accordingly, Applicants assert that they will comply with both the amount payable and timing requirements of Rule 22c–1.

10. In addition, Applicants argue that the credit recapture is consistent with the policy behind Rule 22c–1. Applicants state that the Commission's purpose in adopting Rule 22c–1 was to minimize (i) dilution of the interests of the other security holders, and (ii) speculative trading practices that are unfair to such holders. Applicants represent that the purchase payment credit recapture would in no way have the dilutive effect that Rule 22c–1 is designed to prohibit, because a surrendering or annuitizing owner, or a beneficiary, would ''receive'' no more than an amount equal to the Contract value determined pursuant to the formula and at a time set out in the Contract. Furthermore, Applicants argue that variable annuities, by their nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was aimed against, and, even if they could be so used, the credit recapture would discourage, rather than encourage, any such trading.

11. In addition to the considerations discussed above, Applicants assert that despite the fact that the purchase credits are subject to recapture upon surrender, annuitization, or payment of the death benefit before the expiration of the relevant 12 month time period, the credits are advantageous to owners. Even though the credits do not vest until 12 months after they are applied, owners receive the benefits from the credits. Upon application, owners will be able to invest the credits (thus having more to invest than they otherwise would have had), and will be able to receive any positive investment experience from those credits.

12. Applicants assert that the Contracts' charge structure provides equitable treatment to all owners. Applicants state that the charge structure was established for the purchase payment credits so that the Insurer may recover its costs over the life of the Contract. If an owner could surrender or annuitize a Contract, or if a beneficiary could receive the death benefit proceeds before the 12 month

period after credit application without the recapture of the credits, the Insurer may not be able to fully recover its costs. If the Insurer did not recapture the credits and instead raised other charges under the Contract, the Insurer could be charging persisting owners enrolled in the product more than may otherwise be necessary to recover the costs attributable to such owners.

13. Applicants seek the relief requested herein not only with respect to themselves and the Contracts described above, but also with respect to Future Contracts issued by themselves through Future Accounts and underwritten by Future Underwriters. Applicants represent that the terms of the relief requested with respect to any Future Contract, Future Account, and Future Underwriter are consistent with standards set forth in section 6(c) of the 1940 Act.

14. Applicants state that, without the requested class relief, exemptive relief for any Future Contract, Future Account, and Future Underwriter would have to be requested and obtained separately. Applicants assert that these additional requests for exemptive relief would present no issues under the 1940 Act not already addressed in this application. Applicants state that if the Applicants were to repeatedly seek exemptive relief with respect to the same issues, investors would not receive additional protection or benefit, and investors and the Applicants could be disadvantaged by increased costs from preparing such additional requests for relief. Applicants argue that the requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for Applicants to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would, Applicants argue, enhance each Applicant's ability to effectively take advantage of business opportunities as such opportunities arise. Applicants assert, for all the reasons stated herein, that their request for class exemptions is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Contract and provisions of the 1940 Act, and that an order of the Commission including such class relief, should, therefore, be granted.

## Conclusion

For the reasons stated above, Applicants assert that the requested exemptions, in accordance with the standards of section 6(c), 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. 00–31896 Filed 12–13–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43685; File No. SR–BSE–00–04]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, as Amended by the Boston Stock Exchange, Inc., Relating to an Amendment to the Post Primary Session (''PPS'')

December 6, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 9, 2000, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On December 6, 2000, the BSE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend existing rules under Chapter IIB, *Post 4:00 P.M. Trading,* which will allow member firms to accommodate various customer average pricing programs based on the primary market's primary trading session and to permit risk based portfolio programs which are based on the primary market's closing price.

The proposed rule language is as follows: The new language is in *italics.*

**CHAPTER IIB**

**Facilitation of GTX Orders**

**Application of Chapter**

Sec. 1. This chapter applies to the facilitation of certain orders after the close of the 9:30 a.m. to 4:00 p.m. trading session. All other provisions of the Constitution and Rules of the Exchange are applicable unless superseded by this chapter.

**Facilitation of Customer Average Pricing Programs ''CP''s Eligible for Reporting During PPS**

*Sec. 4. This section applies to the facilitation of certain transactions hereinafter referred to as Customer Average Pricing Programs, ''CP''s, which are reported during the PPS to facilitate transactions in single issue, or portfolios of stocks. In order to be eligible under this rule, all CPs must facilitate customer-to-customer (agency), or customer-to-principal (principal) average pricing programs that are based on primary market average prices. For the purposes of this Section and Section 5, only those stocks that are listed on the Exchange, or that are traded pursuant to Unlisted Trading Privileges (UTP), shall be eligible for these programs.*

*(a) CPs are not exposed to the Exchange's PPS auction, are not price protected during PPS, and thus, may not be broken-up upon entry to the Exchange [1]*

*(b) CPs must be electronically communicated to the Exchange via BEACON, identified as ''CP'' on each cross, entered by symbol and price, into the system, identified as to ''principal'' or ''agency'', and when applicable, identified as ''short exempt''. The time slice must be identified on the cross, identifying the beginning and ending slice for CP entered crosses.*

*BEACON will record the transaction for Tape reporting with the identifier ''W'', to the nearest fraction or decimal eligible for reporting by the Exchange.*

*(c) The following CP crossed orders are eligible for Reporting during the PPS*:

*(i) Primary Market Average Price—Benchmark +/− (Plus or Minus*)

*This CP Program provides customers with average pricing based on the primary market's trading session transactions that are reported to the consolidated tape. The Benchmark is the primary market's average price for the duration of the CP Program. If the Benchmark is exceeded, the customer will receive a better price. If the*

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from John Boese, Assistant Vice President, BSE, to Alton Harvey, Office Chief, Office of Market Watch, Division of Market Regulation, Commission, dated December 1, 2000 (''Amendment No. 1''). In Amendment No. 1, the BSE made corrections to its rule text and clarified issues regarding the language used in its filing.

*Benchmark is not reached, the customer will receive a price less than the Benchmark price.*

*(ii) Primary Market Average Price—Guaranteed*

*This CP Program provides customers with a guarantee of receiving the Benchmark. Customers electing to participate in this Program will not be eligible to obtain a better, or an inferior price.*

*(iii) Primary Market Average Price—Stop*

*This CP Program provides customers with the Benchmark, or better.*

**After-Hours Risk Portfolio Crosses ''RP''s Eligible for PPS**

*Sec. 5. After-Hours Risk Portfolio Crosses, ''RP''s, provide customers with the ability to sell (buy) baskets of stocks (at least 15 stocks, $1 million or more in value) where the member firm guarantees to the customer the primary market closing price, less a discount (plus a premium) for the components that comprise the basket.*

*(a) RP's are not exposed to the Exchange's PPS auction, and are not price protected.*[2]

*(b) RPs must be electronically communicated to the Exchange via BEACON, identified as ''RF'' on each cross, entered by symbol and price into the system, identified as ''principal'' or ''agency'', and if appropriate identified as ''short exempt''. BEACON will record and enter the transaction, and report RPs to the consolidated tape in the aggregate. BEACON will record these transactions as RP Programs and provide regularly available information on aggregate volume levels by individual stock components on T+3, or thereafter*[3].

[1] *These orders are not afforded price protection generally available to members under BSE Rules of Board of Governors, Chapter II, Section 33, Execution Guarantee.*

[2] *These orders are not afforded price protection generally available to members under BSE Rules of Board of Governors, Chapter II, Section 33, Execution Guarantee.*

[3] *Transactions which occur ''regular way'' will settle within the standard T+3 settlement period. Cash settlements may settle beyond the standard T+3 settlement period, according to the agreement of the parties to the transaction. The overwhelming majority of transactions occur ''regular way''.*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

*1. Purpose*

The Exchange is seeking to amend existing rules under Chapter IIB, *Post 4:00 P.M. Trading,* to incorporate new language which will permit members and member firms to use the PPS: (1) to accommodate various customer average pricing programs, in issues eligible to trade on the Exchange,[4] that are based on the primary market trading session; and (2) to permit risk based portfolio programs, which are based on the primary market's closing price. In a side letter, the Exchange is also seeking an exemption to the short sale rule for purposes of supporting the programs described herein.[5]

*a. Background*

The Exchange initiated its PPS program on January 13, 2000.[6] The program runs from 4:00 p.m. through 4:15 p.m. (EST). Only orders entered after the Exchange's 4:00 p.m. close and designated as ''PPS'' are eligible for participation during this session. All PPS designated orders not executed during the PPS expire at the end of the PPS session and are not carried over to the next PPS session. Orders eligible for the Exchange's primary trading session are not eligible to participate during the PPS.

Member firms may wish to use the Exchange's PPS to facilitate execution of certain customer average pricing and risk based portfolio programs on either an agency basis (wherein member firms act as an agent facilitating customers on both sides of the transaction) or as principal (wherein member firms act as principal on one side of the transaction). The main purpose of accessing the PPS to report these programs is to expdite execution and customer reporting of these particular crosses that would otherwise be reported later, such as at 5:15 p.m. (EST), during the New York Stock Exchange's (''NYSE'') Crossing Session II.[7]

The Exchange proposes to implement two general programs; the Customer Average Pricing Facilitation Programs (''CP Programs''), and Post Primary Session Risk Portfolio Facilitation Programs (''RP Programs''). Both of these programs are described below.

*b. The Customer Average Pricing Facilitation Programs*

The CP Programs will allow member firms to act as a principal on one side of the cross (principal cross), or as an agent facilitating customers on both sides (agency cross), and may include single stocks or portfolios of stocks.

Member firms facilitate their customer requests for average pricing based on primary market transactions reported over some specific period of time during the day (a so-called ''time slice''). A time slice can incorporate a full trading day or some part thereof. CP Programs will be ''time sliced'' during the primary market's trading session so that some will begin during the trading day (upon receipt of the program) and end prior to the close. Others will begin at some point during the trading day and last through the primary market's close. Lastly, a full day average pricing program will include all trading day primary market prints from the opening transaction to the last/closing transaction. For example, a customer may seek a guarantee of receiving the primary market average price from noon to 3:00 p.m. (a time slice) on an order to sell 100,000 shares of a particular stock. The member firm accepts the conditions so it can facilitate the customer's order. At the same time, the member firm assumes the pricing risk since it may not be able to obtain the average price. Thus, the customer directly benefits from this transaction because the price performance is guaranteed.

There will be two types of reported facilitation crosses: (1) An agency cross, where the member firm has matched a buyer with a seller; and (2) a principal cross, where the member firm has assumed the contra-side of the

[4] Issues eligible to trade are those listed on the Exchange or listed pursuant to unlisted trading privileges.

[5] 17 CFR 240.10a–1. Review of the BSE's request for an exemption from the short sale rule is still pending before the Commission.

[6] *See* Securities Exchange Act Release No. 41814 (August 31, 1999); 64 FR 48885 (September 8, 1999).

[7] NYSE's Crossing Session II facilities the crossing of portfolios and operates between 4:00 p.m. and 5:15 p.m. (EST). This session is designed to facilitate trading of baskets of at least 15 NYSE securities valued at $1 million or more. Members that have either facilitated a basket trade, or have paired two customer baskets, submit aggregate information to the NYSE for execution. At 5:15 p.m., the NYSE prints the aggregate information of all baskets executed in this session to the consolidated tape. On the third day after the trade date (T+3), the individual component stocks executed as part of a basket are printed in aggregate form in the NYSE's Daily Sales Report.

customer's order. To facilitate a transaction where customers seek to participate on the buy side, member firms will need to sell to their customers irrespective of the tick. Therefore, an exemption to the short sale rule is required.[8]

Member firms may offer three types of average price orders to their customers: (1) Best efforts to obtain the average price, but with no guarantee; (2) a stop order guaranteeing the average price; and (3) a stop order guaranteeing the average price with the ability to improve the average price. As these transactions will be reported as averaged priced crosses during the Exchange's PPS session, they will not be exposed to the PPS auction. In that way, member firms will be able to immediately report these transactions to their customers.

The three specific order types eligible for the CP program are the following:

*Primary Market Average Price—Benchmark+/-(Plus or Minus)*

This order type provides customers with average pricing based on the primary market's trading session transactions, which are reported to the consolidated tape. The Benchmark price (''Benchmark'') is the primary market's average price for the duration of the time slice. If the Benchmark is exceeded, the customer will receive the better price. If the Benchmark is not achieved, the customer will receive the actual price which will be less than the Benchmark price.

*Primary Market Average Price—Guaranteed*

This order type provides customers with a guarantee of receiving the Benchmark. Customers electing to participate in this Program will not be eligible to obtain a better, nor an inferior price.

*Primary Market Average Price—Stop*

This order type provides customers with the Benchmark, or better, for the duration of the time slice. Customers will not receive an inferior price to the Benchmark.

*c. The PPS Risk Portfolio Facilitation Programs*

Under the RP Program, member firms will offer customers a guaranteed price for the sale or purchase of a basket containing at least 15 stocks, $1 million in value or more. Member firms will provide customers with a guarantee of receiving the primary market's closing price, less a discount (or fee) in return for assuming the market risk of the basket. Thus, where member firms facilitate a transaction by being on the buy side, with the customer on the sell side, the discounted price of each component of the basket will be at a price less than the primary market's last sale. Conversely, where customers seek to be on the buy side, member firms will facilitate on the sell side and mark-up the value of the basket.

Each component of a basket will be electronically reported during the PPS as principal facilitation crosses. These principal facilitation crosses will not be exposed to the PPS auction. The shares will be reported to the consolidated tape in the aggregate, not unlike the NYSE's Crossing Session II,[9] to prevent disclosure of the side that the member firm has facilitated. This process is also similar to the system in place for NYSE Crossing Session program where reporting is in the aggregate for shares and not made available until T+3. In order to provide the ability to facilitate customers seeking to participate on the buy side, member firms will need to sell to their customers irrespective of the tick. Therefore, an exemption to the short sale rule is required.[10]

An example of a risk portfolio is where a customer sells a basket of stocks to the member firm at the primary market closing price. In return for assuming the risk, the member firm discounts the basket from the closing price. Another potential program may involve equities-futures programs (EFP). For example, a mutual fund that needs to purchase securities after the close of trading for the amount of investment funds (cash) it has received during the trading day may purchase futures contracts because the stock market is closed. Because the mutual fund must convert the futures to stock at some point, a member firm may buy the futures from the mutual fund and sell the component or underlying stocks in return.

These strategies require that the transactions not be immediately reported to the tape, because price exposure can disclose to competitors the position the member firm has assumed. Anonymity permits the member firm to unwind its position without risk of disclosure. The Exchange would emulate the process currently used by the NYSE and report to the tape in the aggregate and then provide additional information on T+3, or thereafter.[11] As the closing prices are discounted, these programs may be priced away from the primary market's last sale and potentially outside of the day's trading range.

For regulatory oversight purposes, the Exchange will require each member firm that reports transactions in CP or RP Programs to: (1) Identify the issue, shares, and price on each cross; (2) indicate whether the firm is facilitating as agent or principal; (3) indicate, if principal, that it is short exempt; (4) identify the time slice period for CP entered crosses; (5) indicate the average (Benchmark) price determined by the member firm; and (6) for RP programs, identify all crosses in a particular basket. The Exchange may also require other identifiers deemed necessary to monitor pricing. This information will be used to validate Benchmark prices.

*d. Application of Rule 10a-1 of the Exchange Act*

The Exchange is separately requesting that the Commission exempt both the CP and RP Programs from Rule 10a-1, the short sale rule.[12] Based on the manner of pricing transactions that will occur within the CP and RP programs, the practices that Rule 10a–1 is designed to prevent are not at issue. Specifically, over the course of the CP and RP Programs the price direction of a particular stock, *i.e.*, the tick, will not be a factor in determining to fill customer CP and RP orders. Member firms will be acting as facilitators.

2. Statutory Basis

The statutory basis for the proposed rule change is section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, to remove impediments to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[13]

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose

[8] *See supra* note 5.

[9] Under the Rules of the NYSE, members that have either facilitated a basket trade, or have paired two customer baskets, submit aggregate information to the NYSE for execution. At 5:15 p.m., the NYSE prints the aggregate information of all baskets executed in this session to the consolidated tape. On the third day after the trade date (T+3), the individual component stocks executed as part of a basket are printed in aggregate form in the NYSE's Daily Sales Report.

[10] *See supra* note 5.

[11] Transactions which occur ''regular way'' will settle within the standard T+3 settlement period. Cash settlements may settle beyond the standard T+3 settlement period, according to the agreement of the parties to the transaction. The overwhelming majority of transactions occur ''regular way.'' *See* Amendment No. 1, *supra* note 3.

[12] 17 CFR 240.10a–1. *See supra* note 5.

[13] 15 U.S.C. 78f(b)(5).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The BSE has requested accelerated approval of the proposed rule change, as amended. While the Commission is not prepared to grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal at the close of an abbreviated comment period of 15 days from the date of publication of the proposal in the **Federal Register**.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room or the principal office of the BSE. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–BSE–00–04 and should be submitted by December 29, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–31805 Filed 12–13–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43677; File No. SR–CBOE–00–49]**

## Self-Regulatory Organizations; Notice of Filing by Chicago Board Options Exchange, Inc., Relating to RAES Eligibility Requirements for SPX Options

December 5, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2000, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Chicago Board Options Exchange, Inc. (''CBOE'' or the ''Exchange'') proposes to amend Rule 24.16, which governs the eligibility requirements of Market-Makers to participate on the Exchange's Retail Automatic Execution System (''RAES'') in options on the Standard & Poor's 500 Index (''SPX'').

The text of the proposed rule change is available at the CBOE and the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend Rule 24.16, ''RAES Eligibility in SPX,'' to: (1) eliminate the in-person and volume quotas from the eligibility requirements of Rule 24.16; and (2) eliminate the cap on the maximum number of Market-Makers that may participate in a RAES group. The proposed rule changes will make the RAES eligibility requirements of SPX Market-Makers the same as for other Market-Makers in non-index option classes and will enhance the depth and liquidity of the RAES markets in SPX.

Currently, Rule 24.16(a)(iv) sets forth four eligibility requirements that a Market-Maker must meet before he or she can participate in RAES in SPX. One of these requirements is that the Market-Maker must execute at least fifty percent of his or her Market-Maker contracts for the preceding calendar month in SPX. Another requirement is that the Market-Maker must execute at least seventy-five percent of his or her Market-Maker trades for the preceding calendar month in SPX in person. No comparable RAES eligibility requirements are imposed upon Market-Makers trading in non-index option classes. The Exchange proposes to eliminate the in-person and volume quotas from the eligibility requirements of Rule 24.16, so that the RAES eligibility requirements of SPX Market-Makers are the same as for other Market-Makers.

Recently, Market-Maker participation on RAES in index options has been low compared to historical levels. This problem has been aggravated by the fact that the in-person and volume requirements have forced the Exchange to delay new Market-Makers who wish to participate on RAES from logging onto RAES for at least 30 days. The proposed rule change would allow a new Market-Maker to log onto RAES so long as that Market-Maker: (1) Has signed the RAES Participation Agreement and completed the RAES instructional program (Rule 24.16(a); (2) has been approved under Exchange Rules as a Market-Maker with a letter of guarantee (Rule 24.16(a)(iv)(A)); and (3) maintains his or her principal business

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 C.F.R. 240.19b–4.

on the CBOE as a Market-Maker (Rule 24.16(a)(iv)(B)).

The Exchange also proposes to eliminate the cap on the maximum number of Market-Makers that may participate in a RAES group [3] set forth in Rule 24.16(e). Currently, Rule 24.16(e) provides that a RAES group may not exceed the maximum number of RAES participants set by the appropriate Market Performance Committee from time to time, which in no event may be set higher than thirty-three and one-third percent of the average number of RAES participants for the prior quarter. The recent decline in RAES participation in index options has resulted in imposed reductions in the RAES group size due to the application of this size limit.

The proposed rule change would conform Rule 24.16 to the Exchange Rule governing RAES eligibility for equity options, Rule 8.16, which does not impose in-person and volume requirements on equity options Market-Makers. The Exchange believes that by making the SPX RAES eligibility rule consistent with the rule for equity Market-Makers, the proposed rule change will provide the SPX market with enhanced capital and market-making expertise while maintaining the overall quality of the market. By increasing the number of RAES participants in SPX, the Exchange believes the proposed rule change will further assure the availability of RAES during periods of market volatility.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act [4] in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–00–49 and should be submitted by January 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–31799 Filed 12–13–00; 8:45 am]

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[3] A RAES group is an account whereby members of a joint account may participate on the system at the same time and assign their RAES trades to a designated joint account or nominee acronym.

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43676; File No. SR–CBOE–00–48]**

## Self-Regulatory Organizations; Notice of Filing by Chicago Board Options Exchange, Inc., Relating to RAES Eligibility Requirements for OEX and DJX Options

December 5, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 20, 2000, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') proposes to amend Rule 24.17, which governs the eligibility requirements of Market-Makers to participate on the Exchange's Retail Automatic Execution System (''RAES'') in both options on the Standard & Poor's 100 Index (''OEX'') and options on the Dow Jones Industrial Average (''DJX'').

The text of the proposed rule change is available at CBOE and the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend Rule 24.17, ''RAES Eligibility in OEX and DJX,'' to: (1) eliminate the in-person and volume quotas from the eligibility requirements of Rule 24.17; (2) eliminate the cap on the maximum number of Market-Makers that may participate in a RAES group; and (3) add an exception to the log-off requirements of OEX and DJX Market-Makers. The proposed rule changes will make the RAES eligibility requirements of OEX and DJX Market-Makers the same as for other Market-Makers in non-index option classes and will enhance the depth and liquidity of the RAES markets in OEX and DJX.

Currently, Rule 24.17(b)(v) sets forth four eligibility requirements that a Market-Maker must meet before he or she can participate in RAES in either OEX or DJX. One of these requirements is that the Market-Maker must execute at least seventy-five percent of his or her Market-Maker contracts for the preceding calendar month in the option class in which the Market-Maker is participating on RAES. Another requirement is that the Market-Maker must execute at least seventy-five percent of his or her Market-Maker trades for the preceding calendar month in the option class in which the Market-Maker is participating on RAES in person. No comparable RAES eligibility requirements are imposed upon Market-Makers trading in non-index option classes. The Exchange proposes to eliminate the in-person and volume quotas from the eligibility requirements of Rule 24.17, so that the RAES eligibility requirements of OEX and DJX Market-Makers are the same as for other Market-Makers.

Recently, Market-Maker participation on RAES in index options has been low compared to historical levels. This problem has been aggravated by the fact that the in-person and volume requirements have forced the Exchange to delay new Market-Makers who wish to participate on RAES from logging onto RAES for at least 30 days. The proposed rule change would allow a new Market-Maker to log onto RAES so long as that Market-Maker: (1) Has signed the RAES Participation Agreement and completed the RAES instructional program (Rule 24.17(b)(i)); (2) has been approved under Exchange Rules as a Market-Maker with a letter of guarantee (Rule 24.17(b)(v)(A)); and (3) maintains his or her principal business on the CBOE as a Market-Maker (Rule 24.17(b)(v)(B)).

Accordingly, the Exchange proposes to also eliminate subparagraph (b)(vi)(C) to Rule 24.17, which allows a Market-Maker to qualify for RAES in both OEX and DJX during the same calendar month by meeting the individual in person and volume requirements with respect to OEX, with respect to DJX, or the volume requirement with respect to OEX and DJX combined and the in person requirement with respect to OEX or DJX. Under the proposed rule change, a Market-Maker will be able to participate in RAES in both OEX and DJX during the same calendar month as long as he or she meets the remaining criteria under subparagraph (b)(v) to Rule 24.17 and as long as the two products continue to be traded at the same physical trading location. A Market-Maker must be present in the particular trading crowd where the class is traded while he or she is participating in RAES for that class. The Exchange also proposes to eliminate the cap on the maximum number of Market-Makers that may participate in a RAES group [3] set forth in Rule 24.17(e). Currently, Rule 24.17(e) provides that a RAES group may not exceed the maximum number of RAES participants set by the appropriate Committee from time to time, which in no event may be set higher than 50 RAES participants or 25% of the average number of RAES participants for the prior quarter, whichever is smaller. The recent decline in RAES participation in index options has resulted in imposed reductions in the RAES group size due to the application of this size limit.

The Exchange further proposes to add to Rule 24.17 an exception to the log-off requirement that provides that a Market-Maker who has logged onto RAES in OEX or DJX must log off RAES whenever he or she leaves the respective trading crowd. The exception would allow OEX and DJX Market-Makers to remain logged onto RAES if the Market-Maker's departure from the trading crowd is for a ''brief interval.'' This exception is currently found in the SPX RAES eligibility rule, Rule 24.16, and the RAES eligibility rule for equity options, Rule 8.16.[4] The Exchange believes that OEX and DJX RAES Market-Makers should also have the benefit of this exception applicable to SPX and equity options Market-Makers. The appropriate Committee, as defined in Rule 24.17, would have the authority to determine the length of time that constitutes a brief interval in the OEX and DJX trading crowds.

The proposed rule change would conform Rule 24.17 to the Exchange Rule governing RAES eligibility for equity options, Rule 8.16, which does not impose in-person and volume requirements on equity options Market-Makers. The Exchange believes that by making the OEX and DJX RAES eligibility rule consistent with the rule for equity Market-Makers, the proposed rule change will provide the OEX and DJX markets with enhanced capital and market-making expertise while maintaining the overall quality of these markets. By increasing the number of RAES participants in OEX and DJX, the Exchange believes the proposed rule change will further assure the availability of RAES during periods of market volatility.

2. Statutory Basis

The proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act [5] in that it is designed to remove impediments to a free and open market and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[3] A RAES group is an account whereby members of a joint account may participate on the system at the same time and assign their RAES trades to a designated joint account or nominee acronym.

[4] A ''brief interval'' in SPX options has been determined by the appropriate Committee to mean no more than 10 to 15 minutes. In equity options, a brief interval has been determined by the appropriate Committee to mean 5 minutes or less.

[5] 15 U.S.C. 78f(b)(5).

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–00–48 and should be submitted by January 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–31801 Filed 12–13–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43688; File No. SR–ISE–00–24]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Relating to a Marketing Fee To Fund Payment for Order Flow

December 7, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 1, 2000, the International Securities Exchange LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to establish a new marketing fee to fund a payment for order flow program. This will be an interim fee, pending both approval of the Exchange's permanent payment for order flow program (''Permanent Program'') and the establishment of fees under that program.[3] The fee will be $.75 a contract on all Primary Market Maker (''PMM'') and Competitive Market Maker executions against customer orders. This fee will terminate at the earlier of January 15, 2001, or the effectiveness of a fee to fund the Permanent Program.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to provide a source of funding for a payment for order flow program. This will be an interim program expiring on the earlier of January 15, 2001, or Commission approval of the Permanent Program and the establishment of a fee to fund that Program.

[3] On September 12, 2000, the Exchange filed with the Commission a rule change proposing to establish the Permanent Program. *See* Securities Exchange Act Release No. 43462 (October 19, 2000), 65 FR 64466 (October 27, 2000). By the terms of that proposal, the Exchange would be required to submit a separate rule change filing pursuant to Section 19(b)(3)(A) of the Act each time it sets the specific amount of any fees authorized under the program.

The Exchange will segregate the funds the fees generate proportionately to the groups of securities (or ''bins'') that generated the funds. The PMM in each bin will have full and exclusive discretion on how to use those funds to pay for order flow. The Exchange will make the payments to Electronic Access Members based on the PMM's directives.

The Exchange will be issuing appropriate circulars to its members emphasizing their disclosure and best execution obligations. The Exchange also will be providing to members various reports and other information demonstrating the quality of executions that they receive on the Exchange.

2. Statutory Basis

The Exchange states that the basis for the proposed rule change is the requirement under section 6(b)(4) of the Act[4] that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchanges believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge applicable to members of the Exchange, has become effective pursuant to section 19(b)(3)(A)[5] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder.[6] At any time within 60 days of the filing of the rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

The Commission has frequently raised serious concerns about payment for order flow and internalization.[7] Payment for order flow is of concern because brokers who are paid to send their customers' orders to one exchange have a conflict of interest that may reduce their commitment to the duty they owe their customers to find the best execution available. While payment for order flow has been a common practice in the equities markets for some time, only recently has payment for order flow developed in the options markets. Despite these concerns, however, the ISE's proposal involves the imposition of a fee, and the Act gives exchanges wide latitude to establish, revise, and collect fees and other charges without prior Commission approval. The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission asks persons who submit comments whether the payment for order flow facilitated by the ISE's proposal raises greater or different concerns than payment for order flow at other option exchanges. After receiving comments, and at any time within 60 days from the date the ISE filed its proposal, the Commission can decide to require the ISE to stop collecting the fee and await Commission approval of the Permanent Program.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–00–24, and should be submitted by January 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–31800 Filed 12–13–00; 8:45 am]

BILLING CODE 8010–01–M

[7] *See* Securities Exchange Act Release Nos. 43290 (September 13, 2000), 65 FR 57213 (September 21, 2000); 43228 (August 30, 2000), 65 FR 54330 (September 7, 2000); 43177 (August 18, 2000), 65 FR 51889 (August 25, 2000); 43112 (August 3, 2000), 65 FR 49040 (August 10, 2000); 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000); 34902 (October 27, 1994), 59 FR 55006 (November 2, 1994). *See also* Securities Exchange Act Release No. 43590 (November 17, 2000), 65 FR 75414 (December 1, 2000).

[8] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43678; File No. SR–PCX–00–08]**

## Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Dissolution of the Appointments Committee

December 5, 2000.

## I. Introduction

On March 20, 2000, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'' or ''SEC'') pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to eliminate the Options Appointment Committee and to transfer all of its powers to the Options Allocation Committee. On September 21, 2000, the Exchange submitted Amendment No. 1 to the proposal.[3] The proposed rule change was published for comment in the **Federal Register** on October 4, 2000.[4] No comments were received on the proposal. This order approves the proposal.

## II. Description of Proposal

Currently, the PCX rules provide that it is the duty of the Options Appointment Committee to make recommendations to the Board of Governors regarding the appointment, assignment, retention, reassignment, transfer, and taking leave of the privileges to deal in and trade options to, by, and among members on the Options Trading Floor.[5] The Options Appointment Committee is also responsible for appointing Market Makers and appointing and approving Lead Market Makers (''LMMs'').[6] The Options Appointment Committee has the authority to relieve LMMs of their appointments, designate interim LMMs, and make determinations pertaining to LMM-related issues not within the jurisdiction of any other standing committee. Currently, the Options Allocation Committee allocates and reallocates issues and evaluates and monitors Market Makers, LMMs, and trading crowds. In the proposed rule change, the Exchange seeks to eliminate the Options Appointment Committee and to transfer all of its authority and duties to the Options Allocation Committee.

In this regard, the Exchange proposes to change all references to the ''Options Appointment Committee'' in PCX Rule 11.10(a) to the ''Options Allocation Committee'' and to transfer the language of PCX Rule 11.10(a), relating to the current duties of the Options Appointment Committee, to the Options Allocation Committee under new proposed PCX Rule 11.10(b)(2). The Exchange also proposes to renumber PCX Rule 11.10(b) as 11.10(a) and PCX Rule 11.10(c) as 11.10(b)(1). The Exchange proposes to change the references to the ''Options Appointment Committee'' in PCX Rules 6.35; 6.37; Commentary .08; 6.82(a)(1) and (3); 6.82(b)(1) and (2); 6.82(f)(3); 6.82(g)(1); and 6.82(h)(1) to the ''Options Allocation Committee.''

## III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and in particular with the requirements of section 6(b) of the Act.[8] Specifically, the Commission believes that the proposed rule is consistent with the requirements of section 6(b)(5) of the Act[9] because it is designed to help perfect the mechanism of a free and open market and is not designed to permit unfair discrimination between customer and brokers or dealers.

The proposed rule change centralizes all rules relating to the approval,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Cindy L. Sink, Senior Attorney, Regulatory Policy, PCX to Jennifer L. Colihan, Division of Market Regulation, Commission, dated September 20, 2000.

[4] *See* Securities Exchange Release No. 43342 (September 26, 2000), 65 FR 59242.

[5] *See* PCX Rules 6.35, 6.37, 6.82, and 11.10(c).

[6] *See* PCX Rules 6.35 and 6.82.

[7] In approving this rule proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

evaluation, allocation to, and appointment of LLMs in one committee. The Commission finds that by doing so, it is likely that more consistent decisions regarding LLMs, and their role on the Exchange will be made. The Commission believes that this consistency will benefit customers and broker-dealers conducting business on the Exchange.

The Commission recognizes that currently, Market Makers and LLMs are not permitted to serve on the PCX Options Appointment Committee; however, they are permitted to serve on the PCX Options Allocation Committee. The Commission further recognizes that Market Makers and LLMs will continue to be permitted to serve on the Options Allocation Committee after it assumes the responsibilities of the Options Appointment Committee, and that this represents a change in the composition of persons who will make decisions regarding the appointments of Market Makers and LLMs.

The Commission does not believe it is contrary to the public interest, or the interests of PCX members, to allow Market Makers and LLMs to participate on the committee that appoints Market Makers and LLMs, make decisions to relieve LMMS of their appointments, designate interim LMMS, and make determinations pertaining to LMM-related issues not within the jurisdiction of any other standing committee.[10] The Commission expects that members of the Options Allocation Committee, including Market Makers and LLMs, will act fairly and in a non-discriminatory manner, and will recuse themselves from particular decisions, as appropriate. The Commission also expects that the Options Allocation Committee will continue to appoint only those members qualified for market maker positions, and will relieve Market Makers and LLMs of their positions only for appropriate reasons.

[10] The Commission notes that four of the nine members of the Chicago Board Options Exchange's (''CBOE'') Modified Trading System Appointments Committee, which is responsible for the selection and removal of CBOE Designated Primary Market Makers (''DPM''), are Exchange members whose primary business is as a Market Maker, and two of the nine members are Exchange members whose primary business is as a Market Maker or as a DPM Designee. *See* CBOE Rule 8.80. In addition, the Philadelphia Stock Exchange's (''Phlx'') Allocation, Evaluation and Securities Committee, which is the committee that appoints and evaluates specialists on the Phlx, and makes allocations, allows specialists and floor brokers to serve on the committee. *See* Phlx By-law Article X, Section 10–7.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–31803 Filed 12–13–00; 8:45 am]

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[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43683; File No. SR–PHLX–00–67]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Related to PHLX Rule 1009A

December 6, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 7, 2000, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the PHLX.[3] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment Nos. 1 and 2 from interested persons and is simultaneously approving the proposal, as amended, on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend PHLX Rule 1009A, ''Designation of the Index,'' provide for the listing and trading of narrow-based stock index options pursuant to Rule 19b–4(e) under the Act.[4]

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The PHLX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) *Purpose*

The PHLX proposes to amend PHLX Rule 1009A(b) to provide for the listing and trading of narrow-based stock index options pursuant to Rule 19b–4(e) under the Act. The purpose of the proposal is to allow the PHLX to list and trade narrow-based index options immediately without filing a proposed rule change with the Commission under Section 19(b)(3)(A) of the Act prior to trading the product, as PHLX Rule 1009A(b) currently requires.

Currently, PHLX Rule 1009A(b) allows the PHLX to list and trade options on a narrow-based index 30 days after the Exchange files a proposal under Section 19(b)(3)(A) of the Act describing the index option, provided that the index meets the generic listing criteria set forth in PHLX Rule 1009A(b). The Commission release adopting Rule 19b–4(e) under the Act (''New Products Release''),[5] however, no longer requires a Section 19(b)(3)(A) filing and subsequent waiting period so long as the exchange relying on Rule 19b–4(e) under the Act has generic listing criteria approved by the Commission and meets certain other requirements.

The New Products Release indicated that products meeting the listing criteria

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On September 18, 2000, the PHLX amended the proposal to reflect the PHLX Rule 1009A(b)(6)(i), which established a concentration requirement for the Gold/Silver Index. *See* letter from Nandita Yagnik, PHLX, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated September 15, 2000 (''Amendment No. 1''). The Commission approved the adoption of PHLX Rule 1009A(b)(6)(i) on July 25, 2000. *See* Securities Exchange Act Release No. 43070 (July 25, 2000), 65 FR 47551 (August 2, 2000) (order approving File No. SR–PHLX–00–69) (''July 25 Order''). On November 30, 2000, the PHLX amended the proposal to indicate that the PHLX will use Rule 19b–4(e) under the Act in accordance with the terms and conditions set forth in the order approving Rule 19b–4(e) under the Act. *See* letter from Carla Behnfeldt, Director, Legal Department New Product Development Group, PHLX, to Nancy Sanow, Division, Commission, dated November 30, 2000 (''Amendment No. 2'').

[4] 17 CFR 240.19b–4(e).

[5] *See* Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

approved by the Commission in its 1994 Generic Narrow-Based Index Options Approval Order (as set forth in PHLX Rule 1009A(b)) [6] qualified for filing under Rule 19b–4(e) under the Act, so long as the exchange eliminated the Section 19(b)(3)(A) rule filing requirement from its existing rules.[7] Therefore, the PHLX proposes to eliminate the Section 19(b)(3)(A) rule riling requirement in PHLX Rule 1009A(b) the instead incorporate the provisions of new Rule 19b–4(e) under the Act. The PHLX represents that the Exchange will use Rule 19b–4(e) under the Act in accordance with the terms and conditions set forth in the order approving Rule 19b–4(e) under the Act.[8] The PHLX believes that the proposal should allow the Exchange to list and trade narrow-based index options that comply with the PHLX Rule 1009A(b) standards immediately, thereby providing a more expeditious method of offering these products in the marketplace.

(2) Basis

For these reasons, the PHLX believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices and to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by providing a quicker method of putting important hedging tools in the marketplace.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

[6] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) (order approving File Nos. SR–Amex–92–35; SR–CBOE–93–59; SR–NYSE–94–17; SR–PSE–94–07; and SR–PHLX–94–10) (''Generic Index Narrow-Based Index Options Approval Order''). The Generic Narrow-Based Index Options Approval Order established generic listing standards for options on narrow-based indexes and adopted streamlined procedures for introducing trading in options satisfying the generic listing standards.

[7] *See* New Products Release at note 89.

[8] *See* Amendment No. 2, *supra* note 3.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–00–67 and should be submitted by January 4, 2000.

## IV. Commission's Findings and Order Grating Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulation thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b)(5) [9] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[10] Specifically, the Commission finds that the proposal furthers the objectives of the New Products Release, which indicated, among other things, that a self-regulatory organization (''SRO'') could submit a proposal to eliminate the 19(b)(3)(A) rule filing requirement from an existing SRO rule, such as PHLX Rule 1009A(b), that permits the listing and trading of narrow-based index options that satisfy the criteria approved in the Generic Index Narrow-Based Index Options Approval Order.[11] The Commission notes that the Chicago Board Options Exchange, Inc. (''CBOE'') and the American Stock Exchange LLC (''Amex'') have eliminated the 19(b)(3)(A) rule filing requirement from their rules permitting the listing and trading of options pursuant to the Generic Narrow-Based Index Options Approval Order,[12] and that the PHLX's proposal is substantially identical to the CBOE and Amex proposals. Accordingly, Commission finds that the PHLX's proposal does not raise new regulatory issues.

The Commission finds good cause for approving the proposal and Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act. As noted above, the PHLX's proposal is consistent with the New Products Release and is substantially identical to rule changes adopted previously by the CBOE and the Amex. In addition, the Commission believes that approving the proposal on an accelerated basis will help to ensure that PHLX is not disadvantaged in the listing of new index option products vis-a-vis the Amex and the CBOE. Because Amendment No. 1 reflects the adoption of PHLX Rule 1009A(b)(6)(i), which the Commission approved previously,[13] Amendment No. 1 does not raise new regulatory issues. Amendment No. 2 strengthens the PHLX's proposal by indicating that the PHLX will use rule 19b–4(e) under the Act in accordance with the terms and conditions set forth in the order approving Rule 19b–4(e) under the Act. Accordingly, the Commission finds that it is consistent with sections 6(b) and 19(b)(2) of the Act to approve the proposal and Amendment Nos. 1 and 2 on an accelerated basis.

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–PHLX–00–67), as amended, is approved on an accelerated basis.

[9] 15 U.S.C. 78f(b)(5).

[10] In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* New Products Release at note 89.

[12] *See* Securities Exchange Act Release Nos. 41374 (May 5, 1999), 64 FR 25936 (May 13, 1999) (File No. SR–CBOE–99–16); and 41091 (February 23, 1999), 64 FR 10515 (March 4, 1999) (File No. SR–Amex–99–07).

[13] *See* July 25 Order, *supra* note 3.

[14] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–43684; File No. SR–Phlx–00–93]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Providing Automatic Executions for Public Customer Orders at the NBBO

December 6, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 22, 2000 and December 1, 2000, the Exchange submitted Amendments Nos. 1 [3] and 2,[4] respectively, to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval to the portion of the proposal allowing AUTO–X eligible orders to be automatically executed at the NBBO, provided that the NBBO is not better than the specialist's BBO by a predetermined step-up parameter.[5]

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

*A. NBBO Feature*

The Exchange proposes an enhancement to AUTO–X, the automatic execution feature of the Exchange's Automated Options Market (''AUTOM'') System, that would allow AUTO–X eligible orders to be automatically executed at the NBBO, provided that the NBBO is not better than the specialist's BBO by a predetermined ''step-up parameter.'' The enhancement is known as the ''NBBO Feature.''

Under proposed Rule 1080(c)(i), the NBBO Feature would execute AUTO–X eligible orders at the NBBO for certain options designated by the Options Committee as eligible for the NBBO Feature (''automatic step-up options''), provided that the NBBO does not differ from the specialist's BBO by more than the step-up parameter. The step-up parameter for automatic step-up options would be the minimum trading increment (one ''tick'') for options in that series established pursuant to Exchange Rule 1034, or any greater amount established by the Options Committee in respect of specified automatic step-up options or series of options.

The proposal provides that orders that would otherwise qualify as automatic step-up options would be executed manually in accordance with Exchange rules in three circumstances: (1) Where the specialist's best bid or offer [6] is inferior to the current best bid or offer in another market by more than the step-up parameter; (2) where the NBBO is crossed (*i.e.,* 2 bid, 2 asked); or locked (*i.e.,* 2 bid, 2 asked); or (3) in respect of equity options other than automatic step-up options where the specialist's BBO is inferior to the current best bid or offer in another market by any amount. The proposed rule would also include a provision that an order may also be executed partially by AUTO–X and partially manually.

In addition, under the proposal, the Chairman of the Options Committee or his designee [7] (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) may determine to disengage the NBBO Feature for orders in certain automatic step-up options after notice to AUTOM users. In circumstances where the NBBO Feature is disengaged, such orders will continue to be executed manually, in accordance with Exchange rules. Finally, an additional proposed amendment to Exchange Rule 1080(e) would provide that the NBBO Feature is always disengaged when AUTO–X is disengaged.

*B. Exclusion of Unreliable Quotes from NBBO*

Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in certain automatic step-up options on the Exchange or other markets are deemed not to be reliable, such unreliable quotes would be excluded from the calculation of NBBO, and customers would receive an automatic execution at NBBO based on the remaining markets whose quotes are not deemed to be unreliable.

A quote could be deemed not to be reliable because of Exchange communications or systems problems; fast markets; delays in the dissemination of quotes because of queues on the Options Price Reporting Authority (''OPRA'') (in which case the Exchange would know that there is a delay in the dissemination of quotes from the other exchanges, which would likely render such quotes stale); or if the Exchange is advised by another exchange that it is experiencing communication or system problems that would cause its disseminated quotes to be unreliable.

The text of the proposed rule change is as follows. New text is italicized.

Rule 1080. (a)–(b) No change.

(c) AUTO–X—AUTO–X is a feature of AUTOM that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Phlx restated its filing in its entirety to clarify, in part, (1) the factors used in determining which options would qualify as step-up options; (2) when quotes would be deemed unreliable in the rule text; and (3) the factors to be considered in determining whether quotes previously deemed unreliable would be included in the national best bid or offer (''NBBO''). Amendment No. 1 also provides for a memoranda listing all automatic step-up options to be circulated to Exchange members and member organizations. *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 20, 2000 (with attached restated 19b–4 filing) (''Amendment No. 1'').

[4] In Amendment No. 2, the Phlx restated its filing in its entirety to (1) clarify that there may be some circumstances where the specialist's best bid or offer (''BBO'') in inconsistent with the Exchange's BBO; (2) make conforming changes to its rule language to reflect that the specialist's quote may not be the Exchange's BBO; and (3) make technical corrections to its rule text. *See* letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 30, 2000 (with attached restated 19b–4 filing) (''Amendment No. 2'').

[5] The Commission is not approving the portion of the proposed rule change that would allow the Exchange to determine when unreliable quotes would be excluded from the calculation of the NBBO. Further, approval of the automatic step-up feature should not be interpreted as suggesting that the Commission is predisposed to approving the remainder of the proposal.

[6] The proposed rule states that there may be some circumstances in which the specialist's BBO is inferior to the Exchange's BBO. *See* Amendment No. 2, *supra* note 4.

[7] The designee would be a member of the Options Committee. Telephone conversation between Richard Rudolph, Counsel, Phlx, and Terri Evans, Special Counsel, Division, Commission, on November 24, 2000.

determines otherwise. AUTO–X automatically executes eligible orders using the Exchange disseminated quotation and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO–X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO–X is not engaged. *An order may also be executed partially by AUTO–X and partially manually.*

The Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option or series. Currently, orders up to 75 contracts, subject to the approval of the Options Committee, are eligible for AUTO–X. With respect to OTC Prime Index (''OTX'') options, orders of up to 100 contracts are eligible for AUTO–X.

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934.

*(i) AUTO–X on the NBBO (NBBO Feature).—AUTO–X on the NBBO (the ''NBBO Feature'') is a feature of AUTOM that automatically executes at the National Best Bid or Offer (''NBBO''). NBBO Feature will execute AUTO–X eligible orders at the NBBO for certain options designated by the Options Committee as eligible for the NBBO Feature (''automatic step-up options''), provided that the NBBO does not differ from the specialist's best bid or offer by more than the ''step up parameter.''*

*(A) The ''step-up parameter'' for automatic step-up options shall be the minimum trading increment for options in that series established pursuant to Exchange Rule 1034, or any greater amount established by the Options Committee in respect of specified automatic step-up options or series of options.*

*(B) The Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) may determine to disengage the NBBO Feature for orders in certain automatic step-up options after notice to AUTO users in situations in which the Exchange is experiencing communications or systems problems; fast markets; or delays in the dissemination of quotes because of queues on the Options Price Reporting Authority (''OPRA'') which would likely render such quotes stale, Where the NBBO Feature is disengaged, such orders shall be executed manually in accordance with Exchange rules.*

*(C) In respect of automatic step-up options (1) where the specialist's best bid or offer is inferior to the current best bid or offer in another market by more than the step-up parameter; or (2) where the NBBO for one of the series of automatic step-up options is crossed (i.e., 2⅛ bid, 2 asked) or locked (i.e., 2 bid 2 asked); or (3) in respect of equity options other than automatic step-up options where the specialist's best bid or offer is inferior to the current best bid or offer in another market by any amount, such orders shall be executed manually in accordance with Exchange rules. There may be circumstances in which the specialist's best bid or offer is inconsistent with the Exchange's best bid or offer. In such a circumstance, such an order shall be executed manually.*

*(D) Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in options on the Exchange or other markets are deemed not to be reliable due to Exchange communications or systems problems; fast markets; delays in the dissemination of quotes because of queues on the Options Price Reporting Authority (''OPRA'') which would likely render such quotes stale; or if the Exchange is advised by another exchange that it is experiencing communication or system problems that would cause its disseminated quotes to be unreliable, customer market orders will receive an automatic execution at NBBO based on the best bid or offer in markets whose quotes are not deemed to be unreliable, AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are excluded from the calculation of NBBO.*

*(E) Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in options on the Exchange or other markets previously deemed not to be reliable pursuant to Section (D) of this paragraph are again reliable, such quotations will be included in the calculation of NBBO for such options. Factors to be considered in determining whether such quotes previously deemed not to be reliable are to be included in the calculation of NBBO include information via telephonic verification to the Exchange that such quotes are reliable; visual surveillance by Exchange staff or the specialist; and electronic messages from other markets. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are begin included in the calculation of NBBO.*

(d) No change.

(e) Extraordinary Circumstances—In the event extraordinary circumstances with respect to a particular class of options exist, two Floor Officials may determine to disengage AUTO-X with respect to that option, in accordance with Exchange procedures. In the event extraordinary conditions exist floor-wide, two Exchange Floor Officials, the Chairperson of the options Committee or his designee may determine to disengage the AUTO-X feature floor-wide. *The NBBO Feature is always disengaged when AUTO-X is disengaged.*

(*i*) The Exchange's Emergency Committee, pursuant to Rule 98, may take other action respecting AUTOM in extraordinary circumstances.

(f)-(i) No change.

Commentary: No change.

## II. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to provide automatic executions for public customer orders at the NBBO. Currently, customer orders can be delivered electronically to the Exchange via AUTOM.[8] An option order that is automatically executed via AUTOM's automatic execution feature, AUTO–X, is priced at the prevailing market quote on the Phlx at the time the order is received by AUTOM. If another marketplace is displaying a better quote away from the Phlx at the time of the delivery of such an order, then that order would be handled manually by the specialist so that it would not be automatically executed at an inferior price. Under the current system, the specialist handling the order determines whether the order should be executed at the away price.[9] The Exchange believes

[8] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[9] Under normal market conditions, the specialist will execute the manually handled order at the best available price, *i.e.*, the NBBO, unless the specialist

that adding a feature that provides automatic executions at the NBBO should minimize or eliminate any delays that are inherent in orders that are handled manually by the specialist, thus reducing the risk of an adverse movement in the market while such customer orders are being filled.

To increase the number of orders handled automatically, the Exchange is also proposing to partially execute AUTO–X eligible orders that have a size greater than the guaranteed size for automatic execution. Thus, if an order exceeds the size of the AUTO–X guarantee for a given option, the portion of such an order that is within the AUTO–X guaranteed size would be executed automatically, and the remainder would be executed manually.

The NBBO feature would execute AUTO–X eligible orders at the NBBO provided that the NBBO does not differ from the specialist's BBO by more than the step-up parameter. The proposed rule also provides that the step-up parameter for automatic step-up options would be equal to one tick, *i.e.*, the minimum trading increment for options in that series established pursuant to Exchange Rule 1034, or any greater amount established by the Options Committee. In the event that the NBBO is better than the specialist's BBO by more than one tick, the existing procedure will continue to apply whereby the order would be handled manually by the specialist in order to avoid execution at a price inferior to the NBBO.

The proposed rule states that there may be some circumstances in which the specialist's BBO is inconsistent with the Exchange's BBO. This would occur when the Exchange's BBO is composed of a quote of a Registered Option Trader (''ROT'') in a trading crowd or a customer limit order that improves the specialist's BBO. Due to the limitations of the Exchange's existing systems, the transactions would be executed manually to ensure that the specialist could execute an order at the Exchange's BBO and match it to the ROT quote or a customer limit order that posted it.

Under this proposal, the Exchange's Options Committee, upon the request of a specialist, would designate which options traded on the Exchange qualify as automatic step-up options. This is to ensure the orderly introduction of this change to the Exchange's AUTO–X feature. In determining which options qualify as step-up options, the Options Committee may consider such factors as the open interest in the requested option, the average daily volume of the option, customer requests, and any such other factors as the Options Committee deems appropriate. The Options Committee would also have the ability to delete options from the list of automatic step-up options upon the request of the specialist using the same criteria. The Exchange would publish a list of all automatic step-up options in memoranda circulated to the Exchange members and member organizations and on its web site, and would inform all AUTOM users of any changes in the list at least one business day prior to the time such changes become effective.[10]

The proposed rule change authorizes the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials) to determine that quotes in specified options or series of options or in respect of specified markets are not reliable. This authority would be expected to be exercised only in circumstances such as communications or systems problems; fast markets; delays in the dissemination of quotes because of queues on the OPRA (in which case the Exchange would know that there is a delay in the dissemination of quotes from the other exchanges, which would likely render such quotes stale); or if the Exchange is advised by another exchange that it is experiencing communication or system problems that would cause its disseminated quotes to be unreliable.

In creating the NBBO Feature, the Exchange has sought to ensure that customer orders would not be disqualified from receiving an automatic execution due to another market's dissemination of unreliable quotes. When quotes in specified options or series of options or in respect of specified markets are deemed not to be reliable, such quotes would not be included in the calculation of the NBBO, and market orders would receive an automatic execution at the NBBO based on the best bid or offer in markets whose quotes are not deemed to be unreliable.

Where the Chairman of the Options Committee or his designee (or if the Chairman of the Options Committee or his designee is unavailable, two Floor Officials), determines that quotes in options on the Exchange or other markets previously deemed not to be reliable are again reliable, such quotations will be included in the calculation of the NBBO for such options. Factors to be considered in determining whether such quotes previously deemed not to be reliable are to be included in the calculation of the NBBO include information via telephonic verification to the Exchange that such quotes are reliable; visual surveillance by Exchange staff or the specialist; and electronic messages from other markets. AUTOM customers will be duly notified via electronic message from AUTOM that such quotes are again included in the calculation of NBBO.

The rule also provides that the NBBO Feature is always disengaged when AUTO–X is disengaged.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[11] in general, and with Section 6(b)(5) of the Act[12] specifically, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by enhancing the Exchange's ability to provide automatic execution of public customers' orders at the best available prices.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

determines that the superior price at the away market is not reliable due to fast market conditions; communications or other Exchange systems problems; delays in the dissemination of quotes because of queues on OPRA (in which case the specialist would know that there is a delay in the dissemination of quotes from the other exchanges, which likely would render such quotes stale); or if the specialist is advised by another exchange that it is experiencing communication or system problems that would cause its disseminated quotes to be unreliable.

[10] Currently, the Exchange publishes a list of all AUTO–X guarantees. It is anticipated that the publication of a list of options that qualify for the NBBO Feature will be published and disseminated in a similar fashion.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

(ii) as to which the Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–93 and should be submitted by January 4, 2001.

## V. Commission's Findings and Order Granting Partial Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change relating to the automatic step-up feature [13] is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with the section 6(b)(5) [14] requirements that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.[15]

By providing an automatic step-up feature, the rule should help to insure that investors receipt prompt, automatic execution of AUTO–X eligible orders at the best available prices (subject to the step-up parameter), even if those prices are being quoted on a market other than the Phlx. As a result, this proposal should minimize the delay inherent in manually handling orders in this circumstance, and thereby reduce the risk to investors that, as a result of an adverse move in the market while their orders are being manually handled, they may receive an inferior execution.

The Commission finds good cause for approving this portion of the proposed rule change, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. This will permit customers to receive the benefits of automatic price improvement under the proposed rule change more quickly. Further, the Exchange's proposed rule change regarding the automatic step-up feature is substantially similar to the Chicago Board Options Exchange Rule 6.8, Interpretations and Policies .02, which was approved in 1998.[16] The Commission is not aware of any problems with respect to CBOE's automatic step-up feature.

## VI. Conclusion

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,[17] that the portion of the proposed rule change (SR–Phlx–00–93), as amended, allowing AUTO–X eligible orders to be automatically executed at the NBBO, provided that the NBBO is not better than the specialist's BBO by a predetermined step-up parameter, is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

**Margaret McFarland,**

*Deputy Secretary.*

[FR Doc. 00–31804 Filed 12–13–00; 8:45 am]

BILLING CODE 8010–01–M

[13] The Commission is not approving Phlx Rule 1080(c)(i)(D), (E) at this time.

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] *See* Securities Exchange Act Release No. 40096 (June 16, 1998), 63 FR 34209 (June 23, 1998).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**(Release No. 34–43692; File No. SR–PHLX–00–20)**

## Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Trading Certain Over-the-Counter Securities, Nasdaq National Market Securities

December 8, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2000, the Philadelphia Stock Exchange, Inc., (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to trade certain over-the-counter (''OTC'') securities, Nasdaq National Market (''Nasdaq/NM'') securities, on the Exchange, pursuant to unlisted trading privileges (''UTP'') under Section 12(f) of the Act.[3] As discussed below, minor changes to Phlx rules are necessary to accommodate such trading, generally to revise the term ''Nasdaq/NM securities.'' The text of the proposed rule change is available at the Office of the Phlx, the Secretary, and at the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In 1985, the Commission permitted the extension of UTP [4] by national securities exchanges in certain OTC securities, provided that certain terms and conditions were satisfied. In particular, the Commission's willingness to grant UTP was conditioned, in part, on the approval of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 781(f).

[4] Section 12(f) of the Act describes the circumstances under which an exchange may trade a security that is not listed on the exchange, *i.e.*, by extending UTP to the security. *See* 15 U.S.C. 781(f).

a plan submitted by the interested exchanges and the National Association of Securities Dealers, Inc. (''NASD'') to consolidate and disseminate exchange and OTC quotation and transaction data in OTC securities upon which UTP was granted. On June 26, 1990, the Commission approved a joint industry plan (''OTC/UTP Plan'') submitted by the NASD, the American Stock Exchange (''Amex''), the Boston Stock Exchange (''BSE''), the Midwest Stock Exchange (currently operating as the Chicago Stock Exchange, or ''CHX'') and the Phlx.[5]

The OTC/UTP Plan provides for the collection from Plan participants and the consolidation and dissemination to vendors, subscribers and others of quotation and transaction information in ''eligible securities.'' The Plan defines ''eligible'' as any Nasdaq/NM security as to which UTP has been granted to a national securities exchange pursuant to section 12(f) of the Act or that is listed on a national securities exchange.[6]

In late 1992, the Phlx obtained approval of a pilot program and accompanying rules to permit the trading of Nasdaq/NM securities on the Exchange pursuant to UTP (''Phlx OTC/UTP'' Pilot Program'').[7] The Phlx began trading Nasdaq securities pursuant to the Pilot in February 1993. The effectiveness of the Pilot was extended four times before the Phlx determined to cease trading such securities pending reorganization of its OTC/UTP program as a whole. The Phlx OTC/UTP Pilot Program expired on February 12, 1996.[8] The Phlx intends to reinstate OTC/UTP trading in Nasdaq/NM securities in the near future, and, thus, seeks reinstatement of the Phlx OTC/UTP Pilot Program. The Phlx believes that such reinstatement requires only the minor revisions to the Phlx rules for the term ''Nasdaq/NM securities'' because the various rules implicated by OTC/UTP trading were amended in connection with the original Phlx OTC/UTP Pilot Program.

*Proposal*

Reinstatement of the Phlx OTC/UTP Pilot Program will enable the trading of eligible Nasdaq/NM securities by Phlx specialists. The Phlx proposes to reinstate the Pilot for a six-month period.[9] Initially, Phlx specialists will be provided with quotation generation capability, as well as the ability to manually enter and execute orders through a system designed by a third party vendor, TradinGear, separate from the Exchange's PACE System.[10]

The Phlx proposes to trade these securities pursuant to its equity rules, where applicable. The following series of provisions that continue to appear in Phlx rules, specifically reference Nasdaq/NM securities, which are outlined more fully below and include Phlx Rules 102; 105, Supplementary Material .01; 225; 226; 233; 455; and 606, previously approved on a pilot basis: [11]

- Rule 102: Specifies that all Nasdaq/NM securities transactions must be conducted during the applicable Exchange trading floor hours.
- Rule 105: Includes language requiring that in the event of unusual market conditions, as determined by the Floor Procedure Committee, quotations in a given issue will not be subject to firmness provided that the Exchange notifies the processor of Nasdaq/NM securities.
- Rule 225: Incorporates Nasdaq/NM securities into the rule governing odd-lot orders.
- Rule 226: Incorporates Nasdaq/NM securities into the rule dealing with round-lot orders.
- Rule 233: Enables the Exchange to trade Nasdaq/NM securities pursuant to UTP.
- Rule 455: Exempts Nasdaq/NM securities from the short sale rule.
- Rule 606: Enables access by telephone or any other such access as may be established between the Exchange and the Nasdaq system to the Phlx assigned specialist for any Nasdaq system market maker.

The Phlx is also proposing to add a reference to Phlx Rule 233(b) to permit receipt of handheld orders for purposes of the proposed rule change. The proposed rule change would also expand the method of communication between specialists on the Exchange's equity floor and each Nasdaq market maker to include ''such other access as may be established between the Exchange and the Nasdaq system.''

2. Statutory Basis

The Exchange believes that reinstatement of the Phlx OTC/UTP Pilot Program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, including sections 6(b)(5), 11A and 12(f) of the Act.[12] Specifically, the Phlx believes that the proposed rule change is consistent with section 6(b)(5), because permitting Phlx specialists to trade eligible Nasdaq/NM securities should promote just and equitable principles of trade and facilitate transactions in securities, thereby removing impediments to and perfecting the mechanism of a free and open market in manner consistent with the protection of investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has requested accelerated effectiveness of the proposed rule change to promptly reinstate the Pilot. The Commission has determined to deny this request to provide an opportunity for the Exchange and the Commission to resolve questions and concerns created by the proposal but not answered in the proposal, and to provide for the full public comment period prior to potentially approving the proposed rule change to reinstate the Pilot. Accordingly, within 35 days of the date of publication of this notice in the

[5] Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990). Since that time, the CSE and PCX have become participants in the OTC/UTP Plan. *See* respectively Securities Exchange Act Release Nos. 42657 (April 10, 2000), 65 FR 20498 (April 17, 2000); and 43165 (August 16, 2000), 65 FR 51878 (August 25, 2000).

[6] The OTC/UTP Plan superseded an interim transaction reporting plan filed by the NASD and the CHX, approved by the Commission on April 29, 1987. *See* Securities Exchange Act Release No. 24407 (April 29, 1987), 52 FR 17349 (May 7, 1987).

[7] *See* Securities Exchange Act Release No. 31672 (December 30, 1992), 58 FR 3054 (January 7, 1993) (order approving SR–Phlx–92–04).

[8] *See* Securities Exchange Act Release No. 36087 (August 10, 1995), 60 FR 42637 (August 16, 1995).

[9] The current number of Nasdaq/NM Securities that may be traded on a UTP basis is 1,000 securities. *See* Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999).

[10] PACE is the Exchange's Automated Communication and Execution System. PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions. *See generally* Phlx Rule 229 which includes the ability, if available, to use PACE as an order delivery system for Nasdaq/NM securities.

[11] *See* Securities Exchange Act Release No. 31672 (December 30, 1992), 58 FR 3054 (order approving File No. SR–Phlx–92–94). The effectiveness of the Phlx OTC/UTP Pilot Program was extended four times, most recently through February 12, 1996.

[12] 15 U.S.C. 78f(b)(5), 78k–1, and 781(f).

**Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–00–20 and should be submitted by January 4, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–31898 Filed 12–13–00; 8:45 am]

BILLING CODE 8010–01–M

[13] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Applicant No. 99000418]**

### Bluestem Capital Partners III, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Bluestem Capital Partners III, L.P. (Bluestem III), 122 South Phillips Ave., Suite 300, Sioux Falls, South Dakota, 57104, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2000)). Bluestem III proposes to provide convertible debt security financing to Paragon Solutions, Inc., 3625 Brookside Parkway, Suite 300, Alpharetta, GA 30022. The financing is contemplated for the purpose of providing working capital to Paragon Solutions, Inc. to fund its current operations and the expansion of its sales force and management team within the U.S.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Bluestem Capital Partners II, L.P., an Associate of Bluestem III, currently owns greater than 10 percent of Paragon Solutions, Inc. and therefore Paragon Solutions, Inc. is considered an Associate of Bluestem III as defined in Sec. 107.50 of the SBA Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: December 1, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00–31786 Filed 12–13–00; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Applicant No. 99000414]**

### Selby Venture Partners II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Selby Venture Partners II, L.P., 2460 Sand Hill Road, Suite 200, Menlo Park, California 94025, an applicant for a Federal License under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2000)). Selby Venture Partners II, L.P. proposes to provide equity financing to Pulsent Corporation, 1455 McCarthy Blvd., Milpitas, California 95035. The financing is contemplated for working capital and research and development.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Selby Venture Partners, L.P., an Associate of Selby Venture Partners II, L.P., currently owns greater than 10 percent of Pulsent Corporation and therefore Pulsent Corporation is considered an Associate of Selby Venture Partners II, L.P. as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: December 1, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00–31785 Filed 12–13–00; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3309]**

### State of Oklahoma (Amendment #1)

In accordance with information received from the Federal Emergency Management Agency dated December 4, 2000, the above-mentioned Declaration is hereby amended to include Carter, Comanche, and Tillman Counties in the State of Oklahoma as a disaster area due to damages caused by severe storms and flooding beginning on October 21, 2000 and continuing through October 29, 2000.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Cotton, Jackson, Jefferson, Johnston, Love, Marshall, and Murray Counties in Oklahoma; and Wichita and Wilbarger Counties in Texas.

Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, *i.e.,* the deadline for filing applications for physical damage is January 26, 2001, and for economic injury the termination date is August 27, 2001.

The economic injury number for Texas is 9J8900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 6, 2000.

**Allan I. Hoberman,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 00–31787 Filed 12–13–00; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 3506]**

### Bureau of Consular Affairs; Designation of Certain Posts for Special Fee Payment Procedures

This public notice identifies the initial ten posts designated by the Deputy Assistant Secretary for Visa Services for two purposes related to the payment of immigrant visa fees. The first purpose relates to the revised procedure for payment of the fee for the processing of an application for an immigrant visa set forth in the **Federal Register** on September 8, 2000, (65 FR 54598). That regulation is being stayed in a public notice today until a new effective date of January 1, 2001.

The second purpose is to identify the posts for which a fee pursuant to Item 61 of the Schedule of Fees for Consular Services (22 CFR 22.1) will be assessed for advance review of and assistance with the Affidavit of Support that is required in certain immigrant visa cases. Notice of this fee requirement is being added to the visa regulation pertaining to the Affidavit of Support requirement in 22 CFR 40.41(b), being published today with an effective date of January 1, 2001.

The Department will publish further public notices as additional designations are made, until such time as both procedures have been made applicable worldwide.

The Deputy Assistant Secretary for Visa Services hereby designates the Foreign Service posts in the following cities: for participation in the initial stage of the new immigrant visa application processing fee payment system and the fee for review of and assistance with the Affidavit of Support required under section 213A of the Immigration and Nationality Act

Bogota, Colombia
Ciudad Juarez, Mexico
Freetown, Sierra Leone
Georgetown, Guyana
Guangzhou, China
Manila, Philippines
Montreal, Canada
Port au Prince, Haiti
Santo Domingo, Dominican Republic
Tirana, Albania.

Dated: November 28, 2000.

**George C. Lannon,**

*Deputy Assistant Secretary for Visa Services.*

[FR Doc. 00–31743 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–06–P

## DEPARTMENT OF STATE

**[Public Notice 3507]**

### Bureau of Educational and Cultural Affairs Request for Grant Proposals: NIS Secondary School Partnership Program

**SUMMARY:** The Office of Citizen Exchanges, Youth Programs Division, of the Bureau of Educational and Cultural Affairs announces an open competition for the NIS Secondary School Partnership Program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to either enhance or expand existing partnerships or develop new school partnership programs with Russia or Ukraine. All proposals must have a thematic focus and feature on-going joint project activity between the schools, a student exchange component, and an educator (teacher/administrator) exchange component. The maximum grant award will be $150,000.

*Program Information:* The Secondary School Partnership Program is funded under the Freedom Support Act to assist young people in building an open society and developing democratic processes and institutions in the New Independent States (NIS). This program provides grants to link schools in the three countries noted above with schools in the United States. The U.S. recipient of the grant is responsible for recruiting, selecting, and organizing a U.S. network of a minimum of two secondary schools; strengthening an existing working relationship with an organization or agency of government in the NIS responsible for a network of at least two schools there; and linking the two networks in one-to-one school partnerships through thematic projects and substantive exchange activities.

*Overview:* The short-term goal of the school partnership program is to provide partial funding for linkages between U.S. and NIS schools featuring collaborative substantive projects and reciprocal student and educator exchanges with strong academic content. The long-term goals are to: (1) Develop lasting, sustainable institutional ties between U.S. and NIS schools and communities; (2) support democracy and educational reform in the NIS; (3) advance mutual understanding between the youth and teachers of the U.S. and the NIS; and (4) promote partnerships developed through governmental, educational, and not-for-profit sector cooperation that serve the needs and interests of the schools.

The program has several defining features to help the participating schools develop their partnership:

—Each partnership has a project theme and the students and teachers in the two paired schools work on a joint project throughout the school year related to this theme;

—The two schools develop a relationship over the course of an academic year, through the planning process and the work on their joint project, which is highlighted by exchanges from three weeks to ten months in duration. Exchanges take place while the host school is in session.

—The student and teacher exchanges must be reciprocal.

—The program includes educators (teachers and/or administrators) in order to involve them in all aspects of the partnership and to provide them access to resources for curriculum development and educational training.

—During the exchange, participants attend class, are involved in school-based activities, work on their joint project, perform community service, visit educational and cultural sites, and reside with host families.

**DATES:** Grants may begin on or about July 15, 2001, and cover the 2001–2002 academic year. The exact starting date of the grant will be dependent on availability of funds.

*Guidelines:* A competitive proposal will present a project that builds upon previous contacts and interaction between the proposed schools to help ensure a solid foundation for the partnership. Partnerships should have an existence beyond the scope of this initiative; that is, there should be an inherent reason for the linkage apart from the availability of grant funds. Organizers and school networks in the U.S. and NIS should collaborate in planning and preparation. Applicants must have an NIS organizational partner that has its base of operation in the partner country and not in another country. Proposals should support a working relationship that will produce something tangible and lasting in addressing the interests of both sides, beyond the confines of the funded project, such as the development of educational materials. The proposal should specify measurable goals and objectives of the program.

In general, the Bureau seeks school partnerships that target under-served countries or regions. For programs with Russia and Ukraine, priority will be given to partnerships with schools located outside of the Moscow, St. Petersburg, and Kiev regions. The Bureau particularly welcomes proposals that feature schools in the Russian Far East (east of Lake Baikal), western Siberia (*e.g.,* Altay Kray, Gorniy Altay Republic, Kemerovo and Tyumen oblasts), Central Russia (*e.g.,* Orel, Lipetsk, Tambov, Kursk oblasts), and Novgorod, Samara, and Tomsk.

Proposals must clearly describe and define substantive thematically-based projects for each school partnership that are the focus of the exchange for both students and educators and on-going joint project activity between the two schools. Specific activities, products, curriculum materials, and pre-planning are areas that can be addressed. For example, what will the participants be doing and how is it relevant to the thematic focus of the program? Applicants should present a program that involves the greater school community. All participating schools must be identified. Proposals should describe the selected theme, its importance to the schools and communities, the specific academic activities, and the expected outcome or product of the project. Possible themes include civic education, such as citizen activism, volunteerism or community service, youth leadership training, multicultural education, rule of law, and free press.

Proposals must clearly present independent educator programs for teachers/administrators. These programs could include curriculum development seminars, shadowing of host peers in the classroom, university-level courses, or other substantive activities, with an emphasis on such themes as parent-teacher cooperation, model schools, teacher training, and collaboration with local businesses. A program that relies on the educator to act as just an escort will not be competitive.

Competitive proposals will demonstrate a solid and comprehensive follow-on plan to sustain the partnerships after the grant has expired.

*Responsibilities:* The U.S. organization receiving the grant will (1) design the overall plan that integrates the joint project activity and the exchange components of the partnership; (2) ensure quality control for all program elements; (3) keep the Bureau informed of its progress; (4) manage all travel arrangements, logistics, travel documents, etc.; (5) provide competent and informed escorts for student groups; and (6) disburse and account for grant funds. Recipients of a grant are responsible for ensuring the selection of exchange participants who are most suited for the program and for providing them with a meaningful pre-departure orientation. Selection of individual participants from the U.S. and the NIS in the exchange components of the program must be open, competitive, and merit-based; the proposal should describe the mechanisms used for participant selection. All participants from the U.S. and the NIS should represent the full diversity of their communities (racial, ethnic, economic status, religious, etc.) to give greater understanding to the culture and society as a whole.

Preference will be given to proposals that include schools that have not already received funding under the NIS Secondary School Initiative for a total of three years or more.

Significant cost-sharing is mandatory in all proposals, and those that show more generous and creative cost-sharing will be more favorably viewed. Proposals that contain non-Bureau funded items such as additional students and/or educators on the exchange, U.S. participants paying for some of their own costs, computer software purchases, cultural excursions, capital city civics programs, and other significant items will be more competitive proposals than those that do not. However, NIS participants may not be charged to participate in the program, aside from paying for home country costs (such as transportation to the point of departure), the costs of hosting the U.S. students and educators, and miscellaneous expenses such as pocket money.

Please be sure to refer to the Project Objectives, Goals, and Implementation (POGI) section of the Solicitation Package for greater detail regarding the design of the component parts as well as other program information. Also consult the Proposal Submission Instructions (PSI) for information on budget presentation and required forms.

*Budget Guidelines:* Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $150,000. Only partnerships between secondary schools in the United States and these two countries are eligible for this competition.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. All program costs should clearly indicate whether they cover U.S. or NIS participants. Be sure to note the statement on cost-sharing in the Guidelines section. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

*Announcement Title and Number:* All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/PE/C/PY–01–26.

**FOR FURTHER INFORMATION, CONTACT:** The Youth Programs Division, Office of Citizen Exchanges, ECA/PE/C/PY, Room 568, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone (202) 619–6299; fax (202) 619–5311; E-mail: *clantz@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Carolyn Lantz on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/rfgps.* Please read all information before downloading.

*Deadline for Proposals:* All proposal copies must be received at the Bureau of Educational and Cultural Affairs *by 5:00 p.m.* Washington, D.C. time on *Friday, February 9, 2001.* Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original proposal, one fully-tabbed copy, and seven copies including tabs A–E and appendices should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/PY–01–26, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal

Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

**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 for 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,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

**Review Process**

The Bureau will acknowledge receipt of all proposals and will 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. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

**Review Criteria**

Technically eligible applications will be competitively reviewed according to the criteria stated below. Proposals should adequately address each area of review. These criteria are not rank ordered.

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Program planning and ability to achieve program objectives: Program objectives should be stated clearly and precisely and should reflect the applicant's understanding of the project. Objectives need to be reasonable, attainable, and flexible. Proposals should clearly demonstrate how the institution would meet the program's objectives. A detailed agenda and work plan should explain how the objectives will be achieved and the expected outcomes realized. The proposal should describe the academic substance of the project in detail. The agenda and plan should adhere to the program overview and guidelines described above.

3. Multiplier effect/impact: Proposals should show how the program would strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages. Programs that include convincing plans for sustainability will be given preference.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities) should address diversity in a comprehensive and innovative manner.

5. Institutional Capacity and Record: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. The proposal should reflect institutional expertise in the subject area and knowledge of the conditions in the target country. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

6. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events. Follow-on activities should be clearly outlined.

7. Program Evaluation: Proposals must include a plan and methodology to evaluate the program's successes, both as the activities unfold and at the end of the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique. The evaluation plan should show a clear link between program objectives and expected outcomes in the short- and medium-term, and provide a well-thought-out description of performance indicators and measurement tools.

8. Cost-effectiveness/cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Administrative costs should account for 20% or less of the funding requested from the Bureau. Applicants are encouraged to cost share a portion of overhead and administrative expenses. Cost-sharing, such as auditable contributions from the applicant, the NIS partner, and other sources, should be included in the budget.

**Authority:** 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.'' The funding authority for the program above is provided through the FREEDOM Support Act of 1992.

**Notice**

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding.

Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau 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.

**Notification**

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 8, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.*

[FR Doc. 00–31911 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–05–U

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## DEPARTMENT OF STATE

**[Public Notice 3508]**

## Bureau of Educational and Cultural Affairs Request for Grant Proposals: College and University Affiliations Program With Serbia

**SUMMARY:** The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program to support the reform of higher education in the Republic of Serbia, within the Federal Republic of Yugoslavia. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to pursue institutional or departmental objectives through international partnerships with counterpart institutions in Serbia. These objectives should support the overall goals of the Program: to assist the process of democratization in Serbia by facilitating the development of comprehensive plans for educational reform; and to strengthen mutual understanding and cooperation among U.S. and Serbian educational institutions on themes of common interest to the United States and to the participating colleges and universities, specified below. To achieve these objectives, an applicant and its partner(s) may propose approaches including teaching, scholarship, and outreach to professionals and other members of the communities served by the participating institutions. Eligible fields are economics, political science, social sciences, communications, journalism, and law.

**Program Information**

Underlying the specific institutional objectives of the project funded by this program should be the goals of encouraging the growth of freedom and democracy in Serbia through a deepened understanding of fundamental issues and practical applications in the development of civil society, economic stability and prosperity, or the free flow of information. Innovative strategies to address these underlying concerns in the pursuit of clearly defined institutional objectives are encouraged. Outreach from academic institutions to larger communities of citizens and practitioners to extend understanding about these issues is also encouraged.

Funds available under this year's program are restricted to the support of linkages with institutions in Serbia. Please consult with the program office regarding future opportunities for linkages elsewhere in Yugoslavia.

In addition, the Bureau supports institutional linkages in higher education with partners from the New Independent States of the former Soviet Union through the NIS College and University Partnerships Program (NISCUPP) and the NIS Community College Partnerships Program (NISCCPP). A Request for Grant Proposals for NISCUPP was announced on July 27, 2000 with a deadline of January 19, 2001. Community Colleges wishing to pursue partnership projects with counterpart institutions in Georgia, Kazakhstan, Moldova, Russia, Ukraine, or Uzbekistan may apply under the Request for Grant Proposals for the NISCCPP program, which was announced on November 9, 2000 with a deadline of February 23, 2001. A Request for Grant Proposals for an assistance award to support instruction and faculty training in Business Management, Entrepreneurship, and Public Administration at the University of Pristina, Kosovo, is currently open, with a deadline of March 14, 2001. The Bureau's support for institutional linkages in higher education is also provided through the College and University Affiliations Program for other world regions, including Europe. The annual Request for Grant Proposals for FY2002 is expected to be published in the spring of 2001. Applicants interested in any of these additional programs should contact the Bureau's Humphrey Fellowships and Institutional Linkages Branch at (202) 619–5289.

**Applicant Objectives**

In the College and University Affiliations Program with Serbia, partner institutions may pursue specific institutional goals with support from the Bureau of Educational and Cultural Affairs through exchanges of teachers and administrators for any appropriate combination of teaching, consultation, research, and outreach, for periods ranging from one week (for planning visits) to an academic year.

Both the U.S. and foreign participating institutions should benefit from the partnership, although the nature and scope of those benefits may differ. It is especially important that proposals outline well-reasoned strategies leading to specific, demonstrable changes at the department or institution in Serbia. For example, proposals may describe the parameters and possible content of new courses, new research or teaching capacities or methodologies, new or revised curricula or programs, or other changes anticipated as a result of the project. Proposals to pursue a limited number of related thematic objectives at each institution are preferred to proposals addressing a large number of unrelated objectives.

Proposals must focus on curriculum, faculty, and staff development at the Serbian partner institution(s) in one or more of the eligible disciplines. Administrative reform at the Serbian partner institution should also be a project component. Projects should involve the development of new academic programs or the building and/or restructuring of an existing program or programs, and should promote higher education's role in the transition to market economies and open democratic systems. Whenever feasible, the participating institutions should also make their resources, as well as the results of their collaborative work, available to the government, NGOs, and business community.

To provide adequate time to meet institutional project objectives, the Program awards grants for periods of approximately three years. The strategy for achieving project goals may include visits in either or both directions, but no single formula is anticipated for the duration, sequence, or number of these visits. However, visits of one semester or more for participants from each of the institutional partners are strongly encouraged. Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

Although strong budgetary and programmatic emphasis may be given to visits in one direction over another, the benefits of these visits to the sending as well as the receiving sides should be clearly explained in terms of their

contributions to the departmental or institutional objectives that the project is designed to achieve. Exchange visits for the purpose of attending conferences are not encouraged except in combination with other grant activities and in support of specific educational objectives at one or more of the participating institutions.

In addition to demonstrating the capacity of each participating institution to contribute to its partner(s), proposals should also explain how this cooperation would enable each of the institutions to address its own needs. Accordingly, applicants are encouraged to describe the needs as well as the capabilities of each participating department as well as the broader social and educational needs which the partner institutions attempt to serve.

Effective proposals will explain the anticipated cooperation in ways that demonstrate that the institutions proposed for participation in the partnership clearly understand one another and are committed to support one another in project implementation. If the proposed partnership would occur within the context of a previous or on-going project, the proposal should explain how the request for Bureau funding would build upon the pre-existing relationship or complement previous and concurrent projects, which must be listed and described in an appendix with details about the amounts and sources of external support.

Proposals should outline a methodology for project evaluation. The evaluation plan should include an updated assessment of the current status of each participating department's and institution's needs at the time of program inception; ongoing formative evaluation to allow for prompt corrective action; and, at the conclusion of the project, summative evaluation of the degree to which the project's objectives have been achieved together with observations about the project's influence within the participating institutions and their surrounding communities or societies. The final evaluation should also include recommendations about how to build upon project achievements, both with and without the Bureau's support. Evaluative observations by external consultants with appropriate subject or regional expertise are especially encouraged. Proposal budgets should reflect evaluation plans.

Proposals must be submitted by the U.S. institutional partner and must include a letter of commitment from the foreign partner(s). Faxed letters are acceptable. The letters should be signed by persons authorized to commit institutional resources to the project. U.S. and foreign partner institutions are encouraged to consult about the proposed project with the Bureau's program officer in Washington, DC.

**Costs**

The commitment of all partner institutions to the proposed project should be reflected in the cost sharing which they offer in the context of their respective institutional capacities. Although the contributions offered by U.S. and foreign institutions with relatively few resources may be less than those offered by other applicants, all participating institutions are expected to identify costs to contribute. These costs may include the estimated costs of in-kind contributions for which funds are not exchanged (*e.g.,* subsidized housing or homestays). Consistent with the ''Review Criteria'' for this competition listed elsewhere in this document and with specific reference to ''Cost-Sharing'' and ''Institutional Commitment to Cooperation,'' proposed cost-sharing will be considered an important indicator of each participating institution's interest in the project and of the institution's potential to benefit from it.

The Bureau's support may be used to defray the costs of the exchange visits as well as the costs (up to a maximum of 20 percent of the total grant) of their administration at any partner institution, including administrative salaries and direct administrative costs but excluding indirect costs. Although grants will be issued to the lead U.S. college or university, the administrative costs of the project at all partner institutions, including the foreign partner(s), should be included in the budget.

The proposal may include a request for funding to reinforce the activities of exchange participants through the establishment and maintenance of Internet and/or electronic mail communication facilities as well as through interactive technology or non-technology-based distance-learning programs. However, projects focusing primarily on technology or physical infrastructure development are not encouraged. Proposals that include Internet, electronic mail, and other interactive technologies should discuss how the foreign partner institution would support the costs of such technologies after the project ends. Applicants may propose other project activities not specifically anticipated in this solicitation if the activities reinforce exchange activities and their impact.

Bureau policy stipulates that awards to organizations with less than four years experience in conducting international exchanges are limited to $60,000. The Bureau anticipates awarding one grant not to exceed $228,750. Budgets and budget notes should carefully justify the amounts requested.

Projects must conform with the Bureau's requirements and guidelines outlined in the solicitation package for this RFGP, which can be obtained by following the instructions given in the section below entitled ''For Further Information''. The Project Objectives, Goals, and Implementation (hereafter, POGI) and the Proposal Submission Instructions (hereafter, PSI), which contain additional guidelines, are included in the Solicitation Package. Proposals that do not follow RFGP requirements and the guidelines appearing in the POGI and PSI may be excluded from consideration due to technical ineligibility.

**Eligible Fields**

The College and University Partnership—Serbia Program is limited to the following academic fields: (1) Economic, political, social sciences; (2) journalism/communications; and (3) law.

**U.S. Institution and Participant Eligibility**

In the United States, participation in the program is open to accredited two- and four-year colleges and universities, including graduate schools. Applications from community colleges, minority-serving institutions, undergraduate liberal arts colleges, research universities, and combinations of these types of institutions are eligible. Applications from consortia or other combinations of U.S. colleges and universities are eligible. If the lead U.S. institution is responsible for submitting an application on behalf of a consortium, the application must document the lead institution's authority to represent the consortium. With the exception of outside evaluators on contract with the U.S. institution, participants representing the U.S. institution(s) who are traveling under Bureau grant funds should be faculty or staff from the participating institution(s) and must be U.S. citizens.

**Foreign Institution and Participant Eligibility**

In Serbia, participation is open to recognized institutions of post-secondary education, including pedagogical institutes and universities, technical institutes and universities,

and vocational training schools. Secondary foreign partners may include non-profit service or professional organizations. Participants representing the foreign institutions must be faculty or staff of the primary or secondary partner institution, and be citizens, nationals, or permanent residents of the country of the foreign partner, and be qualified to hold a valid passport and U.S. J–1 visa.

**Ineligibility**

A proposal may be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) It is not submitted by the U.S. partner;

(4) One of the partner institutions is ineligible;

(5) The academic discipline(s) is/are not listed as eligible in the RFGP, herein;

(6) The amount requested of the Bureau exceeds $228,750 for the three-year project.

Please refer to program-specific guidelines (POGI) in the Solicitation Package for further details.

**Announcement Title and Number**

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/U–01–15.

**FOR FURTHER INFORMATION CONTACT:** The Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs, Bureau of Educational And Cultural Affairs, ECA/A/S/U, Room 349, SA–44; U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, phone: (202) 619–4097, fax: (202) 401–1433, email: johnsonmi@pd.state.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Michelle Johnson on all inquiries and correspondence.

**To Download a Solicitation Package Via Internet**

The entire Solicitation Package may be downloaded from the Bureau's website at: http://exchanges.state.gov/education/rfgps. Please read all information before downloading.

Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

**Deadline for Proposals**

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on February 5, 2001. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U–01–15, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the relevant State Department officers for review, with the goal of reducing the time it takes to get comments for the Bureau's grants review process.

*Approximate program dates:* Grants should begin on or about March 30, 2001.

*Duration:* Approximately March 30, 2001–March 30, 2004.

**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 for 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,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

**Review Process**

Proposals are reviewed for adherence to legal and budgetary requirements by Bureau offices responsible for these functions. For program content, cost-effectiveness, and other criteria spelled out in the RFGP, the review is conducted by an advisory, assistance award-review panel composed of Bureau and Department officers. Additional officers, including geographic area personnel, also review proposals for feasibility as well as potential for short- and long-term impact. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards resides with a Bureau Grants Officer.

**Review Criteria**

State Department officers in Washington, D.C. and overseas will use the criteria below to reach funding recommendations and decisions. 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. Quality of the Program Idea and Cross-Cultural Sensitivity*

Proposals should exhibit originality, substance, precision, and resourcefulness. Proposals should demonstrate an in-depth understanding of the region and the challenges facing Serbian educators and should describe how the proposed project will contribute toward higher education reform in Serbia.

*2. Program Planning*

Proposals should include creative, realistic, and feasible program plans and a detailed schedule, covering all program and support activities. Agenda and plan should adhere to the program overview and guidelines described above and should consist of goals that are achievable.

*3. Support of Diversity*

Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity relate to project objectives and how these issues will be addressed during project implementation. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

*4. Institutional Capacity*

Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. A proposal should demonstrate a detailed understanding of university conditions in Serbia. Proposals should demonstrate a promise of long-term impact, as reflected in a plan for follow on activities.

*5. Institution's Record/Ability*

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau grants management and contracts staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

*6. Follow-On Activities*

Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

*7. Project Evaluation*

Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

*8. Cost-Effectiveness*

Administrative and program costs should be reasonable and appropriate with cost sharing provided as a reflection of commitment to the pursuit of project objectives. Administrative costs should be kept to a minimum. Cost sharing, including contributions from the applicant or other sources should be included in the budget.

**Grant Making Authority**

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.'' The funding authority for the program above is provided through the Support for East European Democracy (SEED) Act of 1989.

**Notice**

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau 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.

**Notification**

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 4, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.*

[FR Doc. 00–31744 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 3509]**

## Bureau of Educational and Cultural Affairs Request for Grant Proposals: 2001 Summer Institute for English Language Educators From South Africa

**SUMMARY:** The African Programs Branch, Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs, announces an open competition for the 2001 Summer Institute for English Language Educators from South Africa. Accredited, post secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to provide a six-week academic training program for approximately 28 English language educators from South Africa. Subject to availability of funds, one grant will be awarded to conduct the 2001 Institute.

**Program Information**

*Overview*

American institutions of higher education having an acknowledged reputation in the field of English-as-a-second language (ESL) and in curriculum design may apply to develop and deliver a six-week summer program for approximately twenty-eight English language teaching educators from South Africa. The Summer Institute should be programmed to encompass about 45 days and should begin on or about June 16, 2001. A variation in start date, up to one week beyond June 16, 2001, will be considered if it is necessitated by the host institution's academic calendar. The first five weeks of the program will consist of academic coursework specializing in project-based ESL materials development/delivery focusing on three content-based areas (i.e., HIV–AIDS, civic and values education, entrepreneurship, and/or environmental education). Support for these ESL content-based projects through classroom management and curriculum design at the South African secondary and tertiary levels will be developed. A web site will be developed for all projects. The sixth week will consist of an escorted cultural and educational tour of Washington, D.C.

The 2001 Summer Institute for English Language Educators from South Africa will provide participants with intensive training in the fundamentals of content-based ESL materials development/delivery, classroom management and curriculum design. These three areas are critical in South Africa where educators are attempting

to create a new English curriculum in a context of educational transformation and Outcomes Based Education (OBE). Given the need to teach content-based English across the South African curriculum, English language educators are key personnel for quality learning. Presently, there exists a severe shortage of skilled classroom educators. South African teachers will need to produce and deliver culturally appropriate and pedagogically sound content-based materials in a multi-cultural setting.

The Summer Institute will also provide structured exposure to U.S. culture and the diversity of America. The problems of teaching in a multi-cultural society should be a component of the program. The program should maintain a relative balance among discussion sessions, lectures and collaborative workshops. A web site is recommended for participants' projects. Lengthy lectures should be kept at a minimum. Participants should be given ample opportunity to work together and learn from each other as well as from their American instructors. Given the project-based orientation exploring the themes of HIV–AIDS, civic and values education, entrepreneurship and/or environmental education, selected participants will be able to share not only content but relevant ESL materials with their colleagues and home institutions. Participants will receive an educational materials allowance.

Few participants will have visited the United States previously. In view of this, an initial orientation to the university community and a brief introduction to U.S. society and education should be considered an integral part of the Institute and should be held on the first two to three days of the program.

*Program Guidelines*

The applicant is asked to design a two-part program: (1) A five-week academic program supporting South Africa's goal of education transformation through the delivery of intensive training in content-based materials development, classroom management and curriculum design for Outcomes Based Education (OBE) and ESL learning (English across the curriculum) at the secondary and tertiary levels. Division into 3–4 manageable project teams, each with a selected thematic/content focus and each targeting the particular needs of the secondary and tertiary levels is essential. Training should be sensitive to any special needs of the South African participants.

(2) A one-week escorted visit to Washington, D.C., planned, arranged, and conducted by the Institute Program Director and principal Institute staff. The Washington program should be seen as an integral part of the Summer Institute, complementing and reinforcing both the academic and thematic content. This escorted visit should take place at the end of the Institute. Programming in Washington will include a half-day briefing session at the Bureau of Educational and Cultural Affairs, United States Department of State. Additionally, visits to such organizations as TESOL, a regional university, local school systems and teacher resource centers, are encouraged. Proposals may include cultural and educational visits en route to Washington, if such stops contribute to program quality and are cost effective. The participants will return to South Africa at the conclusion of the Washington program.

Specific areas to address in the Institute are:

1. Materials development/delivery with an emphasis on content-based ESL instruction. Thematic issues should include HIV–AIDS, civic and values education, entrepreneurship and/or environmental education (examples can be found at: http://exchanges.state.gov/forum/journal/).

2. Classroom management (for secondary levels).

3. Education Technology:

(a) Introduction and/or enrichment of computer-based word processing and appropriate software for participants who lack these skills. Introduction to computer networks for ESL professionals.

(b) Introduction and/or enrichment of knowledge of e-mail, usenet and the World Wide Web as pedagogic and research tools.

4. Visits to:

(a) Local institutions and organizations related to thematic areas.

(b) On-going ESL classes at the host institution, other universities, and in local educational or community centers, providing participants with opportunities to observe ESL methodology, materials, and multi-cultural classrooms featuring content-based language learning across the curriculum.

5. Involvement of participants in American culture through community/cultural activities. This should include interaction with Americans from a variety of backgrounds.

6. Formative evaluation and adjustment of program components accordingly, as well as summative evaluation of the entire Institute upon its completion.

In accordance with the objectives of the Summer Institute, participants will concentrate on their thematic program projects. However, the academic program should provide time for interaction with American students, faculty, and school administrators, and the local community to promote mutual understanding between the people of the United States and South Africa. In this regard, the Institute should incorporate cultural features such as community and cultural activities, field trips to places of local interest; home stays with families in the area (with other educators if possible), and events, which will bring the participants into contact with Americans from a variety of backgrounds.

*Participants*

Participants, to be selected by Public Affairs Section of the U.S. Embassy in Pretoria, will be South African educators involved with English language instruction. Professionally, they can be teacher-trainers, subject advisors, curriculum developers, and learning facilitators/coordinators. The selected participants will be drawn from public and private sectors including the national and provincial departments of education, teacher resource centers, non-governmental organizations, university departments of education and teacher training colleges. Minimum qualification for all participants will be a three-year teacher-training diploma with preference given to candidates with university degrees. Recruitment will concentrate on English language educators who are actively involved at secondary and tertiary levels, some of whom may be relatively inexperienced but are identified as having leadership potential. Depending upon availability of funds, approximately 28 participants from South Africa will participate in the Institute.

*Program Elements*

The proposal should be designed to support the following specific activities:

1. Pre-Program communication among participants and the U.S. institution to facilitate an exchange of ideas developed for the Institute. Communication should be e-mail based.

2. A web site identifying the program goals/syllabus and on-going participant thematic projects. The site should be a dynamic resource, with weekly updates during the duration of the program, and regular updates in South Africa following program completion. The web site should display each of the three completed theme-based projects. The participants should develop site content, while site construction and

Internet hosting should be provided by the selected American institution. All Institute participants should receive a CD–ROM of their Website creation.

3. A five-week academic program comprising coursework on:

—Project-based English for content-based instruction,
—Use of the Internet and web resources for educators,
—Leadership training to enable participants to conduct workshops upon return to their countries. Training should meet the special needs of participants from South Africa.

4. Cultural activities facilitating interaction among the African participants, American students, faculty, and administrators and the local community to promote mutual understanding between the people of the United States and the people of South Africa, planned within the five-week academic program.

5. A one-week, escorted, cultural and educational tour of Washington, D.C., complementing and reinforcing the academic material. The visit will be planned, arranged and conducted by the Institute Program Director and principal Institute staff.

6. Follow-on communication among participants and the U.S. institution to continue exchanges of ideas developed during the Institute.

7. Assistance to participants to select, purchase and ship materials to use in follow-on activities and training projects in South Africa.

*Orientation*

The host institution should plan to conduct either a pre-program needs assessment if time allows, or a needs assessment upon the arrival of the participants. The Institute Director should be prepared to adjust program emphasis as necessary to respond to participants' professional concerns.

A pre-departure orientation will be held in South Africa by the Public Affairs Section (U.S. Embassy, Pretoria) for all participants. The Institute host institution will be expected to provide general orientation materials for this meeting. This material might include a tentative program outline with suggested goals and objectives, relevant background information about the U.S. institutions and individuals involved in the project, and information about the local housing, climate, and available services.

*Program Administration*

All Summer Institute programming and administrative logistics, management of the academic program and the educational tour, and on-site arrangements will be the responsibility of the host institution.

The host institution is responsible for arrangements for lodging, food, maintenance and local travel for participants while at the host institution and in Washington. The host institution should strive to balance cost effectiveness in accommodations and meal plans with flexibility for differing diets and personal habits among the participants. Single rooms or housing in residential suites, which offer privacy, are preferable.

The Bureau will arrange participants' international travel. The Bureau will provide the host institution with participants' curricula vitae and travel itineraries and will be available to offer guidance throughout the Institute. The participants will arrive directly at the Institute site from their home countries. It is expected that the Institute program staff will make arrangements to have participants met upon arrival at the airport nearest the host campus. Departures will be from Washington D.C. Participants will be given international tickets which will include the leg from the host institution to Washington D.C., if necessary. The Institute staff will plan for ground transportation to and from Washington area airports.

Proposals should describe the available health care system and the plan to provide health care access to Institute participants. The Department of State will provide limited health insurance coverage to all participants. The host institution will be responsible for enrolling the participants in the insurance program with materials supplied by the Department.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

**Budget Guidelines**

Applicants must submit a comprehensive line-item budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to provide clarification.

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. The Bureau anticipates awarding one grant in an amount not-to-exceed $155,000 to support program and administrative costs required to implement this program. The Bureau encourages applicants to provide maximum levels of cost-sharing and funding from private sources in support of its programs.

Allowable costs for the program include the following:

1. Instructional costs (for example: instructors' salaries, honoraria for outside speakers, educational course materials);

2. Lodging, meals, and incidentals for participants;

3. Expenses associated with cultural activities planned for the group of participants (for example: tickets, transportation);

4. Administrative costs as necessary.

5. U.S. ground transportation costs to U.S. appointments, meetings and to/from airports.

Proposals should maximize cost sharing through private sector support as well as institutional direct funding contributions.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

*Announcement Title and Number:* All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/E/AF–01–01*.

**FOR FURTHER INFORMATION CONTACT:** The African Programs Branch, ECA/A/E/AF, Room 232, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, Tel: (202) 619–5376 and fax (202) 619–6137, e-mail: eberelso@pd.state.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer, Ellen Berelson on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

*To Download a Solicitation Package via Internet:* The entire Solicitation Package may be downloaded from the Bureau's website at http://exchanges.state.gov/education/RFGPs. Please read all information before downloading.

*Deadline for Proposals:* All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, January 26, 2001. Faxed documents will not be accepted at any time. Documents postmarked the due date but received

on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: *ECA/A/E/–01–01*, Program Management, ECA/EX/PM, Room 534, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Section at U.S. Embassy Pretoria for review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

**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 for 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,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

**Review Process**

The Bureau will acknowledge receipt of all proposals and will 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. All eligible proposals will be reviewed by the program office, as well as Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's 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. *Quality of the program idea:* Proposal should exhibit quality, rigor, and appropriateness of proposed syllabus to the academic objectives of the Institute. Proposal should demonstrate effective use of community and regional resources to enhance the cultural and educational experiences of participants. The proposal should clearly demonstrate how the institution will meet the program's objectives.

2. *Program planning:* Relevant work plan and a detailed calendar should demonstrate substantive undertakings and logistical capacity. Plan and calendar should adhere to the program overview and guidelines described above.

3. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic program and effective cross-cultural communication with South African participants. Proposal should show evidence of strong on-site administrative capabilities with specific discussion of how logistical arrangements will be undertaken.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

8. *Project Evaluation:* Proposals should include a plan to evaluate the Summer Institute's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended.

9. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

**Authority:** 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.'' The funding authority for the program above is provided through legislation.

**Notice**

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts

published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau 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.

**Notification**

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: December 8, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.*

[FR Doc. 00–32003 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 3510]**

### Bureau of Educational and Cultural Affairs; Extension to the Deadline for the Wye River People-to-People Exchange Program

**ACTION:** Notice.

**SUMMARY:** Due to the Department's interest in providing opportunities for a broad range of organizations to apply for grants, the deadline for the Wye River People-to-People Exchange Program has been extended from January 5, 2001, to April 6, 2001.

**ADDITIONAL INFORMATION:** For additional information, U.S. organizations should contact Thomas Johnston at 202–619–5325 or email tjohnsto@pd.state.gov. Israeli organizations or organizations located in Gaza should contact the Programs and Exchanges Office, U.S. Embassy, Tel Aviv, at 03–516–3210 or email *p-e@usembassy-israel.org.il.*

Palestinian organizations located in the West Bank should contact the Public Affairs Office, U.S. Consulate General, Jerusalem, at 02–622–7207 or email *peoplejeru@pd.state.gov.*

The Wye River People-to-People Exchange Program was announced in the **Federal Register** on September 21, 2000.

Dated: December 8, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.*

[FR Doc. 00–31910 Filed 12–13–00; 8:45 am]

BILLING CODE 4710–05–U

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Trade Policy Staff Committee; Public Comments on Proposed United States-Chile Free Trade Agreement

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of intent to conduct negotiations, initiation of environmental review, and request for comments.

**SUMMARY:** The United States intends to conduct negotiations with the Republic of Chile to conclude a free trade agreement. The Trade Policy Staff Committee (TPSC) is requesting written comments from the public to assist the United States Trade Representative (USTR) in formulating negotiating objectives for the agreement and to provide advice on how specific goods and services and other matters should be treated under the agreement.

Pursuant to Executive Order 13141 (64 FR 63169), USTR, through the TPSC, is initiating an environmental review of the agreement. The TPSC is also requesting written comments from the public on what should be included in the scope of the environmental review, including the potential environmental effects that might flow from the free trade agreement and the potential implications for environmental laws and regulations. Persons submitting written comments should provide as much detail as possible on the degree to which the subject matter they propose for inclusion in the review may raise significant environmental issues in the context of the negotiation.

**DATES:** Public comments should be received by noon, January 29, 2001.

**ADDRESS:** Public comment should be submitted to: Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 600 17th Street, NW., Washington, DC 20508 Attention: U.S.-Chile Free Trade Agreement

**FOR FURTHER INFORMATION CONTACT:** For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 600 17th Street, NW., Washington, DC 20508 (202) 395–3475. All questions regarding the environmental review should be addressed to Mary Latimer, Deputy Assistant USTR for Environment and Natural Resources, Office of the USTR (202) 395–7320. All other questions regarding the negotiations should be addressed to Susan Cronin, Director for Brazil and the Southern Cone, Office of the Western Hemisphere of the USTR (202) 395–5190.

**SUPPLEMENTARY INFORMATION:** On November 29, 2000, President Clinton agreed with Chile's President Ricardo Lagos to negotiate a bilateral free trade agreement. In the negotiations, the United States and the Republic of Chile will seek to eliminate duties and commercial barriers to bilateral trade in U.S.-and Chilean-origin goods and also expect to address trade in services, agricultural products, investment, trade-related aspects of intellectual property rights, government procurement, trade-related environmental and labor matters, and other issues. Two-way trade between the United States and Republic of Chile approached $6 billion in 1999. USTR is requesting that the U.S. International Trade Commission conduct a study of the potential economic impacts of the free trade agreement.

USTR, through the TPSC, will perform an environmental review of the agreement pursuant to Executive Order 13141, 64 FR 63169.

Written comments with as much specificity as possible, including data, views and recommendations, are invited on:

(a) General and commodity-specific negotiating objectives for the agreement.

(b) Economic costs and benefits to U.S. producers and consumers of the removal of tariffs and non-tariff barriers to U.S.-Chile trade.

(c) Treatment of specific goods (described by Harmonized System tariff numbers) under the agreement, including comments on (1) product-specific import or export interests or barriers, (2) experience with particular measures that should be addressed in the negotiations, and (3) in the case of articles for which immediate elimination of tariffs is not appropriate, recommended staging schedule for such elimination.

(d) Proposals for service sectors to be addressed in the agreement, existing barriers to trade in those sectors, and economic costs and benefits of removing such barriers.

(e) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

(f) Relevant investment issues that should be addressed in the negotiations.

(g) Relevant environmental and labor issues that should be addressed in the negotiations

(h) Relevant government procurement issues that should be addressed in the negotiations.

(i) Possible environmental effects of the proposed agreement and the scope of the U.S. environmental review of the proposed agreement.

Comments identifying as present or potential trade barriers any laws or regulations that are not primarily trade-related should address the economic, political and social objectives of such laws and regulations and the degree to which they discriminate against producers of the other country. Comments on the scope of the environmental review should be as detailed as possible.

**Written Comments**

Persons submitting written comments should provide twenty (20) copies no later than noon, January 29, 2001, to Gloria Blue at address listed above. If possible, comments should be submitted before this date. Where possible, please supplement written comments with a computer disk of the submission containing as much of the technical details as possible either in spreadsheet or word processing table format, with each tariff line or services sector in a separate cell. The disk should have a label identifying the software used and the submitter.

Written comments submitted in connection with this request, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room (Room 101) at the address noted above. An appointment to review the file may be made by calling Brenda Webb at (202) 395–6186. The Reading Room is open to the public from 10 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Business confidential information, including any information submitted on disks, will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof. If the submission contains business confidential information, twenty copies of a public version that does not contain confidential information must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked ''Confidential'' at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, ''public version'' or ''non-confidential.''

**Carmen Suro-Bredie,**

*Chair, Trade Policy Staff Committee.*

[FR Doc. 00–31774 Filed 12–13–00; 8:45 am]

BILLING CODE 3190–01–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Aviation Proceedings

Aviation Proceedings, Agreements filed during the week ending November 24, 2000. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2000–8369.
*Date Filed:* November 21, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:*
PTC COMP 0697 dated 6 October 2000
Mail Vote 090—Resolution 017c
Construction Rules for Fare Components
Re-adopt Paragraphs (5)(a)(ix) and (5)(b)(vii)
Intended effective date: 1 November 2000

*Docket Number:* OST–2000–8370.
*Date Filed:* November 21, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:*
PTC COMP 0722 dated 14 November 2000
Composite Resolution 002ww (except within Europe, between USA and Austria, Belgium, Chile, Germany, Iceland, Italy, Malaysia, Netherlands, Scandinavia, Switzerland)
Intended effective date: 15 December 2000

*Docket Number:* OST–2000–8371.
*Date Filed:* November 21, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:*
PTC COMP 0723 dated 14 November 2000
Composite Resolution 002n
between USA and Austria, Belgium, Chile, Germany, Iceland, Italy, Malaysia, Netherlands, Scandinavia, Switzerland
Intended effective date: 15 December 2000

**Dorothy Y. Beard,**

*Federal Register Liaison.*

[FR Doc. 00–31923 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### OFFICE OF THE SECRETARY

### Notice of Aviation Proceedings

Aviation Proceedings, Agreements filed during the week ending November 17, 2000. The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2000–8282.
*Date Filed:* November 13, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:*
PTC123 0123 dated 7 November 2000—Mid Atlantic (r–1 to r–7)
PTC123 0124 dated 7 November 2000—South Atlantic (r–8 to r–20)
Fares: PTC123 Fares 0042 dated 7 November 2000 (Mid Atlantic)
PTC123 Fares 0043 dated 7 November 2000 (South Atlantic)
Intended effective date: 1 March 2001

*Docket Number:* OST–2000–8283.
*Date Filed:* November 13, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:*
PTC123 0122 dated 7 November 2000
TC123 North Atlantic Resolutions (r–1 to r–18)
Fares: PTC123 Fares 0041 dated 7 November 2000
Minutes—PTC123 0125 dated 10 November 2000
Intended effective date: 1 March 2001

*Docket Number:* OST–2000–8295.
*Date Filed:* November 14, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:*
CTC COMP 0322 dated 14 November 2000
Mail Vote 094—Resolution 033d
Intended effective date: 1 February 2001

*Docket Number:* OST–2000–8351.
*Date Filed:* November 17, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:*
PTC2 EUR 0347 dated 7 November 2000
TC2 Within Europe Expedited Resolution 002gg
PTC2 EUR 0348 dated 17 November 2000
TC2 Within Europe Expedited Resolutions 002nn, 078q, 078y

Intended Effective Dates: 15 December 2000, 5 January 2001

**Dorothy Y. Beard,**

*Federal Register Liaison.*

[FR Doc. 00–31924 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Aviation Proceedings

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending October 13, 2000. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–1995–422.

*Date Filed:* October 10, 2000.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* October 31, 2000.

*Description:* Application of US Airways, Inc. (''US Airways'') pursuant 49 U.S.C. 41102 and 41108 and Subpart B, applies forrenewal of its certificate of public convenience and necessity for Route 690, which authorizes US Airways to engage in scheduled foreign air transportation of persons, property, and mail between Philadelphia, Pennsylvania, and Rome, Italy.

**Dorothy Y. Beard,**

*Federal Register Liaison.*

[FR Doc. 00–31922 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Aviation Proceedings

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending November 17, 2000. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–2000–8291.

*Date Filed:* November 13, 2000.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* December 4, 2000.

*Description:* Application of Corporate Flight Management, Inc. pursuant to 49 U.S.C. 41738 and Subpart B, requests the transfer of its commuter air carrier authority to Corporate Airlines, Inc.

*Docket Number:* OST–2000–8355.

*Date Filed:* November 17, 2000.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* December 8, 2000.

*Description:* Joint Application of United Air Lines, Inc., US Airways, Inc., and Allegheny Airlines, Inc. pursuant to 49 U.S.C. Section 41105 and Subpart B apply, to the extent necessary, for approval of the *de facto* certificate transfer that will result from the acquisition of the outstanding shares of US Airways Group, Inc., the corporate parent of US Airways and Allegheny, by UAL Corporation (''UAL''), the corporate parent of United.

**Dorothy Y. Beard,**

*Federal Register Liaison.*

[FR Doc. 00–31925 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Monterey County, CA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Monterey County.

**FOR FURTHER INFORMATION CONTACT:** C. Glenn Clinton, Team Leader, Program Delivery Team—North, Federal Highway Administration, 980 Ninth Street, Suite 400, Sacramento, California 95814–2724, Telephone: 916–498–5020.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare an environmental impact statement (EIS) on a proposed project to construct three operational improvements to improve traffic flow on portions of State Route 1 between Carmel Valley Road and the Route 1/68 interchange (a distance of 2.2 miles), near the City of Carmel-by-the-Sea, in Monterey County. The project is to add a northbound climbing land and a median left turn lane from Carmel Valley Road to Ocean Avenue; add a left turn lane for northbound traffic turning onto Handley Drive; and add an additional northbound lane from Handley Drive to the Route 1/68 interchange. The other alternative under consideration would construct one, two or none of the three proposed operational improvements. The proposed project would basically be an upgrade of the existing facility.

There would be a public scoping meeting to discuss the proposed project and another opportunity for public comment on the draft environmental document during the circulation phase of the draft environmental impact statement (DEIS).

To ensure that the full range of issues related to this proposed action is addressed and all significant issues identified, comments and suggestions are invited from all interested parties. The views of agencies that may have interest in the effects of the proposal on historic properties are specifically solicited. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 6, 2000.

**C. Glenn Clinton,**

*Team Leader, Program Delivery Team—North, Sacramento, California.*

[FR Doc. 00–31895 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2000–8398]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemption from the vision standard; request for comments.

**SUMMARY:** This notice announces the FMCSA's receipt of applications from 35 individuals for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). If we grant the request, the individual will qualify as a driver of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

**DATES:** We must receive your comments on or before January 16, 2001.

**ADDRESSES:** Please mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* You can look at and copy all the comments at the same address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or print the acknowledgment page that appears after submitting comments electronically.

**FOR FURTHER INFORMATION CONTACT:** For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joe Solomey, Office of the Chief Counsel, (202) 366–0834, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site.

#### Background

Thirty-five individuals have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemptions will achieve the required level of safety.

#### Qualifications of Applicants

*1. Carl W. Adams*

Mr. Adams, 49, lost his right eye in 1984. His visual acuity in the left eye is 20/20 with correction. His ophthalmologist examined him in 2000, and certified, ''In my opinion, Mr. Adams has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' In his application, Mr. Adams reported that he has driven tractor-trailer combinations for 14 years, accumulating 1.6 million miles. He holds a Minnesota Class A CDL, and there are no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

*2. David F. Bardsley*

Mr. Bardsley, 52, lost his right eye due to an injury in 1976. His best-corrected visual acuity in the left eye is 20/20. Following an examination in 1999, his ophthalmologist stated, ''I hereby certify that in my professional opinion and reasonable degree of medical certainty, Mr. Bardsley's visual deficiency is stable and he is medically qualified to operate a commercial motor vehicle safely.'' Mr. Bardsley submitted that he has driven a straight truck for 33 years and 825,000 miles. He holds a Class B CDL from Massachusetts, and during the last 3 years, he has had no accidents or convictions for moving violations in a CMV.

*3. William E. Beckley*

Mr. Beckley, 67, had an injury to his left eye in 1975 resulting in corneal scarring. His best-corrected visual acuity is 20/25 in the right eye and hand motions in the left eye. An ophthalmologist examined him in 2000 and stated, ''I feel that Mr. Beckley has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' According to Mr. Beckley's application, he has 51 years of experience driving tractor-trailers, totaling 4.4 million miles; and 6 years of experience driving straight trucks, totaling 270,000 miles. He holds a Maryland Class A CDL and has had no accidents or moving violations in a CMV for the past 3 years.

*4. Joseph M. Blankenship*

Since childhood, Mr. Blankenship, 37, has had amblyopia, which reduces his visual acuity to 20/200 in his right eye. The uncorrected vision in his left eye is 20/20. In 2000, an optometrist examined him and certified, ''Although Mr. Blankenship does not meet the specific criteria of 20/40 monocular vision in each eye, I feel that with the demonstration of excellent visual fields and the presence of binocular depth perception that Mr. Blankenship has sufficient vision to safely operate a commercial vehicle.'' Mr. Blankenship submitted he has operated tractor-trailer combination vehicles for 7 years, accumulating 676,000 miles. He holds a Class AM CDL from Alabama. During the last 3 years, according to his driving record, he has had no accidents and 2 convictions for speeding in a CMV. He exceeded the speed limit by 19 mph in one instance, and 14 mph in the other instance.

*5. Willie Burnett*

Mr. Burnett, 44, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/100 in the left eye. His optometrist examined him in 2000, and stated, ''Mr. Burnett in my medical opinion has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Burnett submitted that he has driven 220,000 miles in straight trucks over 23 years. He holds a Class A CDL from Florida, and his driving record shows no accidents or convictions for moving violations in a CMV for the last 3 years.

*6. Awilda S. Colon*

Ms. Colon, 48, has a corneal scar in her left eye due to a childhood injury. Her best-corrected visual acuity is 20/20 in her right eye and 20/60 in her left eye. Following an examination in 2000, her optometrist certified, ''After careful examination and talking with Ms. Colon, I feel she has adequate vision to operate a commercial vehicle.'' Ms. Colon reported that she has driven

buses for 6 years, accumulating 15,000 miles. She holds a Class B CDL from Tennessee. Her driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

*7. Robert P. Conrad*

Mr. Conrad, 54, has amblyopia in his left eye. His visual acuity with correction is 20/20 in the right eye and 20/60 in the left. Mr. Conrad was examined in 1999, and his ophthalmologist stated, ''I certify that in my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Conrad submitted that he has driven straight trucks and tractor-trailer combinations for 32 years, accumulating 64,000 miles in straight trucks, and 1.4 million miles in tractor-trailer combinations. He holds a Maryland Class AM CDL, and his driving record for the last 3 years contains no accidents and no convictions for moving violations in a CMV.

*8. Jerald O. Edwards*

Mr. Edwards, 52, has had optic nerve pallor in the left eye since birth. His visual acuity is 20/20 in the right eye and finger counting at 5 feet in the left eye. As a result of a 2000 examination, his optometrist affirmed, ''With the previous information, I have sent to you, the tests indicate Mr. Edwards has sufficient vision to perform commercial vehicle driving tasks.'' Mr. Edwards reported that he has driven straight trucks for 5 years and 50,000 miles, and tractor-trailer combination vehicles for 30 years and 1.2 million miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no accidents and one speeding conviction in a CMV. He exceeded the speed limit by 9 mph.

*9. William W. Ferrell*

Mr. Ferrell, 61, developed a macular scar in his right eye following surgery in January 1997. He also has some central vision loss related to macular degeneration. His visual acuity is 20/200 in the right eye and 20/25 corrected in the left. An ophthalmologist examined him in 2000 and stated, ''In my medical opinion, Mr. Ferrell does indeed have sufficient vision to perform the driving tasks that would be required to operate a commercial vehicle.'' Mr. Ferrell reported that he has driven straight trucks for 7 years for 400,000 miles, and tractor-trailer combinations 12 years for 1.2 million miles. He holds a Missouri Class A CDL and has had no accidents or convictions for moving violations in a CMV for the past 3 years.

*10. Marion R. Fox, Jr.*

Mr. Fox, 56, has a chorioretinal scar in his left eye, due to trauma at age 10. His corrected vision is 20/20+2 in the right eye and 20/60+2 in the left eye. He was examined in 2000, and his optometrist stated, ''Mr. Fox has sufficient vision to operate a commercial vehicle.'' Mr. Fox reported that he has 33 years and 3.3 million miles of experience driving tractor-trailer combinations. He holds an Indiana Class A CDL, and has had no CMV accidents or convictions for moving violations for the past 3 years.

*11. Thomas E. Howard*

Mr. Howard, 48, has had anterior uveitis scaring in the left eye since age 2. His vision is 20/20, unaided, in the right eye, and hand motion only, with correction, in the left eye. Following a 2000 examination, his optometrist stated, ''I feel that Mr. Howard should be able to perform the driving tasks required for commercial driving.'' Mr. Howard reported that he has driven tractor-trailer combination vehicles for 30 years, totaling 3.0 million miles. He holds an Indiana Class A CDL, and his official driving record shows no CMV accidents or moving violations in the last 3 years.

*12. James L. Johnson*

Mr. Johnson, 43, has refractive amblyopia in his left eye. His visual acuity uncorrected in the right eye is 20/20, and corrected in the left eye, 20/60. An optometrist examined Mr. Johnson in 2000 and affirmed, ''This condition [refractive amblyopia] does not hinder in any way Mr. Johnson's ability to safely drive or operate commercial vehicles.'' According to Mr. Johnson's application, he has driven 4.8 million miles in tractor-trailer combination vehicles over 20 years. He holds a Class AM CDL from Alabama. In the last 3 years he has had no accidents or convictions for moving violations in a CMV on his driving record.

*13. Spencer E. Leonard*

Mr. Leonard, 48, has amblyopia in his right eye. The visual acuity of his left eye is 20/20, with correction, and the visual acuity of his right eye is finger counting. The ophthalmologist who examined him in 1999 noted, ''Vision and ocular condition stable and patient is able to operate a commercial vehicle as he has in the past.'' According to his application, he has 24 years' and 1.9 million miles' experience operating tractor-trailer combinations, and 12 years' and 180,000 miles' experience operating straight trucks. He has an Ohio Class A CDL. There are no accidents and one conviction for a moving violation in a CMV on his driving record for the last 3 years. The ticket charged him with exceeding the speed limit by 11 mph.

*14. John K. Love*

Mr. Love, 67, has had a prosthetic left eye since 1950. His corrected visual acuity is 20/20− in the right eye. An optometrist examined him in 2000 and affirmed, ''In my medical opinion, John Love has sufficient vision required to operate a commercial vehicle.'' Mr. Love stated he has driven tractor-trailer combinations for 43 years, accumulating 2.1 million miles. He holds a Wyoming Class 1AMTX license. His official driving record for the last 3 years shows no accidents and no convictions for moving violations in a CMV.

*15. Robert C. Lueders*

Mr. Lueders, 44, suffered trauma to his left eye approximately 38 years ago, resulting in a retinal scar. Best-corrected acuities are 20/20 in the right eye and 20/70 in the left. As a result of an examination in 1999, his optometrist stated, ''Based on Mr. Lueders'' excellent driving record and his comprehensive eye exam, I feel Mr. Lueders has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' According to Mr. Lueders' application, he has driven straight trucks for 8 years, accumulating 300,000 miles, and tractor-trailer combinations for 15 years, accumulating 1.5 million miles. He holds a Class A CDL from Wisconsin. In the last 3 years his driving record shows no accidents or convictions for moving violations in a CMV.

*16. Thomas F. Marczewski*

Mr. Marczewski, 34, has amblyopia in his left eye. His visual acuities are 20/20 in his right eye and 20/300, not correctable, in his left. Following a 2000 examination, his optometrist noted, ''Mr. Marczewski has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' According to Mr. Marczewski, he has operated straight trucks for 6 years, accumulating 120,000 miles; and tractor-trailer combinations for 3 years, accumulating 114,000 miles. A holder of a Class ABCDM CDL from Wisconsin, he has no accidents or citations for moving violations in a CMV for the last 3 years.

*17. Samson B. Margison*

Mr. Margison, 48, has congenital amblyopia and esotropia of the left eye. His corrected visual acuity is 20/20+ in the right eye and 20/400 in the left. He was examined in 2000 and his optometrist stated, ''In my opinion I see no reason Mr. Margison should not be able to drive commercially based on his visual status alone.'' In his application, Mr. Margison reported that he has driven straight trucks for 7 years, accumulating 49,000 miles; and tractor-trailer combinations for 16 years, accumulating 1.6 million miles. He holds an Ohio Class A CDL, and has no accidents and one citation for speeding in a CMV on his driving record for the past 3 years. His speed was 12 mph over the limit.

*18. Velmer L. McClelland*

Mr. McClelland, 50, has light perception only in his left eye due to trauma as a child. His best-corrected vision in the right eye is 20/20. Following a 2000 examination, his optometrist noted, ''I feel patient can safely operate a motor vehicle. (commercial).'' In his application, Mr. McClelland reported that he has driven tractor-trailer combinations for 15 years, accumulating 1.1 million miles; and straight trucks for 5 years, accumulating 250,000 miles. He holds a Texas Class A CDL and has had no accidents or convictions for moving violations in a CMV for the past 3 years.

*19. Duane A. McCord*

Mr. McCord, 34, has been blind in his right eye since age 4 due to trauma. His best vision with correction is 20/20 in his left eye. Following an examination in 2000, his optometrist certified, ''I feel since Duane has had the visual defect since almost birth he has adapted using other visual cues and can still operate a commercial vehicle.'' Mr. McCord submitted that he has driven straight trucks for 200,000 miles in 5 years. He holds an Illinois Class B CDL, and his official driving record for the last 3 years shows no accidents and no convictions for moving violations in a CMV.

*20. Gene L. Miller*

Mr. Miller, 60, has a mature cataract and exotropia due to a childhood injury to his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/200 in the left eye. Following an examination in 1999, his optometrist stated, ''In my opinion Mr. Miller has sufficient vision to operate a commercial vehicle.'' Mr. Miller submitted that he has driven straight trucks for 2 years and 100,000 miles; tractor-trailer combination vehicles for 8 years and 800,000 miles; and buses for 2 years and 65,000 miles. He holds a Class A CDL from the State of Washington, and his driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

*21. John E. Musick*

Mr. Musick, 35, had a traumatic injury to the left eye in 1979, resulting in retinal detachment and diffuse retinal scarring, with an acuity of hand motion. His visual acuity is 20/20 in the right eye, without correction. Following a 2000 examination, his ophthalmologist stated, ''Since he has been operating a commercial vehicle in the past and has had many years to adjust to his visual deficit, I would think he can continue.'' Mr. Musick reported that he has driven straight trucks for 5 years, totaling 50,000 miles, and tractor-trailer combination vehicles for 3 years, totaling 105,000 miles. He holds an Arizona Class A CDL, and his official driving record shows no CMV accidents or convictions for moving violations during the last 3 years.

*22. Bobby G. Pool, Sr.*

Mr. Pool, 45, has amblyopia in the left eye. His vision is 20/20 in the right eye and 20/200 in the left eye with best correction. His ophthalmologist examined him in 2000, and certified, ''I have no reason to believe that this patient is any less able to operate a commercial vehicle now than in the last 30 years and I feel his visual requirements should meet your guidelines.'' Mr. Pool reported that he has driven tractor-trailer combinations for 20 years, accumulating 1.5 million miles. He holds a Texas Class AM CDL. In the last 3 years, he has had one accident and no convictions for moving violations in a CMV. Mr. Pool was not charged in the accident, and another driver was held to be at fault for failing to control speed in this 3-vehicle accident.

*23. Robert Radcliff, Jr.*

Mr. Radcliff, 39, has a central macular scar and a corneal scar in his left eye due to a childhood injury. His uncorrected visual acuity is 20/20 in the right eye and 20/100 in the left eye, but refraction yielded no improvement. His optometrist examined him in 2000, and stated, ''In my opinion Mr. Radcliff has sufficient vision to drive a commercial vehicle.'' Mr. Radcliff submitted that he has driven straight trucks for 11 years and 205,000 miles. He holds a Class D license from Alabama. His driving record for the last 3 years shows that he had no accidents and one conviction for speeding in a CMV. The ticket stated that he was driving 16 mph over the limit.

*24. Randolph M. Riffey*

Mr. Riffey, 49, has amblyopia in his right eye. He was examined in 2000, and his optometrist found his visual acuity to be 20/20, corrected, in the left eye, and hand motion at 2 feet in the right eye. His optometrist stated, ''In conclusion, Mr. Riffey has a congenital condition that is stable and in my medical opinion has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Riffey reported that he has driven straight trucks for 5 years and 25,000 miles, and tractor-trailer combination vehicles for 15 years and 1.5 million miles. He holds a Virginia Class A CDL, and has had no convictions for moving violations or accidents in a CMV during the last 3 years.

*25. Billy G. Saunders*

Mr. Saunders, 63, has scarring in his right eye, due to an injury at age 4. His visual acuity is 20/20, corrected, in his left eye, and hand motion in his right eye. Following a 2000 examination, his optometrist stated, ''In my opinion Mr. Saunders has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Saunders stated that he has operated tractor-trailer combination vehicles for 40 years, and a total of 4.0 million miles. He holds a New Mexico Class A CDL, and his official driving record shows no accidents or convictions for a moving violation in a CMV over the last 3 years.

*26. George D. Schell*

Mr. Schell, 48, has amblyopia in his left eye. His visual acuities are 20/20, uncorrected, in the right eye, and 20/200, not correctable, in the left eye. An optometrist examined him in 2000 and stated, ''In my opinion, your vision seems to be stable and you have sufficient vision in the right eye to be able to perform the driving tasks required to operate a commercial vehicle.'' Mr. Schell indicated that he has 12 years of experience driving tractor-trailer combinations, with 900,000 miles driven, and 2 years of experience driving straight trucks, with 24,000 miles driven. He holds an Illinois Class A CDL, and has had no accidents or convictions for moving violations in a CMV during the past 3 years.

*27. Gerald L. Smith*

Mr. Smith, 44, has amblyopia in his right eye. His visual acuity is 20/20 best-corrected in the left eye and 20/200 in the right eye. Following a 1999 examination, his optometrist stated, ''Mr. Smith has sufficient vision to operate a commercial vehicle.'' Mr. Smith reports that he has operated tractor-trailer combinations for 4 years, accumulating 400,000 miles. He holds a California Class AM1 CDL. He has no accidents and one conviction for ''Driver Failure to Obey All Trucks Stop at Scales'' in a CMV on his driving record for the last 3 years.

*28. Scottie Stewart*

Mr. Stewart, 46, has finger counting only in the right eye due to trauma at about the age of 4. His visual acuity is 20/20 in the left eye. His ophthalmologist examined him in 2000 and stated, ''Considering the fact that this patient has been driving commercial vehicles for many, many years without a problem, it is my opinion that his vision is sufficient to continue to do the same task.'' In his application, Mr. Stewart reported that he has driven tractor-trailer combination vehicles for 20 years, totaling 1.1 million miles; and straight trucks for 2 years totaling 570,000 miles. He holds a Mississippi Class A CDL, and his driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

*29. Clarence L. Swann, Jr.*

Mr. Swann, 51, suffered an injury in his right eye in 1962, resulting in a best-corrected visual acuity of 20/200 in that eye. The uncorrected vision in his left eye is 20/20. The ophthalmologist who examined him in 2000 stated, ''I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Swann submitted that he has 21 years' experience driving tractor-trailer combinations for a total of 840,000 miles; and 5 years' experience driving straight trucks for a total of 150,000 miles. He holds a Class AM CDL from Alabama, and for the last 3 years he has no accidents or convictions for violations in a CMV on his driving record.

*30. Robert Tatum*

Mr. Tatum, 52, lost his right eye in an accident 20 years ago. An optometrist examined him in 1999, and certified, ''Mr. Tatum has 20/20 vision in his left eye and has been successfully operating a commercial vehicle for approximately 20 years. Therefore in my medical opinion, Mr. Tatum has sufficient vision to perform these tasks.'' Mr. Tatum stated that he has operated tractor-trailer combinations for 18 years, accumulating 1.6 million miles. He holds a Class A CDL from Illinois, and his driving record for the last 3 years shows that he had no accidents and one conviction for speeding in a CMV for the last 3 years. He exceeded the speed limit by 10 mph.

*31. Thaddeus E. Temoney*

Mr. Temoney, 50, has a macular scar in his right eye due to an injury over 25 years ago. His corrected visual acuity is 20/20 in his left eye and 20/70 in his right eye. An ophthalmologist examined him in 2000, and stated, ''I certify it is my medical opinion that Mr. Temoney has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' In his application, Mr. Temoney reported that he has driven straight trucks for 9 years, accumulating 304,000 miles. He holds a Maryland Class B CDL, and his official driving record for the last 3 years shows no accidents or moving violations in a CMV.

*32. Roberto R. Turpaud*

Mr. Turpaud, 38, has a cataract in his left eye most likely caused by trauma sustained in 1976. He is able to see 20/20 with his right eye and 20/60 with his left eye with correction. His ophthalmologist examined him in 1999, and stated, ''In my opinion, he is qualified based on his vision to drive a commercial vehicle.'' Mr. Turpaud reported that he has driven straight trucks for 4 years and 60,000 miles. He holds a Washington Operator's License currently, but at the time of his application he held a Class D license from Massachusetts. He has no accidents and two convictions for moving violations in a CMV on his driving record for the last 3 years. The convictions were for ''Failure to Stop'' and ''Failure to Obey Stop Sign.''

*33. Roy B. Waggoner*

Mr. Waggoner, 63, has refractive amblyopia due to anisometropic refractive error in his left eye as a result of a childhood injury. The best-corrected visual acuity is 20/20 in the right eye and 20/100 in the left. As the result of an examination in 2000, his ophthalmologist concluded, ''It is my understanding that Mr. Waggoner has operated a commercial vehicle for many years as his primary occupation. * * * Given his binocular visual acuity of 20/20 in his glasses and his full visual fields, it is my opinion that his overall visual function is quite good. * * * My opinion, given these facts, is that Mr. Waggoner does have sufficient vision to operate a commercial vehicle.'' Mr. Waggoner reported that he has 41 years and 4.9 million miles of experience operating tractor-trailers. He holds a Class A CDL from Texas, and there are no accidents or convictions for moving violations in a CMV on his driving record for the last 3 years.

*34. Harry C. Weber*

Mr. Weber, 65, has amblyopia in his left eye. His visual acuity is 20/20 in the right eye, and 20/100 in the left eye. His optometrist examined him in 2000, and stated, ''Mr. Weber has sufficient vision to perform the driving tasks required to operate his commercial vehicle as he performs his duties, with no record of accidents or tickets.'' Mr. Weber reported that he has driven straight trucks for 45 years, accumulating 810,000 miles. He holds a Class C license from Maryland currently, but held a Class B CDL at the time of application. He has no accidents or convictions for moving violations in a CMV on his driving record for the past three years.

*35. Yu Weng*

Mr. Weng, 51, has amblyopia of the left eye. His best-corrected visual acuity is 20/25 in the right eye and 20/50 in the left eye. In 2000 his ophthalmologist examined him and affirmed, ''It is my opinion that Mr. Weng has sufficient vision to perform the driving tasks required to operate a commercial vehicle without problem.'' Mr. Weng submitted that he has 16 years' experience driving tractor-trailer combinations over 2.3 million miles. He holds a Class A CDL from New Jersey. His driving record for the last 3 years has no accidents and one conviction for ''Failure to [Use Chains] When Required'' in a CMV.

**Request for Comments**

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA is requesting public comment from all interested persons on the exemption petitions and the matters discussed in this notice. We will consider all comments that we receive before the close of business on the closing date indicated in the ''Dates'' section. We will continue to place comments that we receive after the closing date in the docket, and we will consider them to the extent practicable, but the FMCSA may publish in the **Federal Register** a notice of final determination at any time after the close of the comment period.

**Authority:** 49 U.S.C. 322, 31136 and 31315; 49 CFR 1.73.

Issued on: December 8, 2000.

**Brian M. McLaughlin,**

*Acting Assistant Administrator.*

[FR Doc. 00–31921 Filed 12–13–00; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

## RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

### Office of Hazardous Materials Safety; Notice of Application for Modification of Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applications for modification of exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comments must be received on or before December 29, 2000.

**ADDRESS COMMENTS TO:** Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION:** Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at http://dms.dot.gov.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 8, 2000.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials Exemptions and Approvals.*

| Application No. | Docket No. | Applicant | Modification of exemption |
|---|---|---|---|
| 8451–M | | TRW Automotive, Queen Creek, AZ (See Footnote 1) | 8451 |
| 8723–M | | Senex Explosives, Inc., Cuddy, PA (See Footnote 2) | 8723 |
| 8760–M | | Barton Solvents, Inc., Des Moines, IA (See Footnote 3) | 8760 |
| 9929–M | | Orbital Sciences Corporation, Germantown, MD (See Footnote 4) | 9929 |
| 10869–M | | Norris Cylinder Company, Longview, TX (See Footnote 5) | 10869 |
| 11526–M | | BOC Gases, Murray Hill, NJ (See Footnote 6) | 11526 |
| 11691–M | | Universal Flavors Corporation, Indianapolis, IN (See Footnote 7) | 11691 |
| 12022–M | RSPA–1998–3308 | Taylor-Wharton (Harsco Gas & Fluid Control Group), Harrisburg, PA (See Footnote 8) | 12022 |
| 12102–M | RSPA–1998–4019 | Onyx Environmental Services, L.L.C., Ledgewood, NJ (See Footnote 9) | 12102 |
| 12581–M | RSPA–2000–8387 | Ball Aerospace & Technologies Corp., Boulder, CO (See Footnote 10) | 12581 |
| 12582–M | RSPA–2000–8385 | State of Michigan (Dept. of State Police), East Lansing, MI (See Footnote 11) | 12582 |

[1] To modify the exemption to waive the requirement to have a copy of the exemption accompany the shipment of not more than 25 grams of Division 1.1 materials.

[2] To modify the exemption to authorize an additional non-DOT specification repump unit for bulk shipment of certain blasting agents.

[3] To modify the exemption to allow for the transportation of additional Class 3 materials in cargo tanks having six or more compartments.

[4] To modify the exemption to update the list of cargo air carriers and airports of departure for the transport of rocket motors having weights exceeding those specified in the regulations.

[5] To modify the exemption to clarify the fracture toughness test requirements, for design qualification only, of non-DOT specification steel cylinders transporting certain compressed gases.

[6] To modify the exemption concerning the calibration cylinder specification testing requirements of 3A and 3AA cylinders.

[7] To modify the exemption to allow for the transportation of an additional Class 8 material exempt from segregation requirements; competent authority approval.

[8] To modify the exemption to include 3BN cylinders and alternative test equipment/procedures for use in transporting Division 2.1, 2.2 and 2.3 materials.

[9] To modify the exemption to allow for the transportation of densitized Division 5.1 and additional Class 3 materials; cargo vessel as an additional mode of transportation; expanded transportation services.

[10] To reissue the exemption originally issued on an emergency basis for the transportation of helium in non-DOT specification packaging.

[11] To reissue the exemption originally issued on an emergency basis for the transportation of first aid/trauma kits containing 2.2 gases in a passenger-carrying aircraft.

[FR Doc. 00–31931 Filed 12–13–00; 8:45am]

BILLING CODE 4910–60–M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applicants for exemptions.

**SUMMARY:** In accordance with the procedures governing the application for and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before January 16, 2001.

**ADDRESS COMMENTS TO:** Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped envelope showing the exemption application number.

**FOR FURTHER INFORMATION:** Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 8, 2000.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials Exemptions and Approvals.*

NEW EXEMPTIONS

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of Exemption Thereof |
|---|---|---|---|---|
| 12586–N | RSPA–00–8480 | Wilsonart International Inc., Temple, TX. | 49 CFR 174.67 (i) and (j). | To authorize rail cars to remain attached while standing without the physical presence of an unloader. (mode 2) |
| 12587–N | RSPA–00–8481 | Georgia-Pacific Corp., Crossett, AR. | 49 CFR 173.31(d)(1)(vi). | To exempt rail cars containing hazardous materials from rupture disc inspection and replacement and marking requirement. (mode 2) |
| 12591–N | RSPA–00–8484 | SGL Carbon, LLC, Morgantown, NC. | 49 CFR 174.67 (i) and (j). | To authorize rail cars to remain connected while standing without the physical presence of an unloader. (mode 2) |
| 12592–N | RSPA–00–8483 | Matson Navigation Co., San Francisco, CA. | 49 CFR 176.905 | To authorize the transportation in commerce of combustion-powered motor vehicles in freight containers in cargo vessel holds that are not ventilated. (mode 3) |

[FR Doc. 00–31932 Filed 12–13–00; 8:45 am]

BILLING CODE 4910–60–M

## DEPARTMENT OF THE TREASURY

### Departmental Offices

### Privacy Act of 1974, as Amended: System of Records

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Notice of alteration of Privacy Act System of Records.

**SUMMARY:** The Department of the Treasury, Departmental Offices (DO), gives notice of a proposed alteration to the system of records entitled ''Personnel Security System—Treasury/DO .004,'' which is subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The system notice was last published in its entirety on December 17, 1998, at 63 FR 69721.

**DATES:** Comments must be received no later than January 16, 2001. The proposed alteration will be effective January 24, 2001 unless DO receives comments which would result in a contrary determination.

**ADDRESSES:** Comments must be submitted to the Department of the Treasury, Departmental Offices, 1500 Pennsylvania Avenue, NW, Room 3180 Annex, Washington, DC 20220. Comments received will be available for inspection at the same address between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Ann Tursic, Office of Security, (202) 622–1120.

**SUPPLEMENTARY INFORMATION:** The original publication of this system of records concerned the collection of information relevant to, or necessary for, making suitability, employability retention, or security clearance determinations. The Department is altering this system to: (1) Include the Disclosure and Written Authorization form that is mandated by the amendments to the Fair Credit and Reporting Act; (2) delete the current routine use and add six new routine uses; (3) add contractor employees as a category of individuals covered by the system; (4) create a Treasury-wide notice; (5) add system locations and managers; and (6) revise the retention and disposal of the records on government and contractor employees.

The following notices of systems of records maintained by Treasury bureaus will be deleted on January 24, 2001.

ATF .006—Internal Security Record System;

CC .014—Personnel Security/ Investigation Files/Employee/ Applicant Reference File
BEP .044—Personnel Security Files and Indices;
FMS .008—Personnel Security Records;
Mint .002—Current Employee Security Identification Record;
OTS .013—Personnel Security and Suitability Program.

A segment of the records formerly maintained in Treasury/IRS 60.008—Security, Background, and Character Investigation Files, Inspection, and which were transferred to the Treasury Inspector General for Tax Administration (TIGTA), pursuant to the IRS Restructuring and Reform Act of 1998, are included in this Treasury-wide Privacy Act notice. Other records formerly maintained in Treasury/IRS 60.008, were transferred to the Assistant Commissioner (Support Services) and are now included in Treasury/IRS 34.021—Personnel Security Investigations, National Background Investigations Center, as published on June 15, 1999, at 64 FR 32096.

The altered system of records report as required by 5 U.S.C. 552a(r) of the Privacy Act has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996.

The Department proposes to alter system of records ''Treasury/DO .004—Personnel Security System'' as noted above. The notice is published in its entirety below.

Date: December 7, 2000.

**W. Earl Wright, Jr.,**

*Chief Management and Administrative Programs Officer.*

## Treasury/DO .004

### SYSTEM NAME:

Personnel Security System-Treasury/DO.

### SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue NW, Room 3180 Annex, Washington, DC 20220. Other locations at which the system is maintained by Treasury bureaus and their associated offices are:

1. a. Departmental Offices (DO): 1500 Pennsylvania Ave., NW, Washington, DC 20220.

b. Financial Crimes Enforcement Network (FinCEN): 2070 Chain Bridge Road, Vienna, VA 22182.

c. The Office of Inspector General (OIG): 740 15th Street, NW, Washington, D.C. 20220.

d. Treasury Inspector General for Tax Administration (TIGTA): 1111 Constitution Ave., NW, Washington, DC 20224.

2. Bureau of Alcohol, Tobacco and Firearms (ATF): 650 Massachusetts Avenue, NW, Washington, D.C. 20226.

3. Office of the Comptroller of the Currency (OCC): 250 E Street, SW, Washington, DC 20219–0001.

4. United States Customs Service (CS): 1300 Pennsylvania Avenue, NW, Washington D.C. 20229

5. Bureau of Engraving and Printing (BEP): 14th & C Streets, SW, Washington, D.C. 20228.

6. Federal Law Enforcement Training Center (FLETC): Glynco, GA. 31524.

7. Financial Management Service (FMS): 401 14th Street, SW, Washington, D.C. 20227.

8. United States Mint (MINT): 801 9th Street, NW, Washington, DC 20220.

9. Bureau of the Public Debt (BPD): 200 Third Street, Parkersburg, WV 26101.

10. Office of Thrift Supervision (OTS): 1700 G Street, NW, Washington, D.C. 20552.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Current and former government employees, applicants and contractor employees occupying or applying for sensitive positions in the Department, (2) current and former senior officials of the Department and Treasury bureaus, and those within the Department who are involved in personnel security matters, and (3) current employees, applicants and contractor employees who are appealing a denial or a revocation of a security clearance.

### CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Background investigations, (2) FBI and other agency name checks, (3) investigative information relating to personnel investigations conducted by the Department of the Treasury and other Federal agencies and departments on a pre-placement and post-placement basis to make suitability and employability determinations and for granting security clearances, (4) card records comprised of Notice of Personnel Security Investigation (TD F 67–32.2) or similar previously used card indexes, and (5) an automated data system reflecting identification data on applicants, incumbents and former employees, disclosure and authorization forms, and record of investigations, level and date of security clearance, if any, as well as status of investigations, and (6) records pertaining to the appeal of a denial or a revocation of a security clearance.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, Sections 2 and 3, Executive Order 12958, and Executive Order 12968.

### PURPOSE(S):

This system is used to maintain records that assure the Department is upholding the highest standards of integrity, loyalty, conduct, and security among its personnel and contract employees.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) appropriate Federal, state, local and foreign agencies for the purpose of enforcing and investigating administrative, civil or criminal law relating to the hiring or retention of an employee; issuance of a security clearance, license, contract, grant or other benefit;

(2) a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of or in preparation for civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Department of the Treasury is authorized to appear, when: (a) The Department of the Treasury, or any component thereof; or (b) any employee of the Department of the Treasury in his or her official capacity; or (c) any employee of the Department of the Treasury in his or her individual capacity where the Department of Justice or the Department of the Treasury has agreed to represent the employee; or (d) the United States, when the Department of the Treasury determines that litigation is likely to affect the Department of the Treasury or any of its components; is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Department of the Treasury is deemed by the Department of the Treasury to be relevant and necessary to the litigation; provided, however, that the disclosure is compatible with the purpose for which records were collected;

(4) a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(6) the Office of Personnel Management, Merit Systems Protection Board, Equal Employment Opportunity Commission, Federal Labor Relations Authority, and the Office of Special Counsel for the purpose of properly administering Federal personnel systems or other agencies' systems in accordance with applicable laws, Executive Orders, and regulations; and

(7) unions recognized as exclusive bargaining representatives under 5 U.S.C. chapter 71, and other parties responsible for the administration of the Federal labor-management program if needed in the performance of their authorized duties.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

File folders, index cards, and magnetic media.

**RETRIEVABILITY:**

Records are retrieved by name.

**SAFEGUARDS:**

Paper records are stored in locked metal containers and in locked rooms. Electronic records are password protected. Access is limited to officials who have a need to know in the performance of their official duties and whose background investigations have been favorably adjudicated.

**RETENTION AND DISPOSAL:**

The records on government employees and contractor employees are retained for the duration of their employment at the Treasury Department. The records on applicants not selected and separated employees are destroyed or sent to the Federal Records Center in accordance with General Records Schedule 18.

**SYSTEM MANAGER(S) AND ADDRESS:**

Department of the Treasury: Official prescribing policies and practices: Director of Security, 1500 Pennsylvania Avenue, NW., Room 3180 Annex, Washington, DC 20220.

The system managers for the Treasury components are:

1. (a) DO: Director of Security, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

(b) FinCEN: Security Director, 2070 Chain Bridge Road, Vienna, VA 22182.

(c) OIG: Personnel Officer, 740 15th St., NW, Suite 510, Washington, DC 20220.

(d) TIGTA: Security Officer, 1111 Constitution Ave., NW, Washington, DC 20224.

2. ATF: Deputy Assistant Director (Management), 650 Massachusetts Avenue, NW, Washington, DC 20226.

3. BPD: Director, Division of Administrative Services, 200 Third Street, P.O. Box 1328, Parkersburg, WV 26106–1318.

4. USCS: Chief, Security Management Branch, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

5. FLETC: Associate Director for Planning & Resources, Glynco, GA 31524.

6. OCC: Director, Administrative Services Division, 250 E Street, SW, Washington, DC 20219.

7. BEP: Chief, Office of Security, 14th & C Streets, NW, Room 113M, Washington, DC 20228.

8. FMS: Director, Administrative Programs Division, 3700 East West Highway, Hyattsville, MD 20782.

9. Mint: Director of Security, 801 9th Street, NW, Washington, DC 20220.

10. OTS: Director, Procurement and Administrative Services, 1700 G Street, NW, Washington, DC 20552.

**NOTIFICATION PROCEDURE:**

Individuals wishing to be notified if they are named in this system of records, or who seek access to any record contained in the system of records, or seek to contest its content, may inquire in accordance with instructions given in the Appendix for each Treasury component appearing at 31 CFR Part 1, Subpart C.

**RECORD ACCESS PROCEDURES:**

See ''Notification procedure'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification procedure'' above.

**RECORD SOURCE CATEGORIES:**

The information provided or verified by applicants or employees whose files are on record as authorized by those concerned, information obtained from current and former employers, co-workers, neighbors, acquaintances, educational records and instructors, and police and credit record checks.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

This system is exempt from 5 U.S.C. 552a (c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H), and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). (See 31 CFR 1.36).

[FR Doc. 00–31794 Filed 12–13–00; 8:45 am]

BILLING CODE 4810–25–P

## DEPARTMENT OF THE TREASURY

### Departmental Offices; Privacy Act of 1974, As Amended; System of Records

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Notice of Proposed Privacy Act System of Records.

**SUMMARY:** The Department is consolidating systems of records pertaining to the parking and carpool programs into one Treasury-wide system of records entitled ''Treasury/DO .204—Parking and Carpool Program Records.''

**DATES:** Comments must be received no later than January 16, 2001. The proposed system of records will be effective January 23, 2001, unless the Department receives comments that would result in a contrary determination.

**ADDRESSES:** Comments should be sent to Disclosure Services, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC, 20220.

**FOR FURTHER INFORMATION CONTACT:** Les Smith, Program Manager, Facilities Management Division, (202) 622–0989, fax (202) 622–5334.

**SUPPLEMENTARY INFORMATION:** The Department is consolidating systems of records pertaining to the parking and carpool programs into one Treasury-wide system of records. Department of the Treasury system of records notices were last published in their entirety beginning at 63 FR 69716 on December 17, 1998. In the proposed notice each Treasury bureau is listed as a ''System Location'' and the official responsible for the program at each bureau is identified under ''System Manager.''

In certain instances, employer-provided parking may constitute a taxable fringe benefit subject to 26 U.S.C. 132(f), and the system will contain information necessary to report the taxable income, withhold the necessary income and employment taxes, and report the amount on an employee's W–2 and Leave and Earnings Statement. In addition, the Department may collect medical information from a person seeking a handicapped parking permit and if needed, disclose the medical information to a physician for determining the individual's eligibility for a handicap permit.

The following system of records notices will be deleted on January 23, 2001:

Treasury/CS .172—Parking Permits File

Treasury/BEP .043—Parking Program Records

Treasury/IRS 34.005—Parking Space Application and Assignment

Treasury/OTS .007—Employee Parking.

The new system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated February 8, 1996.

This system of records, ''Treasury/DO .204—Parking and Carpool Program Records'' is published in its entirety below.

Dated: December 7, 2000.

**W. Earl Wright, Jr.,**

*Chief Management and Administrative Programs Officer.*

## Treasury/DO .204

### SYSTEM NAME:

Parking and Carpool Program Records—Treasury/DO.

### SYSTEM LOCATION:

Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The locations at which the system is maintained by Treasury bureaus and their associated field offices are:

1. a. Departmental Offices (DO): 1500 Pennsylvania Ave., NW, Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street, NW, Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1111 Constitution Ave., NW, Washington, DC 20224.

2. Bureau of Alcohol, Tobacco and Firearms (ATF): 650 Massachusetts Avenue, NW, Washington, DC 20226.

3. Office of the Comptroller of the Currency (OCC): 250 E Street, SW, Washington, DC 20219–0001.

4. United States Customs Service (CS): 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

5. Bureau of Engraving and Printing (BEP): 14th & C Streets, SW, Washington, DC 20228.

6. Federal Law Enforcement Training Center (FLETC): Glynco, Ga. 31524.

7. Financial Management Service (FMS): 401 14th Street, SW, Washington, DC 20227.

8. Internal Revenue Service (IRS): 1111 Constitution Avenue, NW, Washington, DC 20224.

9. United States Mint (MINT): Judiciary Square Building, 633–3rd Street, NW, Washington, DC 20220.

10. Bureau of the Public Debt (BPD): 200 Third Street, Parkersburg, WV 26101.

11. United States Secret Service (USSS): 950 H Street, NW, Washington, DC 20001.

12. Office of Thrift Supervision (OTS): 1700 G Street, NW, Washington, DC 20552.

### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the Department and individuals from other Government agencies or private sector organizations who may use, or apply to use, parking facilities or spaces controlled by the Department. Individuals utilizing handicapped or temporary guest parking controlled by the Department.

### CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include the name, position title, manager's name, organization, vehicle identification, arrival and departure time, home addresses, office telephone numbers, social security numbers, badge number, and service computation date or length of service with a component of an individual or principal carpool applicant. Contains name, place of employment, duty telephone, vehicle license number and service computation date of applicants, individuals or carpool members. For parking spaces, permit number, priority group (handicapped, job requirements/ executive officials (SES) or carpool/ vanpool). Medical information may also be included when necessary to determine disability of applicant when applying for handicapped parking spaces.

### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; Treasury Department Order No. 165, revised as amended. Federal Property and Administrative Services Act of 1949, as amended.

### PURPOSE(S):

The records are used to administer parking, carpool and vanpool programs within the Department. The system enables the Department to allocate and check parking spaces assigned to government or privately-owned vehicles operated by visitors, handicapped personnel, key personnel, employees eligible to participate in a parking program and carpools or vanpools. The Department is also able to compare these records with other Federal agencies to ensure parking privileges or other employee transportation benefits are not abused.

### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used to disclose information to:

(1) Appropriate Federal, State, local, or foreign agencies, or other public authority responsible for investigating or prosecuting the violations of or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) A Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(3) A physician for making a determination on a person's eligibility for handicapped parking;

(4) A contractor who needs to have access to this system of records to perform an assigned activity;

(5) Parking coordinators of Government agencies and private sector organizations for verification of employment and participation of pool members;

(6) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(7) Department of Justice when seeking legal advice, or when (a) the Department of the Treasury (agency) or (b) any component thereof, or (c) any employee of the agency in his or her official capacity, or (d) any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (e) the United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation;

(8) Third parties when mandated or authorized by statute or when necessary to obtain information that is relevant to an inquiry concerned with the possible abuse of parking privileges or other employee transportation benefits;

(9) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where relevant or potentially relevant to a proceeding, and

(10) Officials of the Merit Systems Protection Board, the Federal Labor

Relations Authority, the Equal Employment Opportunity Commission or the Office of Personnel Management when requested in the performance of their authorized duties.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Hard copy and/or electronic media.

**RETRIEVABILITY:**

Name, address, social security number, badge number, permit number, vehicle tag number, and agency name or organization code on either the applicant or pool members as needed by a bureau. Records are filed alphabetically by location.

**SAFEGUARDS:**

Paper records are maintained in locked file cabinets. Access is limited to personnel whose official duties require such access and who have a need to know the information in a record for a job-related purpose. Access to computerized records is limited, through use of a password, to those whose official duties require access. Protection and control of sensitive but unclassified (SBU) records are in accordance with TD P 71–10, Department of the Treasury Security Manual, and any supplemental guidance issued by individual bureaus. The IRS access controls will not be less than those provided by the Automated Information System Security Handbook, IRM 2(10)00, and the Manager's Security Handbook, IRM 1(16)12.

**RETENTION AND DISPOSAL:**

Generally, record maintenance and disposal is in accordance with NARA General Retention Schedule 11, and any supplemental guidance issued by individual components. Disposal of manual records is by shredding or burning; electronic data is erased. Destroyed upon change in, or revocation of, parking assignment.

For the IRS, records are maintained in accordance with Records Control Schedule 301—General Records Schedule 11, Space and Maintenance Records, Item 4(a), IRM 1(15)59.31.

**SYSTEM MANAGER(S) AND ADDRESS:**

The system managers for the Treasury components are:

(1)(a) DO: Assistant Director, Parking, Safety and Farecard Office, Facilities Management Division, 1500 Pennsylvania Ave., NW, Washington, DC 20220.

(b) OIG: Director, Administrative Services Division, Office of Management Services, Room 510, 740 15th Street, NW., Washington, DC 20220.

(c) TIGTA: Security Officer, 1111 Constitution Ave., NW, Washington, DC 20224.

(2) ATF: Chief, Safety Program Branch, Administrative Programs Division, Office of Management, 650 Massachusetts Ave., NW, Washington, DC 20226.

(3) OCC: Building Manager, Building Services, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(4) CS: Chief Financial Officer, U.S. Customs Service Headquarters, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

(5) BEP: Chief, Office of Administrative Services, Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

(6) FLETC: Associate Director for Planning & Resources, Federal Law Enforcement Training Center, Glynco, GA 31524.

(7) FMS: Director, Administrative Programs Division, 401 14th Street, SW, Washington, D.C. 20227.

(8) IRS: Chief, Security and Safety Branch; Regional Commissioners, District Directors, Internal Revenue Service Center Directors, and Computing Center Directors. (See IRS Appendix A for addresses.)

(9) MINT: Office of Management Services, 801 9th St. NW, Washington, DC 20220.

(10) BPD: Director, Washington Support Services, Bureau of the Public Debt, 999 E Street, NW, Washington, DC 20239.

(11) USSS: Assistant Director, Office of Administration, 950 H Street, NW, Washington, DC 20373–5802.

(12) OTS: Director, Procurement and Administrative Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**NOTIFICATION PROCEDURE:**

Individuals seeking notification and access to any record contained in the system of records, or seeking to contest its content, may inquire in accordance with instructions pertaining to individual Treasury components appearing at 31 CFR part 1, subpart C, appendices A–L.

**RECORD ACCESS PROCEDURES:**

See ''Notification procedure'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification procedure'' above.

**RECORD SOURCE CATEGORIES:**

Parking permit applicants, members of carpools or vanpools, other Federal agencies, medical doctor if disability determination is requested.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–31793 Filed 12–13–00; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Thursday,
December 14, 2000

# Part II

# Environmental Protection Agency

## 40 CFR Parts 60, 61, 63, and 65

## Consolidated Federal Air Rule; Synthetic Organic Chemical Manufacturing Industry; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 60, 61, 63, and 65**

**[AD–FRL–6876–9]**

**RIN 2060–AG28**

## Consolidated Federal Air Rule (CAR): Synthetic Organic Chemical Manufacturing Industry

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action promulgates a consolidated Federal air rule for the Synthetic Organic Chemical Manufacturing Industry (SOCMI). In this final rule, we (EPA) consolidate major portions of several new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAP) applicable to storage vessels, process vents, transfer operations, and equipment leaks within the SOCMI. The final rule pulls together applicable Federal SOCMI rules into one integrated set of rules in order to simplify, clarify, and improve implementation of the existing rules with which source owners or operators must comply. The consolidated rule is an optional compliance alternative for SOCMI sources; sources may simply continue to comply with existing applicable rules or choose to comply with the final consolidated rule. The effects of this consolidation are to improve understandability, reduce burden, clarify requirements, and improve implementation and compliance. This document also announces the effective date of information collection requirements in a subpart in the Code of Federal Regulations relating to standards of performance for volatile organic compound emissions from the synthetic organic chemical manufacturing industry reactor processes which was originally published in the **Federal Register** on August 31, 1993.

**DATES:** This final rule is effective December 14, 2000. The incorporation by reference of certain publications in the rule is approved by the Director of the Federal Register as of December 14, 2000. The information collection requirements in 40 CFR part 60, subpart RRR, became effective November 8, 1993 when the Office of Management and Budget approved them.

**ADDRESSES:** Docket number A–96–01 contains information we considered in developing these standards and is available for public inspection between 8:00 a.m. and 5:30 p.m., Monday through Friday except for Federal holidays at EPA's Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460, or by calling (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). The fax number for the Center is (202) 260–4000 and the E-mail address is ''*A-and-R-docket@epamail.gov.*'' A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Colyer, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–5262, fax number (919) 541–0942, or E-mail: *colyer.rick@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This preamble provides background information, summarizes major changes to the CAR since proposal, and discusses how we have met the administrative requirements for this final rule. This preamble does not contain extensive background information in the rule's development or how this rule relates to other rules. The preamble to the proposed CAR (63 FR 57798, October 28, 1998) contains extensive background information, which includes these discussions: goals and objectives, participation, amendments to the referencing subparts, significant decisions in rule consolidation, delegation of the CAR to State authorities, incorporating CAR requirements into the title V permit, extension of the consolidation to include the State implementation plan, summary of benefits and other impacts, and additional amendments to equipment leak referencing subparts.

*Judicial Review.* Under section 307(d)(1) of the Clean Air Act (Act), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by February 12, 2001. Under section 307(d)(7)(B) of the Act, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the Act, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

*Background Information Document.* The consolidated rulemaking package promulgated today is supported by a background information document (BID) that contains a summary of the public comments received on the proposal and the Administrator's responses to public comments. This document may be obtained from the docket for this rule, A–96–01, or through the World Wide Web at *http://www.epa.gov/ttn/oarpg/* or from the U.S. Environmental Protection Agency Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777. Please refer to ''Consolidated Federal Air Rule for Synthetic Organic Chemical Manufacturing Industry; Background Information for Promulgated Standards,'' EPA–453/R–99–006.

*World Wide Web Information.* The EPA provides information and technology exchange in various areas of air pollution control on the World Wide Web (WWW). An electronic copy of today's document that includes the regulatory text is available through the WWW at *http://www.epa.gov/ttn/oarpg/,* under recent actions. For WWW help information, call EPA's Web help line at (919) 541–5384.

*Regulated Entities.* The regulated category and entities potentially affected by this action include the following North American Industrial Classification System (NAICS) and Standard Industrial Classification (SIC) codes.

| Category | NAICS | SIC | Examples of regulated entities |
|---|---|---|---|
| Industry ..... | 3251 | 2865<br>2869 | Synthetic organic chemical manufacturing industry units. For example, producers of benzene, toluene, or any other chemical listed in table 1 of 40 CFR part 63, subpart F, and any other chemical manufacturing process unit identified in an applicable subpart that references the use of this part.<br>Producers of polypropylene, polyethylene, polystyrene, or poly (ethylene terephthalate). Producers of vinyl chloride and polyvinyl chloride. Volatile organic compound storage vessels. Benzene storage vessels. Benzene transfer operations. Equipment (valves, pumps, connectors, etc.) in benzene service. |

| Category | NAICS | SIC | Examples of regulated entities |
|---|---|---|---|
| Industry ..... | 32411 | 2911 | Petroleum Refineries. Volatile organic compound storage vessels.<br>Benzene storage vessels.<br>Benzene transfer operations.<br>Equipment (values, pumps, connectors, etc.) in benzene service. |

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to elect to comply with this rule. This table lists the types of entities that we are now aware could potentially qualify to elect to comply with this rule. To determine whether your facility qualifies to implement this action, you should carefully examine the applicability criteria in 40 CFR part 60, subparts Ka, Kb, VV, DDD, III, NNN, and RRR; 40 CFR part 61, subparts V, Y, and BB; and 40 CFR part 63, subparts G and H. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

The following outline is provided to aid in locating information in this preamble.

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II. Summary of Comments and Changes Since Proposal
A. How has EPA changed the definition of the SOCMI CAR unit?
B. Has EPA changed the scope of the CAR since proposal?
C. How has EPA changed the connector monitoring requirements?
D. What changes were made to the process of implementing the CAR?
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VI. Administrative Requirements
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## I. Background Information

Over the past 25 years, EPA has issued a series of Federal air regulations, many of which affect the same plant site. As a result, many facilities are now subject to multiple Federal rules applying to different emission points. Each rule has its own emission control requirements as well as monitoring, recordkeeping, and reporting requirements. Although these rules were developed for different purposes under different statutory authorities and apply to different pollutants, they may impose many duplicative or near duplicative requirements on a plant site, thus complicating implementation of and compliance with these rules.

On March 16, 1995, President Clinton and Vice President Gore announced several initiatives aimed at reinventing environmental regulation. One of those initiatives was to consolidate Federal air rules so that all Federal air rules for any single industry would be incorporated into a single rule. This rule would consist of ''* * * one set of emission limitations, monitoring, and recordkeeping and reporting requirements.''

We selected the Federal air rules applying to the SOCMI for a pilot project to study the feasibility and practical implications of consolidating and streamlining existing rules, and to establish a workable process for consolidation that can then be applied to other consolidation efforts in the future. We selected the SOCMI as the pilot because of the large number of similar Federal air regulations that can apply at a single location. The SOCMI is subject to NSPS and NESHAP under the Act, as well as to Resource Conservation and Recovery Act (RCRA) air standards. The rules for a given type of emission point require application of controls with similar control efficiencies and include similar design, equipment, or operating standards. However, the standards differ in their applicability and in some of their control, monitoring, recordkeeping, and reporting requirements. Additionally, both the SOCMI and State air pollution control agencies have expressed great interest in consolidation of applicable Federal air requirements to the extent possible for easier incorporation into title V operating permits.

For these reasons, we believe that consolidation of the requirements of the various rules into one rule greatly benefits both the industry and government enforcement agencies. We believe that such consolidation improves compliance and enforceability and reduces resource needs.

## II. Summary of Comments and Changes Since Proposal

We received 16 comment letters on the proposed CAR. The most significant changes made as a result of the comments regarded the SOCMI CAR unit, the scope of the rule, and connector monitoring. We address only the major comments and changes in this preamble. We also made a number of editorial changes and clarifications to make the CAR easier to read and understand. The summary of public comments and our responses are contained in the ''Consolidated Federal Air Rule for Synthetic Organic Chemical Manufacturing Industry: Background Information for Promulgated Standards,'' EPA 453/R–99–006, May 2000, Docket No. A–96–01.

### *A. How Has EPA Changed the Definition of the SOCMI CAR Unit?*

We have eliminated the concept of a SOCMI CAR unit (SCU), as proposed, from the final rule. Commenters noted points of confusion in the assignment procedures and in the definition of the SCU. One commenter was specifically concerned that the complexity of the applicability procedures may prohibit implementation at the State and local levels. Commenters made suggestions to improve the clarity of these provisions including a suggestion that the CAR provide examples showing how SCU boundaries are determined; a rephrasing of the SCU definition; and a request that the CAR include a provision that would allow groups of like equipment, subject to one of the referencing subparts, to implement the CAR even though other portions of the SCU continue to comply with the applicable referencing subpart.

Because this is a pilot program for the SOCMI, at proposal we limited the equipment that could opt into the CAR to plant sites with SOCMI process units. Therefore, the proposed definition of SCU contained specifications for what constituted a SOCMI process unit. The proposed CAR (63 FR 57753) specified that facilities opting into the CAR must do so on a SCU basis because we thought this would reduce potential complexity of implementing the CAR. During development of the proposed CAR, State representatives expressed a desire to allow larger portions of sources to opt in as opposed to a more

piecemeal approach, indicating that it would be easier for them to enforce the rule. Industry representatives generally preferred to allow any regulated source (a source or facility subject to a referencing subpart) to opt into the CAR. We felt that opting into the CAR on an SCU basis would provide a small enough collection of emission points and equipment to provide operational flexibility to the facility, but a large enough collection to avoid possible confusion and additional burden for regulatory authorities.

After reviewing the comments regarding the SCU and assignment procedures, we have concluded that eliminating the confusion and complexity added by the assignment procedures outweighs the reduction in burden and complexity to State inspectors by requiring facilities to opt in on a SCU (large collection of equipment) basis. Keeping track of which equipment is in or out of a SCU and which SCU is complying with the CAR appears to be more burdensome than keeping track of which emission point is complying with what rule.

Therefore, to simplify the applicability provisions of the CAR, we are allowing, in the final CAR, any affected source subject to a referencing subpart to use the CAR as a compliance option with two exceptions described below. This means that a facility may choose to opt in, for example, one subpart Kb tank or all equipment at the facility that is subject to a referencing subpart. For both regulator and industry personnel, this eliminates the assignment procedures that determine what equipment constitutes a SCU. With this change, it is not necessary to keep track of new regulated sources and whether they are part of a SCU or not.

There are two situations where the regulated source in the CAR does not match the affected source of the referencing subpart. In one situation, the affected source for 40 CFR part 61, subpart V is an individual piece of equipment like a pump or a valve. We determined that allowing owners or operators to opt in to the CAR on an individual piece of equipment would not be workable. Therefore, owners or operators must opt in the group of affected equipment at a process unit. This does not alter the applicability of subpart V to a facility; it only affects the set of equipment that can comply with the CAR.

The second situation where the regulated source in the CAR does not match the affected source of the referencing subpart is in the HON. Under the HON, the affected source is the total of all applicable emission points at the plant site that are subject to the HON. Thus, a HON facility that contains more than one CMPU, would consist of only one affected source, which would be the collection of all subject CMPU's. However, under the CAR the regulated source is collection of emission points within each CMPU (as proposed under the original concept in the CAR of the SCU). Thus, a HON facility can choose to opt into the CAR on a CMPU basis, and not the entire collection of CMPU's that comprise the HON affected source.

Although we believe that in most cases facilities will opt in as much equipment and as many emission points as possible, the States and owners or operators have the opportunity to work together to determine the basis on which facilities can opt in their equipment that will provide the ''best fit'' for both regulators and industry.

*B. Has EPA Changed the Scope of the CAR Since Proposal?*

We have not changed the scope of the CAR since proposal except for one minor change that affects polystyrene process vents. We received comments on incorporating or allowing other rules in the CAR, including the following requests: Consolidate all rules that may apply to a facility that has a SOCMI process unit on site, use the CAR as a compliance option for new regulations, and allow rules that reference the referencing subparts to use the CAR as a compliance option. These comments and our rationale for not changing the scope of the CAR are discussed in the following sections.

1. Incorporating or Allowing Other Rules in the CAR

Comments: Several commenters supported expanding the scope of the CAR so that it completely incorporates rules that may apply to facilities that have a SOCMI process unit on site. Commenters specifically mentioned the HON wastewater provisions (40 CFR part 63, subpart G); the Benzene Waste NESHAP provisions (40 CFR part 61, subpart FF); and the SOCMI wastewater NSPS (40 CFR part 60, subpart YYY). Some commenters requested that sources subject to the Petroleum Refinery NESHAP, 40 CFR part 63, subpart CC, be allowed to use the CAR to comply with subpart CC. Two commenters also referred to the following 40 CFR part 63 subparts as rules that should allow the CAR as a compliance option: I, U, W, DD, TT, OO, UU, WW, and JJJ. One commenter requested consolidation of several other provisions affecting SOCMI including the Hazardous Organic NESHAP (HON) Group 2 transfer racks and storage vessels; emission points not requiring control under the non-HON referencing subparts; marine loading under 40 CFR part 61, subpart BB; and equipment leak provisions under subpart BB of both 40 CFR parts 264 and 265. One commenter encouraged us to define CAR requirements as acceptable for requirements in non-consolidated rules that are likely to overlap with the CAR at SOCMI sites.

Commenters argued that without including additional regulations in the consolidation, issues of overlapping requirements remain, and the CAR cannot achieve its goals. One commenter alleged that sources, in most cases, have no incentive to use the CAR and concluded that the CAR must consolidate several additional rules in order to provide this incentive.

Response: It is true that the CAR does not consolidate all rules applicable to the SOCMI or to sources with SOCMI processes on site. We considered other rules in this consolidation. As stated in the preamble to the proposed rule (63 FR 57750), because the rule was meant to be a pilot project for the SOCMI, we limited the scope to the Federal Clean Air Act rules that apply to SOCMI. We thought that these rules would provide benefit to affected sources, yet the scope would be defined well enough to ensure a reasonable chance of success. Some SOCMI rules that we considered for consolidation were subject to litigation, which could have led to substantial changes, when the CAR process started, and others are currently in litigation. It was therefore not appropriate to consolidate these rules into the CAR since they would likely be changing. Our intention was to keep the rule development process manageable in order to develop a practical CAR in a reasonable amount of time. The details, approach, and regulatory text for including additional rules in the CAR have not been investigated. To include additional rules in the consolidation effort at this point would require substantial time, resources, and a supplemental proposal. We consider our efforts better spent finalizing this rule.

We do not agree that sources have no incentive to use the CAR. We maintain that there can be significant burden reduction with the rules that are currently consolidated, and that the burden reduction will persuade sources to use the CAR.

2. CAR for New Regulations

Comments: Four commenters requested that we consider using the CAR as a compliance option for new regulations. Two commenters

specifically mentioned the Miscellaneous Organic NESHAP, one commenter mentioned the Generic MACT, and one commenter mentioned the Ethylene MACT. One commenter recommended that any new regulations applicable to the SOCMI that may be promulgated should be incorporated into the CAR for use by affected sources that have opted to use the CAR. The commenter stated that in this case, additional incorporated rules would follow part 70 on opting new rules into a title V permit as they are promulgated.

Response: We may consider using the CAR in future rulemakings. Because of the timing of the Generic MACT's promulgation (64 FR 34854; June 29, 1999), it was not possible to consolidate that rule into the CAR. However, the Generic MACT employs similar structure, concept, and provisions to the CAR.

3. Referencing Subparts Using the CAR

Comments: Several commenters requested that rules that refer to referencing subparts should be allowed to use the CAR as a compliance option. Commenters specifically mentioned 40 CFR part 63, subpart I, the polymers and resins MACT standards, and 40 CFR part 60, subpart DDD, equipment leak provisions. Two commenters requested any MACT standard that points to the HON be allowed the option to comply with the CAR.

Response: We have not expanded the scope of the final rule to include other regulations that refer to referencing subparts. Expanding the scope of the CAR to other rules at this point would entail additional proposals. The details, approach, and ramifications of allowing the CAR for these other rules have not been investigated. Many of the rules that point to the CAR's referencing subparts for requirements generally have complex references, with conditions and exceptions to the referencing subparts. To allow these rules to comply with the CAR would require us to study the conditions and exceptions and possibly develop detailed references for compliance with the CAR. We are finalizing this rule so that the burden reductions associated with it can be used as soon as possible, and we may consider additional provisions in later rulemakings.

4. Polystyrene Process Vents

Comment: One commenter noted that the proposed language in § 60.560(j) and (k) would not allow polystyrene process vents subject to 40 CFR part 60, subpart DDD, to use the CAR. These process vents have the same requirements as the polypropylene and polyethylene process vents subject to subpart DDD that could opt into the CAR under the proposed rule.

Response: We agree that the polystyrene process vents subject to subpart DDD that choose the control device or flare compliance option should be allowed to opt into the CAR. We have edited the final rule to allow this option.

*C. How Has EPA Changed the Connector Monitoring Requirements?*

We have provided a sensory inspection alternative to instrument monitoring for sources subject only to 40 CFR part 60, subpart VV and 40 CFR part 61, subpart V, to eliminate a disincentive to use the CAR.

Comments: Several commenters noted that the proposed CAR imposed a significant increase in equipment leak monitoring burden for connectors in gas/vapor or light liquid service if the owner or operator decided to opt into the CAR for compliance. Specifically, these connectors subject to 40 CFR part 60, subpart VV, and 40 CFR part 61, subpart V, would have been subject to periodic instrument monitoring under the CAR. Under the referencing subparts, however, instrument monitoring was only required if sensory indications of a leak were detected. In other words, if plant personnel see, hear, or smell a potential leak, then they would investigate the potential leak by performing instrument monitoring.

Instrument monitoring, the commenters noted, is a substantial burden increase over sensory inspection. The commenters felt that this created a financial disincentive to use the CAR for some owners or operators. The commenters reasoned that if having to perform routine, periodic instrument monitoring of connectors costs more than is saved by complying with the CAR at the rest of the facility, then the owner or operator would likely decide not to use the CAR.

The commenters also noted that removing the requirement for instrument monitoring still has the potential to achieve an overall increase in environmental benefit. By maintaining the status quo with regard to performing sensory inspection for connectors, many subparts V and VV facilities may opt into the CAR. Once in the CAR, they must comply with the CAR's lower leak definitions for valves (500 parts per million (ppm)) and pumps (1,000 ppm for pumps in general service) instead of the referencing subparts' leak definition (10,000 ppm) for this equipment. The lower leak definitions would push the facilities towards better performance, potentially increasing the benefit to the environment.

Response: We agree that initiating instrument monitoring for connectors at a facility currently performing only sensory monitoring presents a significant and unanticipated financial disincentive to using the CAR. Because we believe that having more facilities using the CAR will result in reduced burden for both industry and regulators, we have provided a sensory monitoring option for sources subject only to subparts V and VV to eliminate this disincentive.

We have modified the CAR so that it contains an exemption from the instrument monitoring protocol for connectors referenced from subparts V and VV. It should be noted that the owner or operator may choose to perform instrument monitoring for these connectors if, for example, the owner or operator wanted to have one set of protocols for all the connectors at a facility and some of them were referenced to the CAR from the HON. Instrument monitoring would be required for the connectors referenced from the HON, and it may be simpler to instrument monitor all of the connectors rather than single out some connectors for instrument monitoring and others for sensory inspection.

No degradation of environmental protection results from the CAR requiring sensory monitoring for connectors referenced from subparts V and VV because that is what those two referencing subparts currently require. In fact, as commenters noted, because the CAR consolidates on lower leak definitions for other equipment, environmental protection will potentially be strengthened because subparts V and VV have a 10,000 ppm leak definition.

*D. What Changes Were Made to the Process of Implementing the CAR?*

We clarified the provisions for setting the implementation schedule to specify that the schedule must be set by mutual agreement with the Administrator. This language was also revised to be consistent with the CAR most likely being a minor permit modification to a title V permit. In the proposed CAR, the implementation schedule was to be established in a title V permit. It was meant to require that the regulated source propose the implementation schedule in a title V amendment. The final schedule as approved by the permitting authority would be established in the title V permit. In other words, the permitting authority would signal approval by including the schedule in the title V permit. However,

since the title V amendment is a minor permit modification, there is no real opportunity for the permitting authority's approval. Therefore, the language associated with the implementation schedule was modified to establish the schedule by mutual agreement between the source and the permitting authority outside the title V process.

## III. Other Changes Since Proposal

In addition to those changes discussed in section II of this preamble, we made numerous other, less significant, changes, including editorial changes and corrections to make the rule more clear. Most of these changes were made in response to comment and are discussed in detail in the BID (see the **ADDRESSES** section of this preamble).

## IV. Has EPA Changed Its Approach for Delegating the CAR to State Authorities?

No. Our approach is outlined here and clarification is provided regarding States that do not have delegated authority of the underlying rules but have an approved title V program.

At proposal, we specifically requested comment on this streamlined approach to State delegation. Commenters who commented on delegation were unanimous in support of our approach. They agreed with our rationale and echoed our belief that the approach we outlined will facilitate and expedite delegation and implementation of the CAR.

To avoid impeding the adoption of the CAR, we specified a streamlined approach to implement the CAR using State authorities who have been delegated authority for the referencing subparts. Our approach is based on two steps. First, we intend to recognize the CAR as an alternative compliance approach to the referencing subparts. Second, we intend to waive the need for formal delegation of the CAR where the State is already delegated authority to implement the underlying NSPS or NESHAP. The details and implications of both of these steps are discussed in detail in the proposal preamble (63 FR 57784; October 28, 1998).

One commenter supported an approach that would provide for implementation of the CAR in States with an approved title V program, regardless of whether the State has received formal delegation of the underlying rules. We agree with the commenter that delegation of the CAR could also occur when States have an approved title V program. We recognize that fewer States have accepted delegation of the part 63 rules than the parts 60 and 61 rules. By incorporating the part 63 rules into the title V permit as applicable requirements, the terms and conditions of the part 63 rules become enforceable by the permitting authority through the permit, as if the part 63 rules themselves were delegated. We agree that the CAR could be delegated to permitting authorities with approved title V programs in place; however, there are advantages to obtaining formal delegation of the CAR by the permitting authority. Delegation should be conditioned to ensure the CAR is substantively incorporated unchanged into the permit.

As stated above, there are advantages to accepting formal delegation of the CAR. Permitting authorities that accept formal delegation of the CAR through accepting delegation of the referencing subparts, *i.e.,* the HON (or accept formal delegation of any section 112 requirement), are the clear enforcement authorities. In other words, if the permitting authority does not accept formal delegation of the referencing subparts, then the EPA Regional Office remains the enforcement authority, and sources must submit duplicate reports to both the EPA Regional Office and the permitting authority. Additionally, if the permitting authority accepts formal delegation of the referencing subparts, then the permitting authority can make the discretionary decisions regarding the general provisions authorities. For example, if a source wants to change some facet of its monitoring program, then, in some cases, a permitting authority that has accepted delegation of the CAR will be able to approve this change. See the 40 CFR part 63, subpart E preamble (64 FR 1879; January 12, 1999) for more information.

## V. Has EPA Changed Its Approach for Incorporating CAR Requirements Into the Title V Permit?

No. At proposal, we specifically requested comment on our interpretation of using the minor permit modification mechanism to implement the CAR at title V sources. Commenters agreed and expressed support for our approach. The use of the CAR is subject to mutual agreement with the Administrator, and the title V permit modification is the appropriate mechanism.

The proposal preamble discussed the incorporation of the CAR requirements into the title V permit in detail (63 FR 57786; October 28, 1998). At proposal, we reasoned that of the three mechanisms through which a permit can be modified (administrative amendments, minor permit modification, or significant modifications), a minor permit modification is the correct mechanism to use to incorporate the CAR in most cases. Because the source does not have significant discretion in establishing the specific requirements, adopting the CAR qualifies as a minor permit modification. In cases where the CAR allows significant discretion on the part of the source in determining monitoring, recordkeeping or reporting requirements, and these are being established for the first time through the permit revision process, we would consider this change to be a significant modification to the permit. An example of this type of provision is under § 65.162(e) of 40 CFR part 65, subpart G, which applies to sources who are directed under § 65.154(c)(2) or § 65.155(c)(1) to set unique monitoring parameters.

## VI. Administrative Requirements

### *A. Paperwork Reduction Act*

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1854.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., SW; Washington, DC 20460; by e-mail at *farmer.sandy@epa.gov,* or by calling (202) 260–2740. A copy may also be downloaded from the internet at *http://www.epa.gov/icr.* The information requirements are not enforceable until OMB approves them.

Information is required to ensure compliance with the provisions of the rules. The information collected pursuant to the CAR will be used by Agency enforcement personnel to: (1) identify sources subject to the standards, (2) identify the control methodology being applied, and (3) ensure that the emission control devices are being properly operated and maintained on a continuous basis.

In addition, records and reports are necessary to enable EPA to identify plants that may not be in compliance with the standards. Based on reported information, EPA can decide which plants should be inspected and what records or processes should be inspected at the plants. The records that plants maintain would indicate to EPA whether plant personnel are operating and maintaining control equipment properly.

These recordkeeping and reporting requirements are specifically authorized by section 114 of the Clean Air Act (42 U.S.C. 7414). All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, ''Confidentiality of Business Information.''

The rules require that facility owners or operators retain records for a period of at least 5 years for title V sources, which exceeds the 3-year retention period contained in the guidelines in 5 CFR 1320.6. The 5-year retention period is consistent with the general provisions of 40 CFR part 63, and with the 5-year record retention requirement in the operating permit program under title V of the Act.

Reports are required on a semi-annual basis and as required, such as notification of performance testing. Information to be reported consists of emission data and other information that are not of a sensitive nature. If the relevant information were collected less frequently, the EPA would not be reasonably assured that a source is in compliance with the rules. In addition, the EPA's authority to take administrative action would be reduced significantly. No sensitive personal or proprietary information are being collected.

The burden estimate is an estimate of the recordkeeping and reporting burden that will be incurred by a representative respondent choosing to comply with the CAR. The estimated annual average hour burden for all respondents is about 427,046 hours, or about 5,338 hours per respondent. The estimated annual average cost of this burden is about $23,051,000 for all of the estimated 80 projected respondents. An additional cost for operation and maintenance of monitoring systems and computers is about $32,333,600, for a total cost of about $702,708 per respondent. The estimated annual average hour burden for the Federal government is about 6,600 hours, with an associated cost of about $263,000. These estimates do not include the burden reduction achieved from not having to comply with the referencing subparts. The net burden reduction to the industry is estimated to be about 464,000 hours per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

*B. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulatory action is ''significant'' and therefore subject to 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 Executive Order 12866, OMB has notified EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

*C. Executive Order 13132: Federalism*

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

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule consolidates requirements for existing rules, and will result in no net increase of recordkeeping and reporting to State agencies. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials in developing this rule.

*D. 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. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*E. 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 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA 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 these rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate or the private sector in any 1 year. Thus, today's rules are not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that these rules contain no regulatory requirements that might significantly or uniquely affect small governments. No small government entities have been identified that have involvement with these source categories and, as such, are not covered by the regulatory requirements of the proposed regulations.

*F. Regulatory Flexibility*

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency determines that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

After considering the economic impacts of today's final rule on small entities, EPA has determined that this action will not have a significant economic impact on a substantial number of small entities and therefore a regulatory flexibility analysis was not necessary. This final rule is an optional compliance method and does not introduce any new requirements. Sources, including small entities, may choose to comply with the final rule if they determine that it would be beneficial to do so. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

*G. National Technology Transfer and Advancement Act*

As stated in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs the 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, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The purpose of the NTTAA is to reduce the costs to the private and public sectors by requiring Federal agencies to use existing technical standards used in commerce or industry. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The technical standards promulgated with this final rule are standards that have been proposed and promulgated under other rulemakings for similar source control applicability and compliance determinations. Since today's final rule does not involve the establishment or modification of technical standards, the requirements of the NTTAA do not apply.

*H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA 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.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to

influence the regulation. This final rule is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

*I. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the agency adopting the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted 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 this rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects**

*40 CFR Part 60*

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

*40 CFR Part 61*

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

*40 CFR Part 63*

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

*40 CFR Part 65*

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

Dated: September 20, 2000.

**Carol M. Browner,**

*Administrator.*

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

## PART 60—[AMENDED]

1. The authority citation for part 60 is revised to read as follows:

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

## Subpart A—General Provisions

### § 60.17 [Amended]

1a. Amend § 60.17 as follows:

a. In paragraph (a)(12), remove ''98,'';

b. In paragraph (a)(13), remove ''95,'' and ''97,'';

c. In paragraph (a)(14), remove, ''98,'';

d. In paragraph (a)(19), add ''(Reapproved 1980)'' after ''D1475–60'' and remove ''80,'';

e. In paragraph (a)(22), remove ''82,86,'';

f. In paragraph (a)(28), remove ''97a,''; and

g. In paragraph (a)(47), add ''Test'' after ''Standard''.

## Subpart Ka—Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984

2. Section 60.110a is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

### § 60.110a Applicability and designation of affected facility.

(a) *Affected facility.* Except as provided in paragraph (b) of this section, the affected facility to which this subpart applies is each storage vessel with a storage capacity greater than 151,416 liters (40,000 gallons) that is used to store petroleum liquids for which construction is commenced after May 18, 1978.

* * * * *

(c) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators may choose to comply with 40 CFR part 65, subpart C, to satisfy the requirements of §§ 60.112a through 60.114a for storage vessels that are subject to this subpart that store petroleum liquids that, as stored, have a maximum true vapor pressure equal to or greater than 10.3 kPa (1.5 psia). Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 60, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart C, must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.7(a)(1) and (4), 60.14, 60.15, and 60.16 for those storage vessels. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (c)(2) do not apply to owners or operators of storage vessels complying with 40 CFR part 65, subpart C, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart C, must comply with 40 CFR part 65, subpart A.

3. Section 60.115a is amended by revising paragraph (d)(2) to read as follows:

### § 60.115a Monitoring of operations.

* * * * *

(d) * * *

(2) The owner or operator of each storage vessel equipped with a vapor recovery and return or disposal system in accordance with the requirements of § 60.112a(a)(3) and (b), or a closed vent system and control device meeting the specifications of 40 CFR 65.42(b)(4), (b)(5), or (c).

## Subpart Kb—Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984

4. Section 60.110b is amended by adding paragraph (e) to read as follows:

### § 60.110b Applicability and designation of affected facility.

* * * * *

(e) *Alternative means of compliance.*—(1) *Option to comply with part 65.* Owners or operators may choose to comply with 40 CFR part 65, subpart C, to satisfy the requirements of §§ 60.112b through 60.117b for storage vessels that are subject to this subpart that meet the specifications in paragraphs (e)(1)(i) and (ii) of this section. When choosing to comply with 40 CFR part 65, subpart C, the monitoring requirements of § 60.116b(c), (e), (f)(1), and (g) still apply. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(i) A storage vessel with a design capacity greater than or equal to 151 $m^3$ containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 5.2 kPa; or

(ii) A storage vessel with a design capacity greater than 75 $m^3$ but less than 151 $m^3$ containing a VOL that, as stored, has a maximum true vapor pressure equal to or greater than 27.6 kPa.

(2) *Part 60, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart C, must also

comply with §§ 60.1, 60.2, 60.5, 60.6, 60.7(a)(1) and (4), 60.14, 60.15, and 60.16 for those storage vessels. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (e)(2) do not apply to owners or operators of storage vessels complying with 40 CFR part 65, subpart C, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart C, must comply with 40 CFR part 65, subpart A.

(3) *Internal floating roof report.* If an owner or operator installs an internal floating roof and, at initial startup, chooses to comply with 40 CFR part 65, subpart C, a report shall be furnished to the Administrator stating that the control equipment meets the specifications of 40 CFR 65.43. This report shall be an attachment to the notification required by 40 CFR 65.5(b).

(4) *External floating roof report.* If an owner or operator installs an external floating roof and, at initial startup, chooses to comply with 40 CFR part 65, subpart C, a report shall be furnished to the Administrator stating that the control equipment meets the specifications of 40 CFR 65.44. This report shall be an attachment to the notification required by 40 CFR 65.5(b).

5. Section 60.116b is amended by revising paragraph (g) to read as follows:

**§ 60.116b Monitoring of operations.**

* * * * *

(g) The owner or operator of each vessel equipped with a closed vent system and control device meeting the specification of § 60.112b or with emissions reductions equipment as specified in 40 CFR 65.42(b)(4), (b)(5), (b)(6), or (c) is exempt from the requirements of paragraphs (c) and (d) of this section.

## Subpart VV—Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry

6. Section 60.480 is amended by adding paragraph (e) to read as follows:

**§ 60.480 Applicability and designation of affected facility.**

* * * * *

(e) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators may choose to comply with the provisions of 40 CFR part 65, subpart F, to satisfy the requirements of §§ 60.482 through 60.487 for an affected facility. When choosing to comply with 40 CFR part 65, subpart F, the requirements of § 60.485(d), (e), and (f), and § 60.486(i) and (j) still apply. Other provisions applying to an owner or operator who chooses to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 60, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart F must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.7(a)(1) and (4), 60.14, 60.15, and 60.16 for that equipment. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (e)(2) do not apply to owners or operators of equipment subject to this subpart complying with 40 CFR part 65, subpart F, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart F, must comply with 40 CFR part 65, subpart A.

7. Section 60.481 is amended by revising the definition of ''Closed vent system'' and adding in alphabetical order the definitions of ''Duct work,'' ''Fuel gas,'' ''Fuel gas system,'' ''Hard-piping,'' and ''Sampling connection system,'' to read as follows:

**§ 60.481 Definitions.**

* * * * *

*Closed vent system* means a system that is not open to the atmosphere and that is composed of hard-piping, ductwork, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device or back to a process.

* * * * *

*Duct work* means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

* * * * *

*Fuel gas* means gases that are combusted to derive useful work or heat.

*Fuel gas system* means the offsite and onsite piping and flow and pressure control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices or in-process combustion equipment, such as furnaces and gas turbines, either singly or in combination.

*Hard-piping* means pipe or tubing that is manufactured and properly installed using good engineering judgement and standards such as ASME B31.3, Process Piping (available from the American Society of Mechanical Engineers, PO Box 2900, Fairfield, NJ 07007–2900).

* * * * *

*Sampling connection system* means an assembly of equipment within a process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take nonroutine grab samples is not considered a sampling connection system.

* * * * *

8. Section 60.482–1 is amended by revising paragraph (a) to read as follows:

**§ 60.482–1 Standards: General.**

(a) Each owner or operator subject to the provisions of this subpart shall demonstrate compliance with the requirements of §§ 60.482–1 through 60.482–10 or § 60.480(e) for all equipment within 180 days of initial startup.

* * * * *

9. Section 60.482–2 is amended by:

a. Revising paragraph (d)(1)(ii);

b. Revising paragraph (f);

c. Adding paragraph (g); and

d. Adding paragraph (h).

The revisions and additions read as follows:

**§ 60.482–2 Standards: Pumps in light liquid service.**

* * * * *

(d) * * *

(1) * * *

(ii) Equipment with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed vent system to a control device that complies with the requirements of § 60.482–10; or

* * * * *

(f) If any pump is equipped with a closed vent system capable of capturing and transporting any leakage from the seal or seals to a process or to a fuel gas system or to a control device that complies with the requirements of § 60.482–10, it is exempt from paragraphs (a) through (e) of this section.

(g) Any pump that is designated, as described in § 60.486(f)(1), as an unsafe-to-monitor pump is exempt from the monitoring and inspection requirements of paragraphs (a) and (d)(4) through (6) of this section if:

(1) The owner or operator of the pump demonstrates that the pump is unsafe-to-monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section; and

(2) The owner or operator of the pump has a written plan that requires

monitoring of the pump as frequently as practicable during safe-to-monitor times but not more frequently than the periodic monitoring schedule otherwise applicable, and repair of the equipment according to the procedures in paragraph (c) of this section if a leak is detected.

(h) Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (a)(2) and (d)(4) of this section, and the daily requirements of paragraph (d)(5) of this section, provided that each pump is visually inspected as often as practicable and at least monthly.

10. Section 60.482–3 is amended by revising paragraphs (b)(2) and (h) to read as follows:

**§ 60.482–3 Standards: Compressors.**

* * * * *

(b) * * *

(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system or connected by a closed vent system to a control device that complies with the requirements of § 60.482–10; or

* * * * *

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section, if it is equipped with a closed vent system to capture and transport leakage from the compressor drive shaft back to a process or fuel gas system or to a control device that complies with the requirements of § 60.482–10, except as provided in paragraph (i) of this section.

* * * * *

11. Section 60.482–4 is amended by revising paragraph (c), and adding paragraph (d) to read as follows:

**§ 60.482–4 Standards: Pressure relief devices in gas/vapor service.**

* * * * *

(c) Any pressure relief device that is routed to a process or fuel gas system or equipped with a closed vent system capable of capturing and transporting leakage through the pressure relief device to a control device as described in § 60.482–10 is exempted from the requirements of paragraphs (a) and (b) of this section.

(d)(1) Any pressure relief device that is equipped with a rupture disk upstream of the pressure relief device is exempt from the requirements of paragraphs (a) and (b) of this section, provided the owner or operator complies with the requirements in paragraph (d)(2) of this section.

(2) After each pressure release, a new rupture disk shall be installed upstream of the pressure relief device as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in § 60.482–9.

12. Section 60.482–5 is amended by:

a. Revising paragraph (a);

b. Revising the introductory text to paragraph (b);

c. In paragraph (b)(3), removing the period and adding ''; or'' in it's place; and

d. Adding paragraph (b)(4).

The revisions and addition read as follows:

**§ 60.482–5 Standards: Sampling connection systems.**

(a) Each sampling connection system shall be equipped with a closed-purged, closed-loop, or closed-vent system, except as provided in § 60.482–1(c). Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed-vent system as required in paragraph (a) of this section shall comply with the requirements specified in paragraphs (b)(1) through (4) of this section:

* * * * *

(4) Collect, store, and transport the purged process fluid to any of the following systems or facilities:

(i) A waste management unit as defined in 40 CFR 63.111, if the waste management unit is subject to, and operated in compliance with the provisions of 40 CFR part 63, subpart G, applicable to Group 1 wastewater streams;

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR part 262, 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261.

* * * * *

13. Section 60.482–6 is amended by adding paragraphs (d) and (e) to read as follows:

**§ 60.482–6 Standards: Open-ended valves or lines.**

* * * * *

(d) Open-ended valves or lines in an emergency shutdown system which are designed to open automatically in the event of a process upset are exempt from the requirements of paragraphs (a), (b) and (c) of this section.

(e) Open-ended valves or lines containing materials which would autocatalytically polymerize or would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraphs (a) through (c) of this section are exempt from the requirements of paragraphs (a) through (c) of this section.

14. Section 60.482–8 is amended by revising the section heading and paragraph (a) to read as follows:

**§ 60.482–8 Standards: Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and connectors.**

(a) If evidence of a potential leak is found by visual, audible, olfactory, or any other detection method at pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and connectors, the owner or operator shall follow either one of the following procedures:

(1) The owner or operator shall monitor the equipment within 5 days by the method specified in § 60.485(b) and shall comply with the requirements of paragraphs (b) through (d) of this section.

(2) The owner or operator shall eliminate the visual, audible, olfactory, or other indication of a potential leak.

* * * * *

15. Section 60.482–9 is amended by revising paragraph (a) to read as follows:

**§ 60.482–9 Standards: Delay of repair.**

(a) Delay of repair of equipment for which leaks have been detected will be allowed if repair within 15 days is technically infeasible without a process unit shutdown. Repair of this equipment shall occur before the end of the next process unit shutdown.

* * * * *

16. Section 60.482–10 is amended by revising paragraphs (b) and (c) to read as follows:

**§ 60.482–10 Standards: Closed vent systems and control devices.**

* * * * *

(b) Vapor recovery systems (for example, condensers and absorbers) shall be designed and operated to recover the VOC emissions vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, whichever is less stringent.

(c) Enclosed combustion devices shall be designed and operated to reduce the VOC emissions vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent or to provide a minimum residence time of 0.75

seconds at a minimum temperature of 816 °C.

* * * * *

17. Section 60.483–1 is amended by revising paragraph (b)(1) to read as follows:

**§ 60.483–1 Alternative standards for valves—allowable percentage of valves leaking.**

* * * * *

(b) * * *

(1) An owner or operator must notify the Administrator that the owner or operator has elected to comply with the allowable percentage of valves leaking before implementing this alternative standard, as specified in § 60.487(d).

* * * * *

18. Section 60.483–2 is amended by revising paragraph (a)(2) to read as follows:

**§ 60.483–2 Alternative standards for valves—skip period leak detection and repair.**

(a) * * *

(2) An owner or operator must notify the Administrator before implementing one of the alternative work practices, as specified in § 60.487(d).

* * * * *

19. Section 60.486 is amended by revising paragraphs (f) introductory text and (f)(1) to read as follows:

**§ 60.486 Recordkeeping requirements.**

(f) The following information pertaining to all valves subject to the requirements of § 60.482–7(g) and (h) and to all pumps subject to the requirements of § 60.482–2(g) shall be recorded in a log that is kept in a readily accessible location:

(1) A list of identification numbers for valves and pumps that are designated as unsafe-to-monitor, an explanation for each valve or pump stating why the valve or pump is unsafe-to-monitor, and the plan for monitoring each valve or pump.

* * * * *

## Subpart DDD—Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Polymer Manufacturing Industry

* * * * *

20. Section 60.560 is amended by adding paragraph (j) before the note to read as follows:

**§ 60.560 Applicability and designation of affected facilities.**

* * * * *

(j) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators may choose to comply with 40 CFR part 65, subpart G, for continuous process vents that are subject to this subpart, that choose to comply with § 60.562–1(a)(1)(i)(A), (B), or (C) as allowed in § 60.562–1(a)(1) and (b)(1)(iii). The requirements of 40 CFR part 65, subpart G, satisfy the requirements of paragraph (c) of this section and §§ 60.563 through 60.566, except for § 60.565(g)(1). Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 60, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart G, must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.7(a)(1) and (4), 60.14, 60.15, and 60.16 for those process vents. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (j)(2) do not apply to owners or operators of process vents complying with 40 CFR part 65, subpart G, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart G, must comply with 40 CFR part 65, subpart A.

(3) *Initial startup notification.* Each owner or operator subject to the provisions of this subpart that chooses to comply with 40 CFR part 65, subpart G, at initial startup shall notify the Administrator of the specific provisions of 40 CFR part 65, subpart G, with which the owner or operator has elected to comply. Notification shall be submitted with the notification of initial startup required by 40 CFR 65.5(b).

* * * * *

21. Section 60.565 is amended by revising paragraph (g) introductory text to read as follows:

**§ 60.565 Reporting and recordkeeping requirements.**

* * * * *

(g) Each owner or operator of an affected facility subject to the provisions of this subpart and seeking to demonstrate compliance with § 60.560(j) or § 60.562–1 shall keep up-to-date, readily accessible records of:

* * * * *

## Subpart III—Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes

22. Section 60.610 is amended by adding paragraph (d) before the note to read as follows:

**§ 60.610 Applicability and designation of affected facility.**

* * * * *

(d) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators of process vents that are subject to this subpart may choose to comply with the provisions of 40 CFR part 65, subpart D, to satisfy the requirements of §§ 60.612 through 60.615 and 60.618. The provisions of 40 CFR part 65 also satisfy the criteria of paragraph (c) of this section. Other provisions applying to an owner or operator who chooses to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 60, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart D, must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.7(a)(1) and (4), 60.14, 60.15, and 60.16 for those process vents. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (d)(2) do not apply to owners or operators of process vents complying with 40 CFR part 65, subpart D, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart D, must comply with 40 CFR part 65, subpart A.

(3) *Compliance date.* Owners or operators who choose to comply with 40 CFR part 65, subpart D, at initial startup shall comply with paragraphs (d)(1) and (2) of this section for each vent stream on and after the date on which the initial performance test is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial startup, whichever date comes first.

(4) *Initial startup notification.* Each owner or operator subject to the provisions of this subpart that chooses to comply with 40 CFR part 65, subpart D, at initial startup shall notify the Administrator of the specific provisions of 40 CFR 65.63(a)(1), (2), or (3) with which the owner or operator has elected to comply. Notification shall be submitted with the notifications of initial startup required by 40 CFR 65.5(b).

* * * * *

## Subpart NNN—Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations

23. Section 60.660 is amended by adding paragraph (d) before the note to read as follows:

### § 60.660 Applicability and designation of affected facility.

* * * * *

(d) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators of process vents that are subject to this subpart may choose to comply with the provisions of 40 CFR part 65, subpart D, to satisfy the requirements of §§ 60.662 through 60.665 and 60.668. The provisions of 40 CFR part 65 also satisfy the criteria of paragraphs (c)(4) and (6) of this section. Other provisions applying to an owner or operator who chooses to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 60, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart D, must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.7(a)(1) and (4), 60.14, 60.15, and 60.16 for those process vents. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (d)(2) do not apply to owners or operators of process vents complying with 40 CFR part 65, subpart D, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart D, must comply with 40 CFR part 65, subpart A.

(3) *Compliance date.* Owners or operators who choose to comply with 40 CFR part 65, subpart D, at initial startup shall comply with paragraphs (d)(1) and (2) of this section for each vent stream on and after the date on which the initial performance test is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial startup, whichever date comes first.

(4) *Initial startup notification.* Each owner or operator subject to the provisions of this subpart that chooses to comply with 40 CFR part 65, subpart D, at initial startup shall notify the Administrator of the specific provisions of 40 CFR 65.63(a)(1), (2), or (3), with which the owner or operator has elected to comply. Notification shall be submitted with the notifications of initial startup required by 40 CFR 65.5(b).

* * * * *

24. Section 60.665 is amended by revising paragraph (l)(6) to read as follows:

### § 60.665 Reporting and recordkeeping requirements.

* * * * *

(l) * * *

(6) Any change in equipment or process operation, as recorded under paragraph (j) of this section, that increases the design production capacity above the low capacity exemption level in § 60.660(c)(5) and the new capacity resulting from the change for the distillation process unit containing the affected facility. These must be reported as soon as possible after the change and no later than 180 days after the change. These reports may be submitted either in conjunction with semiannual reports or as a single separate report. A performance test must be completed within the same time period to obtain the vent stream flow rate, heating value, and $E_{TOC}$. The performance test is subject to the requirements of § 60.8. The facility must begin compliance with the requirements set forth in § 60.660(d) or § 60.662. If the facility chooses to comply with § 60.662, the facility may qualify for an exemption in § 60.660(c)(4) or (6).

* * * * *

## Subpart RRR—Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes

25. Section 60.700 is amended by adding paragraph (d) before the note to read as follows:

### § 60.700 Applicability and designation of affected facility.

* * * * *

(d) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators of process vents that are subject to this subpart may choose to comply with the provisions of 40 CFR part 65, subpart D, to satisfy the requirements of §§ 60.702 through 60.705 and 60.708. The provisions of 40 CFR part 65 also satisfy the criteria of paragraphs (c)(2), (4), and (8) of this section. Other provisions applying to an owner or operator who chooses to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 60, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart D, must also comply with §§ 60.1, 60.2, 60.5, 60.6, 60.7(a)(1) and (4), 60.14, 60.15, and 60.16 for those process vents. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (d)(2) do not apply to owners or operators of process vents complying with 40 CFR part 65, subpart D, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart D, must comply with 40 CFR part 65, subpart A.

(3) *Compliance date.* Owners or operators who choose to comply with 40 CFR part 65, subpart D at initial startup shall comply with paragraphs (d)(1) and (2) of this section for each vent stream on and after the date on which the initial performance test is completed, but not later than 60 days after achieving the maximum production rate at which the affected facility will be operated, or 180 days after the initial startup, whichever date comes first.

(4) *Initial startup notification.* Each owner or operator subject to the provisions of this subpart that chooses to comply with 40 CFR part 65, subpart D, at initial startup shall notify the Administrator of the specific provisions of 40 CFR 65.63(a)(1), (2), or (3), with which the owner or operator has elected to comply. Notification shall be submitted with the notifications of initial startup required by 40 CFR 65.5(b).

* * * * *

26. Section 60.705 is amended by revising paragraph (1)(5) to read as follows:

### § 60.705 Reporting and recordkeeping requirements.

* * * * *

(l) * * *

(5) Any change in equipment or process operation, as recorded under paragraph (i) of this section, that increases the design production capacity above the low capacity exemption level in § 60.700(c)(3) and the new capacity resulting from the change for the reactor process unit containing the affected facility. These must be reported as soon as possible after the change and no later than 180 days after the change. These reports may be submitted either in conjunction with semiannual reports or as a single separate report. A performance test must be completed within the same time period to obtain the vent stream flow rate, heating value, and $E_{TOC}$. The performance test is subject to the requirements of § 60.8. The facility must begin compliance with the requirements set forth in § 60.702 or § 60.700(d). If the

facility chooses to comply with § 60.702, the facility may qualify for an exemption under § 60.700(c)(2), (4), or (8).

* * * * *

## PART 61—[AMENDED]

27. The authority citation for part 61 is revised to read as follows:

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

## Subpart A—General Provisions

28. Amend § 61.18 as follows:

a. In paragraph (a)(5), add ''Standard Test Method for'' after ''88,'';

b. In paragraph (a)(8), add ''(Reapproved 1993)'' after ''88'' and remove ''93,'';

c. Redesignate paragraphs (a)(9) through (a)(13) as paragraphs (a)(10) through (a)(14);

d. Add new paragraph (a)(9); and

e. Add paragraph (e).

The additions read as follows:

### § 61.18 Incorporations by reference.

(a) * * *

(9) ASTM D2879–83, Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope, IBR approved December 14, 2000 for § 61.241.

* * * * *

(e) The materials listed in this paragraph (e) are available for purchase from the American Petroleum Institute (API), 1220 L Street, NW., Washington, DC 20005.

(1) API Publication 2517, Evaporative Loss from External Floating-Roof Tanks, Third Edition. February 1989. IBR approved December 14, 2000 for § 61.241.

(2) [Reserved]

## Subpart J—National Emission Standard for Equipment Leaks (Fugitive Emission Sources) of Benzene

29. Section 61.110 is amended by revising paragraph (a) to read as follows:

### § 61.110 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following sources that are intended to operate in benzene service: pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, and control devices or systems required by this subpart.

* * * * *

## Subpart V—National Emission Standard for Equipment Leaks (Fugitive Emission Sources)

30. Section 61.240 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

### § 61.240 Applicability and designation of sources.

(a) The provisions of this subpart apply to each of the following sources that are intended to operate in volatile hazardous air pollutant (VHAP) service: pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, and control devices or systems required by this subpart.

* * * * *

(d) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators may choose to comply with 40 CFR part 65 to satisfy the requirements of §§ 61.242–1 through 61.247 for equipment that is subject to this subpart and that is part of the same process unit. When choosing to comply with 40 CFR part 65, the requirements of §§ 61.245(d) and 61.246(i) and (j) still apply. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 65, subpart C or F.* For owners or operators choosing to comply with 40 CFR part 65, each surge control vessel and bottoms receiver subject to this subpart that meets the conditions specified in table 1 or table 2 of this subpart shall meet the requirements for storage vessels in 40 CFR part 65, subpart C; all other equipment subject to this subpart shall meet the requirements in 40 CFR part 65, subpart F.

(3) *Part 61, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart C or F, must also comply with §§ 61.01, 61.02, 61.05 through 61.08, 61.10(b) through (d), 61.11, and 61.15 for that equipment. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (d)(3) do not apply to owners or operators of equipment subject to this subpart complying with 40 CFR part 65, subpart C or F, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart C or F, must comply with 40 CFR part 65, subpart A.

(4) *Rules referencing this subpart.* Owners or operators referenced to this subpart from subpart F or J of this part may choose to comply with 40 CFR part 65 for all equipment listed in paragraph (a) of this section.

31. Section 61.241 is amended by revising the definitions of ''*Closed-vent system*'' and ''*Equipment*,'' adding in alphabetical order the definitions of ''*Bottoms receiver*,'' ''*Duct work*,'' ''*Fuel gas*,'' ''*Fuel gas system*,'' ''*Hard-piping*,'' ''*Maximum true vapor pressure*,'' ''*Sampling connection system*,'' and ''*Surge control vessel*,'' and removing the definition of ''*Product accumulator vessel*'' to read as follows:

### § 61.241 Definitions.

* * * * *

*Bottoms receiver* means a tank that collects distillation bottoms before the stream is sent for storage or for further downstream processing.

*Closed-vent system* means a system that is not open to atmosphere and that is composed of hard-piping, ductwork, connections, and, if necessary, flow-inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device or back to a process.

* * * * *

*Duct work* means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

*Equipment* means each pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, surge control vessel, bottoms receiver in VHAP service, and any control devices or systems required by this subpart.

* * * * *

*Fuel gas* means gases that are combusted to derive useful work or heat.

*Fuel gas system* means the offsite and onsite piping and flow and pressure control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices or in-process combustion equipment, such as furnaces and gas turbines, either singly or in combination.

*Hard-piping* means pipe or tubing that is manufactured and properly installed using good engineering judgement and standards such as ASME B31.3, Process Piping (available from the American Society of Mechanical Engineers, PO Box 2900, Fairfield, NJ 07007–2900).

* * * * *

*Maximum true vapor pressure* means the equilibrium partial pressure exerted by the total VHAP in the stored or

transferred liquid at the temperature equal to the highest calendar-month average of the liquid storage or transfer temperature for liquids stored or transferred above or below the ambient temperature or at the local maximum monthly average temperature as reported by the National Weather Service for liquids stored or transferred at the ambient temperature, as determined:

(1) In accordance with methods described in American Petroleum Institute Publication 2517, Evaporative Loss From External Floating-Roof Tanks (incorporated by reference as specified in § 61.18); or

(2) As obtained from standard reference texts; or

(3) As determined by the American Society for Testing and Materials Method D2879–83, Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope (incorporated by reference as specified in § 61.18); or

(4) Any other method approved by the Administrator.

* * * * *

*Sampling connection system* means an assembly of equipment within a process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take non-routine grab samples is not considered a sampling connection system.

* * * * *

*Surge control vessel* means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a process unit when in-process storage, mixing, or management of flow rates of volumes is needed on a recurring or ongoing basis to assist in production of a product.

* * * * *

32. Section 61.242–2 is amended by:

a. Redesignating paragraph (g) as paragraph (h);

b. Revising paragraph (a)(1);

c. Revising paragraph (d)(1)(ii);

d. Revising paragraph (f);

e. Adding new paragraph (g); and

f. Revising newly designated paragraph (h).

The revisions and addition read as follows:

**§ 61.242–2 Standards: Pumps.**

(a)(1) Each pump shall be monitored monthly to detect leaks by the methods specified in § 61.245(b), except as provided in § 61.242–1(c) and paragraphs (d), (e), (f) and (g) of this section.

* * * * *

(d) * * *

(1) * * *

(ii) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that complies with the requirements of § 61.242–11; or

* * * * *

(f) If any pump is equipped with a closed-vent system capable of capturing and transporting any leakage from the seal or seals to a process or fuel gas system or to a control device that complies with the requirements of § 61.242–11, it is exempt from the requirements of paragraphs (a) through (e) of this section.

(g) Any pump that is designated, as described in § 61.246(f)(1), as an unsafe-to-monitor pump is exempt from the monitoring and inspection requirements of paragraphs (a) and (d)(4) through (6) of this section if:

(1) The owner or operator of the pump demonstrates that the pump is unsafe-to-monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraph (a) of this section; and

(2) The owner or operator of the pump has a written plan that requires monitoring of the pump as frequently as practicable during safe-to-monitor times but not more frequently than the periodic monitoring schedule otherwise applicable, and repair of the equipment according to the procedures in paragraph (c) of this section if a leak is detected.

(h) Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (a)(2) and (d)(4) of this section, and the daily requirements of paragraph (d)(5) of this section, provided that each pump is visually inspected as often as practicable and at least monthly.

33. Section 61.242–3 is amended by revising paragraphs (b)(2) and (h) to read as follows:

**§ 61.242–3 Standards: Compressors.**

* * * * *

(b) * * *

(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system or connected by a closed-vent system to a control device that complies with the requirements of § 61.242–11; or

* * * * *

(h) A compressor is exempt from the requirements of paragraphs (a) and (b) of this section if it is equipped with a closed-vent system to capture and transport leakage from the compressor drive shaft back to a process or fuel gas system or to a control device that complies with the requirements of § 61.242–11, except as provided in paragraph (i) of this section.

* * * * *

34. Section 61.242–4 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

**§ 61.242–4 Standards: Pressure relief devices in gas/vapor service.**

* * * * *

(c) Any pressure relief device that is routed to a process or fuel gas system or equipped with a closed-vent system capable of capturing and transporting leakage from the pressure relief device to a control device as described in § 61.242–11 is exempt from the requirements of paragraphs (a) and (b) of this section.

(d)(1) Any pressure relief device that is equipped with a rupture disk upstream of the pressure relief device is exempt from the requirements of paragraphs (a) and (b) of this section, provided the owner or operator complies with the requirements in paragraph (d)(2) of this section.

(2) After each pressure release, a new rupture disk shall be installed upstream of the pressure relief device as soon as practicable, but no later than 5 calendar days after each pressure release, except as provided in § 61.242–10.

35. Section 61.242–5 is revised to read as follows:

**§ 61.242–5 Standards: Sampling connecting systems.**

(a) Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed vent system, except as provided in § 61.242–1(c). Gases displaced during filling of the sample container are not required to be collected or captured.

(b) Each closed-purge, closed-loop, or closed vent system as required in paragraph (a) of this section shall comply with the requirements specified in paragraphs (b)(1) through (4) of this section:

(1) Return the purged process fluid directly to the process line; or

(2) Collect and recycle the purged process fluid; or

(3) Be designed and operated to capture and transport all the purged process fluid to a control device that complies with the requirements of § 61.242–11; or

(4) Collect, store, and transport the purged process fluid to any of the following systems or facilities:

(i) A waste management unit as defined in 40 CFR 63.111 if the waste

management unit is subject to and operated in compliance with the provisions of 40 CFR part 63, subpart G, applicable to Group 1 wastewater streams; or

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR part 262, 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261.

(c) In-situ sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (a) and (b) of this section.

36. Section 61.242–6 is amended by adding paragraphs (d) and (e) to read as follows:

**§ 61.242–6 Standards: Open-ended valves or lines.**

* * * * *

(d) Open-ended valves or lines in an emergency shutdown system which are designed to open automatically in the event of a process upset are exempt from the requirements of paragraphs (a), (b) and (c) of this section.

(e) Open-ended valves or lines containing materials which would autocatalytically polymerize or would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraphs (a) through (c) of this section are exempt from the requirements of paragraphs (a) through (c) of this section.

37. Section 61.242–8 is amended by revising the section heading and paragraph (a) to read as follows:

**§ 61.242–8 Standards: Pressure relief services in liquid service and connectors.**

(a) If evidence of a potential leak is found by visual, audible, olfactory, or any other detection method at pressure relief devices in liquid service and connectors, the owner or operator shall follow either one of the following procedures, except as provided in § 61.242–1(c):

(1) The owner or operator shall monitor the equipment within 5 days by the method specified in § 61.245(b) and shall comply with the requirements of paragraphs (b) through (d) of this section.

(2) The owner or operator shall eliminate the visual, audible, olfactory, or other indication of a potential leak.

* * * * *

38. Section 61.242–9 is revised to read as follows:

**§ 61.242–9 Standards: Surge control vessels and bottoms receivers.**

Each surge control vessel or bottoms receiver that is not routed back to the process and that meets the conditions specified in table 1 or table 2 of this subpart shall be equipped with a closed-vent system capable of capturing and transporting any leakage from the vessel back to the process or to a control device as described in § 61.242–11, except as provided in § 61.242–1(c); or comply with the requirements of 40 CFR 63.119(b) or (c).

39. Section 61.242–10 is amended by revising paragraph (a) to read as follows:

**§ 61.242–10 Standards: Delay of repair.**

(a) Delay of repair of equipment for which leaks have been detected will be allowed if repair within 15 days is technically infeasible without a process unit shutdown. Repair of this equipment shall occur before the end of the next process unit shutdown.

* * * * *

40. Section 61.242–11 is amended by:

a. Revising paragraph (b);
b. Revising paragraph (c);
c. Revising paragraph (f);
d. Revising paragraph (g);
e. Adding paragraph (h);
f. Adding paragraph (i);
g. Adding paragraph (j);
h. Adding paragraph (k);
i. Adding paragraph (l); and
j. Adding paragraph (m).

The revisions and additions read as follows:

**§ 61.242–11 Standards: Closed-vent systems and control devices.**

* * * * *

(b) Vapor recovery systems (for example, condensers and absorbers) shall be designed and operated to recover the organic vapors vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, whichever is less stringent.

(c) Enclosed combustion devices shall be designed and operated to reduce the VHAP emissions vented to them with an efficiency of 95 percent or greater, or to an exit concentration of 20 parts per million by volume, on a dry basis, corrected to 3 percent oxygen, whichever is less stringent, or to provide a minimum residence time of 0.50 seconds at a minimum temperature of 760 °C.

* * * * *

(f) Except as provided in paragraphs (i) through (k) of this section, each closed vent system shall be inspected according to the procedures and schedule specified in paragraph (f)(1) or (2) of this section, as applicable.

(1) If the vapor collection system or closed vent system is constructed of hard-piping, the owner or operator shall comply with the following requirements:

(i) Conduct an initial inspection according to the procedures in § 61.245(b); and

(ii) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(2) If the vapor collection system or closed vent system is constructed of ductwork, the owner or operator shall:

(i) Conduct an initial inspection according to the procedures in § 61.245(b); and

(ii) Conduct annual inspections according to the procedures in § 61.245(b).

(g) Leaks, as indicated by an instrument reading greater than 500 parts per million by volume above background or by visual inspections, shall be repaired as soon as practicable except as provided in paragraph (h) of this section.

(1) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(2) Repair shall be completed no later than 15 calendar days after the leak is detected.

(h) Delay of repair of a closed vent system for which leaks have been detected is allowed if the repair is technically infeasible without a process unit shutdown, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair. Repair of such equipment shall be complete by the end of the next process unit shutdown.

(i) If a vapor collection system or closed vent system is operated under a vacuum, it is exempt from the inspection requirements of paragraphs (f)(1)(i) and (2) of this section.

(j) Any parts of the closed vent system that are designated, as described in paragraph (l)(1) of this section, as unsafe-to-inspect are exempt from the inspection requirements of paragraphs (f)(1)(i) and (2) of this section if they comply with the following requirements:

(1) The owner or operator determines that the equipment is unsafe-to-inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (f)(1)(i) or (2) of this section; and

(2) The owner or operator has a written plan that requires inspection of the equipment as frequently as practicable during safe-to-inspect times.

(k) Any parts of the closed vent system that are designated, as described in paragraph (l)(2) of this section, as difficult-to-inspect are exempt from the inspection requirements of paragraphs (f)(1)(i) and (2) of this section if they comply with the following requirements:

(1) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters above a support surface; and

(2) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years. A closed vent system is exempt from inspection if it is operated under a vacuum.

(l) The owner or operator shall record the following information:

(1) Identification of all parts of the closed vent system that are designated as unsafe-to-inspect, an explanation of why the equipment is unsafe-to-inspect, and the plan for inspecting the equipment.

(2) Identification of all parts of the closed vent system that are designated as difficult-to-inspect, an explanation of why the equipment is difficult-to-inspect, and the plan for inspecting the equipment.

(3) For each inspection during which a leak is detected, a record of the information specified in § 61.246(c).

(4) For each inspection conducted in accordance with § 61.245(b) during which no leaks are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(5) For each visual inspection conducted in accordance with paragraph (f)(1)(ii) of this section during which no leaks are detected, a record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(m) Closed vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

41. Section 61.246 is amended by revising paragraph (f) introductory text and revising paragraph (f)(1) to read as follows:

**§ 61.246 Recordkeeping requirements.**

* * * * *

(f) The following information pertaining to all valves subject to the requirements of § 61.242–7(g) and (h) and to all pumps subject to the requirements of § 61.242–2(g) shall be recorded in a log that is kept in a readily accessible location:

(1) A list of identification numbers for valves and pumps that are designated as unsafe to monitor, an explanation for each valve or pump stating why the valve or pump is unsafe to monitor, and the plan for monitoring each valve or pump.

* * * * *

42. Section 61.247 is amended by:

a. Revising paragraph (a)(3);

b. Redesignating paragraph (a)(4) as paragraph (a)(5);

c. Adding new paragraph (a)(4);

d. Revising paragraph (e)(3); and

e. Adding paragraph (f).

The revisions and additions read as follows.

**§ 61.247 Reporting requirements.**

(a) * * *

(3) In the case of new sources which did not have an initial startup date preceding December 14, 2000, the statement required under paragraph (a)(1) of this section shall be submitted with the application for approval of construction, as described in § 61.07.

(4) For owners and operators complying with 40 CFR part 65, subpart C or F, the statement required under paragraph (a)(1) of this section shall notify the Administrator that the requirements of 40 CFR part 65, subpart C or F, are being implemented.

* * * * *

(e) * * *

(3) In the next semiannual report required by paragraph (b) of this section, the information in paragraph (a)(5) of this section is reported.

(f) For owners or operators choosing to comply with 40 CFR part 65, subpart C or F, an application for approval of construction or modification, as required under §§ 61.05 and 61.07 will not be required if:

(1) The new source complies with 40 CFR 65.106 through 65.115 and with 40 CFR part 65, subpart C, for surge control vessels and bottoms receivers;

(2) The new source is not part of the construction of a process unit; and

(3) In the next semiannual report required by 40 CFR 65.120(b) and 65.48(b), the information in paragraph (a)(5) of this section is reported.

43. Tables 1 and 2 are added to the end of subpart V to read as follows:

TABLE 1 TO PART 61, SUBPART V.—SURGE CONTROL VESSELS AND BOTTOMS RECEIVERS AT EXISTING SOURCES

| Vessel capacity (cubic meters) | Vapor pressure [1] (kilopascals) |
|---|---|
| 75 ≤ capacity < 151 | ≥ 13.1 |
| 151 ≤ capacity | ≥ 5.2 |

[1] Maximum true vapor pressure as defined in § 61.241.

TABLE 2 TO PART 61, SUBPART V.—SURGE CONTROL VESSELS AND BOTTOMS RECEIVERS AT NEW SOURCES

| Vessel capacity (cubic meters) | Vapor pressure [1] (kilopascals) |
|---|---|
| 38 ≤ capacity < 151 | ≥ 13.1 |
| 151 ≤ capacity | ≥ 0.7 |

[1] Maximum true vapor pressure as defined in § 61.241.

## Subpart Y—National Emission Standard for Benzene Emissions From Benzene Storage Vessels

44. Section 61.270 is amended by adding paragraph (g) to read as follows:

**§ 61.270 Applicability and designation of sources.**

* * * * *

(g) *Alternative means of compliance*—(1) *Option to comply with part 65.* Owners or operators may choose to comply with 40 CFR part 65, subpart C, to satisfy the requirements of §§ 61.271 through 61.277, except for §§ 61.271(d)(2) and 61.274(a) for storage vessels that are subject to this subpart. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(2) *Part 61, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart C, must also comply with §§ 61.01, 61.02, 61.05 through 61.08, 61.10(b) through (d), 61.11, and 61.15 for those storage vessels. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (g)(2) do not apply for storage vessels complying with 40 CFR part 65, subpart C, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart C, must comply with 40 CFR part 65, subpart A.

45. Section 61.271 is amended by revising paragraph (d) introductory text

and revising paragraph (d)(2) to read as follows:

**§ 61.271 Emission standard.**

* * * * *

(d) The owner or operator of each affected storage vessel shall meet the requirements of paragraph (a), (b), or (c) of this section or § 61.270(g) as follows:

* * * * *

(2) The owner or operator of each benzene storage vessel upon which construction commenced after September 14, 1989 shall meet the requirements of paragraph (a), (b), or (c) of this section or § 61.270(g) prior to filling (*i.e.,* roof is lifted off leg supports) the storage vessel with benzene.

* * * * *

46. Section 61.274 is amended by revising paragraph (a) to read as follows:

**§ 61.274 Initial report.**

(a) The owner or operator of each storage vessel to which this subpart applies and which has a design capacity greater than or equal to 38 cubic meters (10,000 gallons) shall submit an initial report describing the controls which will be applied to meet the equipment requirements of § 61.271 or § 61.270(g). For an existing storage vessel or a new storage vessel for which construction and operation commenced prior to September 14, 1989, this report shall be submitted within 90 days of September 14, 1989 and can be combined with the report required by § 61.10. For a new storage vessel for which construction or operation commenced on or after September 14, 1989, the report shall be combined with the report required by § 61.07 or 40 CFR 65.5(b). In the case where the owner or operator seeks to comply with § 61.271(c), with a control device other than a flare, this information may consist of the information required by § 61.272(c)(1).

* * * * *

## Subpart BB—National Emission Standard for Benzene Emissions From Benzene Transfer Operations

47. Section 61.300 is amended by revising paragraph (c) and adding paragraph (f) to read as follows:

**§ 61.300 Applicability.**

* * * * *

(c) *Comply with standards at each loading rack.* Any affected facility under paragraph (a) of this section shall comply with the standards in § 61.302 or as specified in paragraph (f) of this section, if applicable, at each loading rack that is handling a liquid containing 70 weight-percent or more benzene.

* * * * *

(f) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators may choose to comply with 40 CFR part 65, subpart E, to satisfy the requirements of §§ 61.302 through 61.306 for all tank truck or railcar loading racks that are subject to this subpart. Loading racks are referred to as transfer racks in 40 CFR part 65, subpart E. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1. All marine vessel loading racks shall comply with the provisions in §§ 61.302 through 61.306.

(2) *Part 61, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart E, must also comply with §§ 61.01, 61.02, 61.05 through 61.08, 61.10(b) through (d), 61.11, and 61.15 for those loading racks. All sections and paragraphs of subpart A of this part that are not mentioned in this paragraph (f)(2) do not apply to owners or operators of loading racks complying with 40 CFR part 65, subpart E, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart E, must comply with 40 CFR part 65, subpart A.

## PART 63—[AMENDED]

48. The authority citation for part 63 continues to read as follows:

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

## Subpart G—National Emission Standards for Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater

49. Section 63.110 is amended by adding paragraph (i) to read as follows:

**§ 63.110 Applicability.**

* * * * *

(i) *Alternative means of compliance*—(1) *Option to comply with part 65.* Owners or operators of CMPU that are subject to § 63.100 may choose to comply with the provisions of 40 CFR part 65 for all Group 1 and Group 2 process vents, Group 1 storage vessels, Group 1 transfer operations, and equipment that are subject to § 63.100, that are part of the CMPU. Other provisions applying to owners or operators who choose to comply with 40 CFR part 65 are provided in 40 CFR 65.1. Group 1 and Group 2 wastewater streams, Group 2 transfer operations, Group 2 storage vessels, and in-process streams are not eligible to comply with 40 CFR part 65 and must continue to comply with the requirements of this subpart and subpart F of this part.

(i) For Group 1 and Group 2 process vents, 40 CFR part 65, subpart D, satisfies the requirements of §§ 63.102, 63.103, 63.112 through 63.118, 63.148, 63.151, and 63.152.

(ii) For Group 1 storage vessels, 40 CFR part 65, subpart C, satisfies the requirements of §§ 63.102, 63.103, 63.112, 63.119 through 63.123, 63.148, 63.151, and 63.152.

(iii) For Group 1 transfer racks, 40 CFR part 65, subpart E, satisfies the requirements of §§ 63.102, 63.103, 63.112, 63.126 through 63.130, 63.148, 63.151, and 63.152.

(iv) For equipment, comply with § 65.160(g).

(2) *Part 63, subpart A.* Owners or operators who choose to comply with 40 CFR part 65 must also comply with the applicable general provisions of this part 63 listed in table 1A of this subpart. All sections and paragraphs of subpart A of this part that are not mentioned in table 1A of this subpart do not apply to owners or operators who choose to comply with 40 CFR part 65, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with a subpart of 40 CFR part 65 must comply with 40 CFR part 65, subpart A.

50. Table 1A is added in numerical order to the appendix to subpart G to read as follows:

**Appendix to Subpart G—Tables and Figures**

TABLE 1A TO SUBPART G.—APPLICABLE 40 CFR PART 63 GENERAL PROVISIONS

| 40 CFR part 63, subpart A, provisions applicable to subpart G |
|---|
| § 63.1(a)(1), (a)(2), (a)(3), (a)(13), (a)(14), (b)(2) and (c)(4) |
| § 63.2 |
| § 63.5(a)(1), (a)(2), (b), (d)(1)(ii), (d)(3)(i), (d)(3)(iii) through (d)(3)(vi), (d)(4), (e), (f)(1), and (f)(2) |
| § 63.6(a), (b)(3), (c)(5), (i)(1), (i)(2), (i)(4)(i)(A), (i)(5) through (i)(14), (i)(16) and (j) |

TABLE 1A TO SUBPART G.—APPLICABLE 40 CFR PART 63 GENERAL PROVISIONS—Continued

| 40 CFR part 63, subpart A, provisions applicable to subpart G |
|---|
| § 63.9(a)(2), (b)(4)(i)[a], (b)(4)(ii), (b)(4)(iii), (b)(5)[a], (c), (d) |
| § 63.10(d)(4) |
| § 63.12(b) |

[a] The notifications specified in § 63.9(b)(4)(i) and (b)(5) shall be submitted at the times specified in 40 CFR part 65.

* * * * *

## Subpart H—National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks

51. Section 63.160 is amended by adding paragraph (g) to read as follows:

### § 63.160 Applicability and designation of sources.

* * * * *

(g) *Alternative means of compliance.* (1) *Option to comply with part 65.* Owners or operators of CMPU that are subject to § 63.100 may choose to comply with the provisions of 40 CFR part 65 for all Group 1 and Group 2 process vents, Group 1 storage vessels, Group 1 transfer operations, and equipment that are subject to § 63.100, that are part of the CMPU. Other provisions applying to an owner or operator who chooses to comply with 40 CFR part 65 are provided in 40 CFR 65.1.

(i) For equipment, 40 CFR part 65 satisfies the requirements of §§ 63.102, 63.103, and 63.162 through 63.182. When choosing to comply with 40 CFR part 65, the requirements of § 63.180(d) continue to apply.

(ii) For Group 1 and Group 2 process vents, Group 1 storage vessels, and Group 1 transfer operations, comply with § 63.110(i)(1).

(2) *Part 65, subpart C or F.* For owners or operators choosing to comply with 40 CFR part 65, each surge control vessel and bottoms receiver subject to § 63.100 that meets the conditions specified in table 2 or table 3 of this subpart shall meet the requirements for storage vessels in 40 CFR part 65, subpart C; all other equipment subject to § 63.100 shall meet the requirements in 40 CFR part 65, subpart F.

(3) *Part 63, subpart A.* Owners or operators who choose to comply with 40 CFR part 65, subpart C or F, for equipment subject to § 63.100 must also comply with the applicable general provisions of this part 63 listed in table 4 of this subpart. All sections and paragraphs of subpart A of this part that are not mentioned in table 4 of this subpart do not apply to owners or operators of equipment subject to § 63.100 of subpart F complying with 40 CFR part 65, subpart C or F, except that provisions required to be met prior to implementing 40 CFR part 65 still apply. Owners and operators who choose to comply with 40 CFR part 65, subpart C or F, must comply with 40 CFR part 65, subpart A.

52. Section 63.169 is amended by revising paragraph (b) to read as follows:

### § 63.169 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service.

* * * * *

(b) If an instrument reading of 10,000 parts per million or greater for agitators, 5,000 parts per million or greater for pumps handling polymerizing monomers, 2,000 parts per million or greater for all other pumps (including pumps in food/medical service), or 500 parts per million or greater for valves, connectors, instrumentation systems, and pressure relief devices is measured, a leak is detected.

* * * * *

53. Section 63.171 is amended by revising paragraph (a) to read as follows:

### § 63.171 Standards: Delay of repair.

(a) Delay of repair of equipment for which leaks have been detected is allowed if repair within 15 days is technically infeasible without a process unit shutdown. Repair of this equipment shall occur by the end of the next process unit shutdown.

* * * * *

54. Table 4 is added in numerical order to subpart H to read as follows:

TABLE 4 TO SUBPART H.— APPLICABLE 40 CFR PART 63 GENERAL PROVISIONS

| 40 CFR part 63, subpart A, provisions applicable to subpart H |
|---|
| § 63.1(a)(1), (a)(2), (a)(3), (a)(13), (a)(14), (b)(2) and (c)(4) |
| § 63.2 |
| § 63.5(a)(1), (a)(2), (b), (d)(1)(ii), (d)(4), (e), (f)(1) and (f)(2) |
| § 63.6(a), (b)(3), (c)(5), (i)(1), (i)(2), (i)(4)(i)(A), (i)(5) through (i)(14), (i)(16) and (j) |
| § 63.9(a)(2), (b)(4)(i)[a], (b)(4)(ii), (b)(4)(iii), (b)(5)a, (c) and (d) |
| § 63.10(d)(4) |
| § 63.12(b) |

[a] The notifications specified in § 63.9(b)(4)(i) and (b)(5) shall be submitted at the times specified in 40 CFR part 65.

55. Add part 65 to read as follows:

## PART 65—CONSOLIDATED FEDERAL AIR RULE

### Subpart A—General Provisions

Sec.

65.1 Applicability.
65.2 Definitions.
65.3 Compliance with standards and operation and maintenance requirements.
65.4 Recordkeeping.
65.5 Reporting requirements.
65.6 Startup, shutdown, and malfunction plan and procedures.
65.7 Monitoring, recordkeeping, and reporting waivers and alternatives.
65.8 Procedures for approval of alternative means of emission limitation.
65.9 Availability of information and confidentiality.
65.10 State authority.
65.11 Circumvention and prohibited activities.
65.12 Delegation of authority.
65.13 Incorporation by reference.
65.14 Addresses.
65.15–65.19 [Reserved]
Table 1 to Subpart A of Part 65—Applicable 40 CFR Parts 60, 61, and 63 General Provisions

Table 2 to Subpart A of Part 65—Applicable Referencing Subpart Provisions

**Subpart B [Reserved]**

**Subpart C—Storage Vessels**

65.40 Applicability.
65.41 Definitions.
65.42 Control requirements.
65.43 Fixed roof with an internal floating roof (IFR).
65.44 External floating roof (EFR).
65.45 External floating roof converted into an internal floating roof.
65.46 Alternative means of emission limitation.
65.47 Recordkeeping provisions.
65.48 Reporting provisions.
65.49–65.59 [Reserved]

**Subpart D—Process Vents**

65.60 Applicability.
65.61 Definitions.
65.62 Process vent group determination.
65.63 Performance and group status change requirements.
65.64 Group determination procedures.
65.65 Monitoring.
65.66 Recordkeeping provisions.
65.67 Reporting provisions.
65.68–65.79 [Reserved]
Table 1 to Subpart D of Part 65—Concentration for Group Determination
Table 2 to Subpart D of Part 65—TRE Parameters for NSPS Referencing Subparts
Table 3 to Subpart D of Part 65—TRE Parameters for HON Referencing Subparts

**Subpart E—Transfer Racks**

65.80 Applicability.
65.81 Definitions.
65.82 Design requirements.
65.83 Performance requirements.
65.84 Operating requirements.
65.85 Procedures.
65.86 Monitoring.
65.87 Recordkeeping provisions.
65.88–65.99 [Reserved]

**Subpart F—Equipment Leaks**

65.100 Applicability.
65.101 Definitions.
65.102 Alternative means of emission limitation.
65.103 Equipment identification.
65.104 Instrument and sensory monitoring for leaks.
65.105 Leak repair.
65.106 Standards: Valves in gas/vapor service and in light liquid service.
65.107 Standards: Pumps in light liquid service.
65.108 Standards: Connectors in gas/vapor service and in light liquid service.
65.109 Standards: Agitators in gas/vapor service and in light liquid service.
65.110 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in liquid service; and instrumentation systems.
65.111 Standards: Pressure relief devices in gas/vapor service.
65.112 Standards: Compressors.
65.113 Standards: Sampling connection systems.
65.114 Standards: Open-ended valves or lines.
65.115 Standards: Closed vent systems and control devices; or emissions routed to a fuel gas system or process.
65.116 Quality improvement program for pumps.
65.117 Alternative means of emission limitation: Batch processes.
65.118 Alternative means of emission limitation: Enclosed-vented process units.
65.119 Recordkeeping provisions.
65.120 Reporting provisions.
65.121—65.139 [Reserved]
Table 1 to Subpart F of Part 65— Batch Process Monitoring Frequency for Equipment Other Than Connectors

**Subpart G—Closed Vent Systems, Control Devices, and Routing to a Fuel Gas System or a Process**

65.140 Applicability.
65.141 Definitions.
65.142 Standards.
65.143 Closed vent systems.
65.144 Fuel gas systems and processes to which storage vessel, transfer rack, or equipment leak regulated material emissions are routed.
65.145 Nonflare control devices used to control emissions from storage vessels or low-throughput transfer racks.
65.146 Nonflare control devices used for equipment leaks only.
65.147 Flares.
65.148 Incinerators.
65.149 Boilers and process heaters.
65.150 Absorbers used as control devices.
65.151 Condensers used as control devices.
65.152 Carbon adsorbers used as control devices.
65.153 Absorbers, condensers, carbon adsorbers, and other recovery devices used as final recovery devices.
65.154 Halogen scrubbers and other halogen reduction devices.
65.155 Other control devices.
65.156 General monitoring requirements for control and recovery devices.
65.157 Performance test and flare compliance determination requirements.
65.158 Performance test procedures for control devices.
65.159 Flare compliance determination and monitoring records.
65.160 Performance test and TRE index value determination records.
65.161 Continuous records and monitoring system data handling.
65.162 Nonflare control and recovery device monitoring records.
65.163 Other records.
65.164 Performance test and flare compliance determination notifications and reports.
65.165 Initial Compliance Status Reports.
65.166 Periodic reports.
65.167 Other reports.
65.168—65.169 [Reserved]

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

## Subpart A—General Provisions

### § 65.1 Applicability.

(a) The provisions of this subpart apply to owners or operators expressly referenced to this part from a subpart of 40 CFR part 60, 61, or 63 for which the owner or operator has chosen to comply with the provisions of this part as an alternative to the provisions in the referencing subpart as specified in paragraph (b) of this section.

(b) Owners or operators may choose to comply with this part for any regulated source subject to a referencing subpart.

(c) Compliance with this part instead of the referencing subparts does not alter the applicability of the referencing subparts. This part applies to only the equipment, process vents, storage vessels, or transfer operations to which the referencing subparts apply. This part does not extend applicability to equipment, process vents, storage vessels, or transfer operations that are not regulated by the referencing subpart.

(d) The provisions of 40 CFR part 60, subpart A; 40 CFR part 61, subpart A; and 40 CFR part 63, subpart A, that are listed in table 1 of this subpart still apply to owners or operators of regulated sources expressly referenced to this part. The owner or operator shall comply with the provisions in table 1 of this subpart in the column corresponding to the referencing subpart. All provisions of 40 CFR part 60, subpart A; 40 CFR part 61, subpart A; and 40 CFR part 63, subpart A, not expressly referenced in table 1 of this subpart do not apply, and the provisions of this part apply instead, except that provisions which were required to be met prior to implementation of this part 65 still apply.

(e) The provisions of the referencing subparts that are listed in table 2 of this subpart still apply to owners or operators of regulated sources expressly referenced to this part. The owner or operator shall comply with the provisions in table 2 of this subpart in the row corresponding to the referencing subpart. All provisions of the referencing subparts not expressly referenced in table 2 to this subpart do not apply and the provisions of this part apply instead, except that provisions which were required to be met prior to implementation of this part 65 still apply.

(f) *Implementation date.* Owners or operators who choose to comply with this part shall comply by the dates specified in paragraph (f)(1) of this section, as applicable, and shall meet the requirement in paragraph (f)(2) of this section.

(1) Owners or operators shall implement this part as specified in an implementation schedule or at initial startup. The implementation date shall be established by mutual agreement with the Administrator or delegated authority. The implementation schedule shall be included in the source's title V permit. For non-title V sources, the implementation schedule shall be proposed by the source in the Initial Notification for Part 65 Applicability as specified in § 65.5(c).

(2) There shall be no gaps in compliance between compliance with the referencing subpart and compliance with this part.

(g) *Transitioning out of this part.* Owners or operators who decide to no longer comply with this part and to comply with the provisions in the referencing subpart instead shall comply with the following, as applicable:

(1) This transition shall be carried out on a date established in a title V permit or if the source is not a title V source, by a date established by agreement with the Administrator or delegated authority. The transition date shall be proposed in a title V permit amendment, or for non-title V sources, in a periodic report or separate notice.

(2) There shall be no gaps in compliance between compliance with this part and compliance with the referencing subpart provisions.

(h) *Overlap with other subparts of this part.* When provisions of another subpart of this part conflict with the provisions of this subpart, the provisions of the other subpart shall apply.

(i) *Equipment assignment procedures.* If specific items of equipment (pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, surge control vessels, and bottoms receivers) that are part of a process unit complying with this part are managed by different administrative organizations (for example, different companies, affiliates, departments, divisions, etc.), those items of equipment may be aggregated with any process unit within the plant site.

**§ 65.2 Definitions.**

All terms used in this part shall have the meaning given them in the Act and in this section. If a term is defined both in this section and in other parts that reference the use of this part, the term shall have the meaning given in this section for purposes of this part. If a term is not defined in the Act or in this section, the term shall have the meaning given in the referencing subpart for purposes of this part. The terms follow:

*Act* means the Clean Air Act (42 U.S.C. 7401 *et seq.*).

*Administrator* means the Administrator of the United States Environmental Protection Agency (EPA) or his or her authorized representative (for example, a State that has been delegated the authority to implement the provisions of this part).

*Approved permit program* means a State permit program approved by the Administrator as meeting the requirements of part 70 of this chapter or a Federal permit program established in this chapter pursuant to title V of the Act (42 U.S.C. 7661).

*Automated continuous parameter monitoring system* means a continuous parameter monitoring system that automatically both records the measured data and calculates hourly averages.

*Automated monitoring and recording system* means any means of measuring values of monitored parameters and creating a hard copy or computer record of the measured values that does not require manual reading of monitoring instruments and manual transcription of data values. Automated monitoring and recording systems include, but are not limited to, computerized systems, strip charts, and circular charts.

*Batch process* means a process in which the equipment is fed intermittently or discontinuously. Processing then occurs in this equipment after which the equipment is generally emptied. Examples of industries that use batch processes include pharmaceutical production and pesticide production.

*Batch product-process equipment train* means the collection of equipment (for example, connectors, reactors, valves, pumps) configured to produce a specific product or intermediate by a batch process.

*Boiler* means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator or a process heater. Boiler also means any industrial furnace as defined in 40 CFR 260.10.

*Bottoms receiver* means a tank that collects distillation bottoms before the stream is sent for storage or for further downstream processing.

*By compound* means by individual stream components, not carbon equivalents.

*Car-seal* means a seal that is placed on a device that is used to change the position of a valve (for example, from opened to closed) in such a way that the position of the valve cannot be changed without breaking the seal.

*Closed vent system* means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device. A closed vent system does not include the vapor collection system that is part of any tank truck or railcar or the loading arm or hose that is used for vapor return. For transfer racks, the closed vent system begins at, and includes, the first block valve on the downstream side of the loading arm or hose used to convey displaced vapors.

*Closed vent system shutdown* means a work practice or operational procedure that stops production from a process unit or part of a process unit during which it is technically feasible to clear process material from a closed vent system or part of a closed vent system consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a closed vent system shutdown. An unscheduled work practice or operational procedure that would stop production from a process unit or part of a process unit for a shorter period of time than would be required to clear the closed vent system or part of the closed vent system of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled closed vent system shutdown, is not a closed vent system shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not closed vent system shutdowns.

*Closed-loop system* means an enclosed system that returns process fluid to a process.

*Closed-purge system* means a system or combination of systems and portable containers to capture purged liquids. Containers must be covered or closed when not being filled or emptied.

*Combustion device* means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of organic emissions.

*Compliance date* means the date by which a regulated source is required to be in compliance with a relevant standard, limitation, prohibition, or any federally enforceable requirement established by the Administrator (or a State with an approved permit program) pursuant to the Act.

*Connector* means flanged, screwed, or other joined fittings used to connect two

pipelines or a pipeline and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered connectors for the purpose of this regulation. For the purpose of reporting and recordkeeping, connector means joined fittings that are not inaccessible, ceramic, or ceramic-lined (for example, porcelain, glass, or glass-lined) as described in § 65.108(e)(2).

*Continuous parameter monitoring system* or *CPMS* means the total equipment that may be required to meet the data acquisition and availability requirements of this part used to sample, condition (if applicable), analyze, and provide a record of process or control system parameters.

*Continuous record* means documentation, either in hard copy or computer-readable form, of data values measured at least once every 15 minutes and recorded at the frequency specified in § 65.161(a).

*Continuous seal* means a seal that is designed to form a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the floating roof. A continuous seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal. A continuous seal may be constructed of fastened segments so as to form a continuous seal.

*Control device* means any combustion device, recovery device, or any combination of these devices used to comply with this part. Such equipment or devices include, but are not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For process vents (as defined in this section), recovery devices are not considered control devices except for the recovery devices specified in § 65.63(a)(2)(ii). A fuel gas system is not a control device. For a steam stripper, a primary condenser is not considered a control device.

*Control system* means the combination of the closed vent system and the control devices used to collect and control vapors or gases from a regulated source.

*Day* means a calendar day.

*Distance piece* means an open or enclosed casing through which the piston rod travels, separating the compressor cylinder from the crankcase.

*Double block and bleed system* means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

*Ductwork* means a conveyance system such as those commonly used for heating and ventilation systems. It is often made of sheet metal and often has sections connected by screws or crimping. Hard-piping is not ductwork.

*Emission point* means an individual process vent, storage vessel, transfer rack, wastewater stream, or equipment leak.

*Empty or emptying* means the removal of the stored liquid from a storage vessel. Storage vessels where stored liquid is left on the walls, as bottom clingage, or in pools due to bottom irregularities are considered empty. Lowering of the stored liquid level, so that the floating roof is resting on its legs, as necessitated by normal vessel operation (for example, when changing stored material or when transferring material out of the vessel for shipment) is not considered emptying.

*Equipment* means each of the following that is subject to control under the referencing subpart: pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system; and any control devices or systems used to comply with subpart F of this part.

*Equivalent method* means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Administrator's satisfaction to have a consistent and quantitatively known relationship to the reference method under specified conditions.

*External floating roof* or *EFR* means a pontoon-type (noncontact) or double-deck-type (contact) roof that is designed to rest on the stored liquid surface in a storage vessel with no fixed roof.

*Failure, EFR (referred to as EFR failure)* is defined as any time the external floating roof's primary seal has holes, tears, or other openings in the shoe, seal fabric, or seal envelope; or the secondary seal has holes, tears, or other openings in the seal or the seal fabric; or the gaskets no longer close off the stored liquid surface from the atmosphere; or a slotted membrane has more than 10 percent open area.

*Failure, internal floating roof type A (referred to as IFR type A failure)* means any time, as determined during visual inspection through roof hatches, in which the internal floating roof is not resting on the surface of the stored liquid inside the storage vessel and is not resting on the leg supports; or there is stored liquid on the floating roof; or there are holes, tears, or other openings in the seal or seal fabric; or there are visible gaps between the seal and the wall of the storage vessel.

*Failure, internal floating roof type B (referred to as IFR type B failure)* means any time, as determined during internal inspections, the internal floating roof's primary seal has holes, tears, or other openings in the seal or the seal fabric; or the secondary seal (if one has been installed) has holes, tears, or other openings in the seal or the seal fabric; or the gaskets no longer close off the stored liquid surface from the atmosphere; or a slotted membrane has more than 10 percent open area.

*Fill* or *filling* means the introduction of liquids into a storage vessel, but not necessarily to complete capacity.

*First attempt at repair,* for the purposes of subparts F and G of this part, means to take action for the purpose of stopping or reducing leakage of organic material to the atmosphere, followed by monitoring as specified in § 65.104(b) and § 65.143(c), as appropriate, to verify whether the leak is repaired, unless the owner or operator determines by other means that the leak is not repaired.

*Fixed roof* means a roof that is mounted (for example, permanently affixed) on a storage vessel in a stationary manner and that does not move with fluctuations in stored liquid level.

*Flame zone* means the portion of the combustion chamber in a boiler or process heater occupied by the flame envelope.

*Floating roof* means a roof consisting of an external floating roof or an internal floating roof that is designed to rest upon and is supported by the stored liquid and is equipped with a continuous seal.

*Flow indicator* means a device that indicates whether gas flow is present in a line, or whether the valve position would allow gas flow to be present in a line.

*Fuel gas* means gases that are combusted to derive useful work or heat.

*Fuel gas system* means the offsite and onsite piping and flow and pressure control system that gathers gaseous stream(s) generated by onsite operations, may blend them with other sources of gas, and transports the gaseous stream for use as fuel gas in combustion devices or in-process combustion equipment, such as furnaces and gas turbines, either singly or in combination.

*Group 1 process vent* means a process vent for which the flow rate is greater than or equal to 0.011 standard cubic meter per minute (0.39 cubic feet per minute); the total concentration is greater than or equal to the appropriate value in table 1 of subpart D of this part, and the total resource effectiveness index value, calculated according to § 65.64(h) is less than or equal to 1.0.

*Group 2A process vent* means a process vent that is not Group 1 or

Group 2B for which monitoring and recordkeeping are required to demonstrate a total resource effectiveness index value greater than 1.0.

*Group 2B process vent* means a process vent that is not Group 1 or Group 2A for which monitoring and recordkeeping are not required to demonstrate a total resource effectiveness index value greater than 4.0, or which is exempt from control requirements due to the vent stream's flow rate, regulated material concentration, or total resource effectiveness index value.

*Halogenated vent stream* or *halogenated stream* means, for purposes of this part, a vent stream determined to be halogenated by the procedures specified in § 65.85(c) for transfer racks and in § 65.64(g) for process vents, as applicable.

*Halogens and hydrogen halides* means hydrogen chloride (HCl), chlorine ($Cl_2$), hydrogen bromide (HBr), bromine ($Br_2$), and hydrogen fluoride (HF).

*Hard-piping* means pipe or tubing that is manufactured and installed using good engineering judgment and standards, such as ASME B31.3, Process Piping (available from the American Society of Mechanical Engineers, PO Box 2900, Fairfield, NJ 07007–2900).

*High-throughput transfer racks* means those transfer racks that transfer greater than or equal to a total of 11.8 million liters per year (3.12 million gallons per year) of liquid containing regulated material.

*In food/medical service* means that a piece of equipment in regulated material service contacts a process stream used to manufacture a Food and Drug Administration-regulated product where leakage of a barrier fluid into the process stream would cause any of the following:

(1) A dilution of product quality so that the product would not meet written specifications;

(2) An exothermic reaction that is a safety hazard;

(3) The intended reaction to be slowed down or stopped; or

(4) An undesired side reaction to occur.

*In gas/vapor service* means that a piece of equipment in regulated material service contains a gas or vapor when in operation.

*In heavy liquid service* means that a piece of equipment in regulated material service is not in gas/vapor service or in light liquid service.

*In light liquid service* means that a piece of equipment in regulated material service contains a liquid that meets the following conditions:

(1) The vapor pressure of one or more of the organic compounds is greater than 0.3 kilopascals at 20 °C (0.04 pounds per square inch at 68 °F);

(2) The total concentration of the pure organic compound constituents having a vapor pressure greater than 0.3 kilopascals at 20 °C (0.04 pounds per square inch at 68 °F) is equal to or greater than 20 percent by weight of the total process stream; and

(3) The fluid is a liquid at operating conditions. (Note: Vapor pressures may be determined by standard reference texts or American Society for Testing and Materials (ASTM) D–2879, available from American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.)

*In liquid service* means that a piece of equipment in regulated material service is not in gas/vapor service.

*In regulated material service* means, for the purposes of the equipment leak provisions of subpart F of this part, equipment which meets the definition of ''in volatile organic compound service,'' ''in volatile hazardous air pollutant service,'' ''in benzene service,'' ''in vinyl chloride service,'' or ''in organic hazardous air pollutant service'' as defined in the referencing subpart.

*In vacuum service* means that equipment is operating at an internal pressure that is at least 5 kilopascals (0.7 pounds per square inch) below ambient pressure.

*In-situ sampling systems* means nonextractive samplers or in-line samplers.

*Incinerator* means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section present is not physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section is a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. This energy recovery section limitation does not apply to an energy recovery section used solely to preheat the incoming vent stream or combustion air.

*Initial startup* means, for new or reconstructed sources, the first time the source begins production. For additions or changes not defined as a new source by an applicable referencing subpart, initial startup means the first time additional or changed equipment is put into operation. Initial startup does not include operation solely for testing equipment. Initial startup does not include subsequent startup (as defined in this section) of process units following malfunctions or process unit shutdowns. Except for equipment leaks, initial startup also does not include subsequent startups (as defined in this section) of process units following changes in product for flexible operation units or following recharging of equipment in batch operation.

*Instrumentation system* means a group of equipment components used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (for example, composition, pressure, flow). Valves and connectors are the predominant type of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems. Only valves nominally 0.5 inches and smaller in diameter and connectors nominally 0.75 inches and smaller in diameter are considered instrumentation systems for the purposes of subpart F of this part.

*Intermediate change to monitoring* means a modification to federally required monitoring involving ''proven technology'' (generally accepted by the scientific community as equivalent or better) that is applied on a site-specific basis and that may have the potential to decrease the stringency of the associated emission limitation or standard. Though site-specific, an intermediate change may set a national precedent for a source category and may ultimately result in a revision to the federally required monitoring. Examples of intermediate changes to monitoring include, but are not limited to:

(1) Use of a continuous monitoring system (CEMS) in lieu of a parameter monitoring approach;

(2) Decreased frequency for non-continuous parameter monitoring or physical inspections;

(3) Changes to quality control requirements for parameter monitoring; and

(4) Use of an electronic data reduction system in lieu of manual data reduction.

*Intermediate change to test method* means a within-method modification to a federally enforceable test method involving ''proven technology'' (generally accepted by the scientific community as equivalent or better) that is applied on a site-specific basis and that may have the potential to decrease the stringency of the associated emission limitation or standard. Though site-specific, an intermediate change

may set a national precedent for a source category and may ultimately result in a revision to the federally enforceable test method. In order to be approved, an intermediate change must be validated according to EPA Method 301 (40 CFR part 63, appendix A) to demonstrate that it provides equal or improved accuracy or precision. Examples of intermediate changes to a test method include, but are not limited to:

(1) Modifications to a test method's sampling procedure including substitution of sampling equipment that has been demonstrated for a particular sample matrix; and use of a different impinger absorbing solution;

(2) Changes in sample recovery procedures and analytical techniques, such as changes to sample holding times and use of a different analytical finish with proven capability for the analyte of interest; and

(3) ''Combining'' a federally required method with another proven method for application to processes emitting multiple pollutants.

*Internal floating roof* or *IFR* means a pontoon-type (noncontact) or double-deck-type (contact) roof that is designed to rest or float on the stored liquid surface inside a storage vessel that has a fixed roof.

*Liquid-mounted seal* means a foam-or liquid-filled continuous seal mounted in contact with the stored liquid.

*Liquids dripping* means any visible leakage from a seal including dripping, spraying, misting, clouding, and ice formation. Indications of liquids dripping include puddling or new stains that are indicative of an existing evaporated drip.

*Loading cycle* means the time period from the beginning of filling a tank truck or railcar until flow to the control device ceases as determined by the flow indicator.

*Low-throughput transfer racks* means those transfer racks that transfer less than a total of 11.8 million liters per year (3.12 million gallons per year) of liquid containing regulated material.

*Major change to monitoring* means a modification to federally required monitoring that uses ''unproven technology or procedures'' (not generally accepted by the scientific community) or is an entirely new method (sometimes necessary when the required monitoring is unsuitable). A major change to monitoring may be site-specific or may apply to one or more source categories and will almost always set a national precedent. Examples of major changes to monitoring include, but are not limited to:

(1) Use of a new monitoring approach developed to apply to a control technology not contemplated in the applicable regulation in this part;

(2) Use of a predictive emission monitoring system (PEMS) in place of a required continuous emission monitoring system (CEMS);

(3) Use of alternative calibration procedures that do not involve calibration gases or test cells;

(4) Use of an analytical technology that differs from that specified by a performance specification;

(5) Decreased monitoring frequency for a continuous emission monitoring system, continuous opacity monitoring system, predictive emission monitoring system, or continuous parameter monitoring system;

(6) Decreased monitoring frequency for a leak detection and repair program; and

(7) Use of alternative averaging times for reporting purposes.

*Major change to test method* means a modification to a federally enforceable test method that uses ''unproven technology or procedures'' (not generally accepted by the scientific community) or is an entirely new method (sometimes necessary when the required test method is unsuitable). A major change to a test method may be site-specific or may apply to one or more source categories and will almost always set a national precedent. In order to be approved, a major change must be validated according to EPA Method 301 (40 CFR part 63, appendix A). Examples of major changes to a test method include, but are not limited to:

(1) Use of an unproven analytical finish;

(2) Use of a method developed to fill a test method gap;

(3) Use of a new test method developed to apply to a control technology not contemplated in the applicable regulation in this part; and

(4) Combining two or more sampling/analytical methods (at least one unproven) into one for application to processes emitting multiple pollutants.

*Malfunction* means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, monitoring equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions. Malfunctions that do not affect a regulated source or compliance with this part are not malfunctions for purposes of this part.

*Metallic shoe seal* or *mechanical shoe seal* means metal sheets that are held vertically against the wall of the storage vessel by springs, weighted levers, or other mechanisms and connected to the floating roof by braces or other means. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

*Minor change to monitoring* means:

(1) A modification to federally required monitoring that:

(i) Does not decrease the stringency of the compliance and enforcement measures of the relevant standard;

(ii) Has no national significance (*e.g.*, does not affect implementation of the applicable regulation in this part for other affected sources, does not set a national precedent, and individually does not result in a revision to the monitoring requirements); and

(iii) Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source.

(2) Examples of minor changes to monitoring include, but are not limited to:

(i) Modifications to a sampling procedure, such as use of an improved sample conditioning system to reduce maintenance requirements;

(ii) Increased monitoring frequency; and

(iii) Modification of the environmental shelter to moderate temperature fluctuation and thus protect the analytical instrumentation.

*Minor change to test method* means:

(1) A modification to a federally enforceable test method that:

(i) Does not decrease the stringency of the emission limitation or standard;

(ii) Has no national significance (*e.g.*, does not affect implementation of the applicable regulation in this part for other affected sources, does not set a national precedent, and individually does not result in a revision to the test method); and

(iii) Is site-specific, made to reflect or accommodate the operational characteristics, physical constraints, or safety concerns of an affected source.

(2) Examples of minor changes to a test method include, but are not limited to:

(i) Field adjustments in a test method's sampling procedure, such as a modified sampling traverse or location to avoid interference from an obstruction in the stack, increasing the sampling time or volume, use of additional impingers for a high moisture situation, accepting particulate emission results for a test run that was conducted with a lower than specified temperature, substitution of a material in the sampling train that has been demonstrated to be more inert for the sample matrix; and

(ii) Changes in recovery and analytical techniques such as a change in quality control/quality assurance requirements needed to adjust for analysis of a certain sample matrix.

*Nonautomated monitoring and recording system* means manual reading of values measured by monitoring instruments and manual transcription of those values to create a record. Nonautomated systems do not include strip charts nor circular charts.

*Nonrepairable* means that it is technically infeasible to repair a piece of equipment from which a leak has been detected without a process unit shutdown.

*One-hour period* means the 60-minute period commencing on the hour.

*Onsite* or *on-site* means, with respect to records required to be maintained by this part, that the records are stored at a location within a plant site that encompasses the regulated source. Onsite includes, but is not limited to, storage at the regulated source to which the records pertain, or storage in central files elsewhere at the plant site.

*Open-ended valve or line* means any valve except relief valves having one side of the valve seat in contact with process fluid and one side open to the atmosphere, either directly or through open piping.

*Organic monitoring device* means a device used to indicate the concentration level of organic compounds based on a detection principle such as infrared, photo ionization, or thermal conductivity.

*Owner or operator* means any person who owns, leases, operates, controls, or supervises a regulated source or a stationary source of which a regulated source is a part.

*Part 70 permit* means any permit issued, renewed, or revised pursuant to part 70 of this chapter.

*Performance test* means the collection of data resulting from the execution of a test method (usually three emission test runs) used to demonstrate compliance with a relevant emission standard as specified in the performance test section of the relevant standard.

*Permit program* means a comprehensive State operating permit system established pursuant to title V of the Act (42 U.S.C. 7661) and regulations codified in part 70 of this chapter and applicable State regulations, or a comprehensive Federal operating permit system established pursuant to title V of the Act and regulations codified in part 71 of this chapter.

*Permitting authority* means one of the following:

(1) The State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to carry out a permit program under part 70 of this chapter; or

(2) The Administrator, in the case of EPA-implemented permit programs under title V of the Act (42 U.S.C. 7661) and part 71 of this chapter.

*Plant site* means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

*Polymerizing monomer* means, for the purposes of this part, a compound which may form polymer buildup in pump mechanical seals resulting in rapid mechanical seal failure.

*Pressure release* means the emission of materials resulting from the system pressure being greater than the set pressure of the relief device. This release can be one release or a series of releases over a short time period.

*Pressure relief device or valve* means a device used to prevent operating pressures from exceeding the maximum allowable working pressure of the process equipment. A common pressure relief device is a spring-loaded pressure relief valve. Devices that are actuated either by a pressure of less than or equal to 2.5 pounds per square inch gauge or by a vacuum are not pressure relief devices.

*Primary fuel* means the fuel that provides the principal heat input to the device. To be considered primary, the fuel must be able to sustain operation without the addition of other fuels.

*Process heater* means an enclosed combustion device that transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water. A process heater may, as a secondary function, heat water in unfired heat recovery sections.

*Process unit* means the equipment specified in the definitions of process unit or chemical manufacturing process unit in the applicable referencing subpart. If the referencing subpart does not define process unit, then, for the purposes of this part, process unit means the equipment assembled and connected by pipes or ducts to process raw materials and to manufacture an intended product.

*Process unit shutdown* means a work practice or operational procedure that stops production from a process unit or part of a process unit during which it is technically feasible to clear process material from a process unit or part of a process unit consistent with safety constraints and during which repairs can be effected. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a process unit shutdown. An unscheduled work practice or operational procedure that would stop production from a process unit or part of a process unit for a shorter period of time than would be required to clear the process unit or part of the process unit of materials and start up the unit, and would result in greater emissions than delay of repair of leaking components until the next scheduled process unit shutdown is not a process unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not process unit shutdowns.

*Process vent* means a process vent or vent stream as they are defined in the referencing subpart.

*Recovery device* means an individual unit of equipment capable of and normally used for the purpose of recovering chemicals for fuel value (*i.e.,* net positive heating value), use, reuse, or for sale for fuel value, use, or reuse. Equipment capable of and used for the purpose of recovering chemicals, but not normally for use, reuse or sale, are not recovery devices but are control devices. Examples of equipment that may be recovery devices include absorbers, carbon adsorbers, condensers, oil-water separators or organic-water separators, or organic removal devices such as decanters, strippers, or thin-film evaporation units.

*Reference method* means any method of sampling and analyzing for an air pollutant as specified in an applicable subpart, the appendices to 40 CFR part 60 or 63, or in appendix B of 40 CFR part 61.

*Referencing subpart* means 40 CFR part 60, subparts Ka, Kb, VV, DDD, III, NNN, and RRR; 40 CFR part 61, subparts V, Y, and BB; and 40 CFR part 63, subparts G and H.

*Regulated material* means, for the purposes of this part, the material regulated by the specific referencing subpart, including volatile organic liquids (VOL), volatile organic compounds (VOC), organic hazardous air pollutants (HAP's), benzene, vinyl chloride, or other chemicals or groups of chemicals.

*Regulated source* means, for the purposes of this part, the stationary source, the group of stationary sources, or the portion of a stationary source that is regulated by a relevant standard or other requirement established pursuant

to this part, or 40 CFR part 60, 61, or 63.

*Relief device or valve* means a device or valve used only to release an unplanned, nonroutine discharge. A relief device or valve discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

*Repaired* means, for the purposes of subparts F and G of this part, that equipment meets the following conditions:

(1) Is adjusted, or otherwise altered, to eliminate a leak as defined in the applicable section of this part; and

(2) Unless otherwise specified in applicable provisions of this part, is monitored as specified in § 65.104(b) and § 65.143(c) to verify that emissions from the equipment are below the applicable leak definition.

*Routed to a process or route to a process* means the emissions are conveyed to any enclosed portion of a process unit where the emissions are predominantly recycled and/or consumed in the same manner as a material that fulfills the same function in the process and/or transformed by chemical reaction into materials that are not regulated materials and/or incorporated into a product; and/or recovered.

*Run* means one of a series of emission or other measurements needed to determine emissions for a representative operating period or cycle as specified in this part. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

*Sampling connection system* means an assembly of equipment within a process unit used during periods of representative operation to take samples of the process fluid. Equipment used to take nonroutine grab samples is not considered a sampling connection system.

*Secondary fuel* means a fuel fired through a burner other than the primary fuel burner that provides supplementary heat in addition to the heat provided by the primary fuel.

*Sensor* means a device that measures a physical quantity or the change in a physical quantity, such as temperature, pressure, flow rate, pH, or liquid level.

*Set pressure* means, for the purposes of subparts F and G of this part, the pressure at which a properly operating pressure relief device begins to open to relieve atypical process system operating pressure.

*Shutdown* means the cessation of operation of a regulated source (for example, chemical manufacturing process unit or a reactor, air oxidation reactor, distillation unit) and equipment required or used to comply with this part, or the emptying and degassing of a storage vessel. Shutdown is defined here for purposes including, but not limited to, periodic maintenance, replacement of equipment, or repair. Shutdown does not include the routine rinsing or washing of equipment in batch operation between batches.

*Simultaneous loading* means, for a shared control device, loading of regulated materials from more than one transfer arm at the same time so that the beginning and ending times of loading cycles coincide or overlap and there is no interruption in vapor flow to the shared control device.

*Single-seal system* means, for the purposes of subpart C of this part, a floating roof having one continuous seal. This seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal.

*Specific gravity monitoring device* means a unit of equipment used to monitor specific gravity and having a minimum accuracy of ±0.02 specific gravity units.

*Startup* means the setting into operation of a regulated source (for example, chemical manufacturing process unit or a reactor, air oxidation reactor, distillation unit, a storage vessel after emptying and degassing) and/or equipment required or used to comply with this part. Startup includes initial startup, operation solely for testing equipment, the recharging of equipment in batch operation, and transitional conditions due to changes in product for flexible operation units.

*State* means all non-Federal authorities, including local agencies, interstate associations, and statewide programs, that have delegated authority to implement the provisions of this part; the referencing subparts; and/or the permit program established under part 70 of this chapter. The term State shall have its conventional meaning where clear from the context.

*Steam jet ejector* means a steam nozzle that discharges a high-velocity jet across a suction chamber that is connected to the equipment to be evacuated.

*Stuffing box pressure* means the fluid (liquid or gas) pressure inside the casing or housing of a piece of equipment, on the process side of the inboard seal.

*Surge control vessel* means feed drums, recycle drums, and intermediate vessels. Surge control vessels are used within a process unit (as defined in the specific subpart that references this part) when in-process storage, mixing, or management of flow rates or volumes is needed to assist in production of a product.

*Temperature monitoring device* means a unit of equipment used to monitor temperature and having a minimum accuracy of ±1 percent of the temperature being monitored expressed in degrees Celsius or ±1.2 degrees Celsius (°C), whichever is greater.

*Title V permit* means any permit issued, renewed, or revised pursuant to Federal or State regulations established under 40 CFR part 70 or 71 to implement title V of the Act (42 U.S.C. 7661).

*Total organic compounds* or *TOC* means those compounds measured according to the procedures specified in § 65.64(c) and § 65.158(b)(3)(ii)(A), as applicable. Those compounds that the Administrator has determined do not contribute appreciably to the formation of ozone and that are specifically excluded from the definition of volatile organic compound at 40 CFR 51.100(s), as amended, are to be excluded for the purposes of measuring the hourly emission rate as required in § 65.64(f) for process vents subject to subpart III, NNN, or RRR of part 60 of this chapter.

*Total resource effectiveness index value* or *TRE index value* means a calculated value used to determine whether control is required for a process vent. It is based on process vent flow rate, emission rate of regulated material, net heating value, and corrosion properties (halogenated compound content), as quantified by the equations given under § 65.64(h).

*Vapor balancing system* means a piping system that is designed to collect regulated material vapors displaced from tank trucks or railcars during loading and to route the collected regulated material vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected by a common header; or to compress and route to a process or a fuel gas system the collected regulated material vapors.

*Vapor-mounted seal* means a continuous seal that is mounted so that there is a vapor space between the stored liquid and the bottom of the seal.

*Visible emission* means the observation of an emission of opacity or optical density above the threshold of vision.

### § 65.3 Compliance with standards and operation and maintenance requirements.

(a) *Requirements.* (1) Except as provided in paragraph (a)(2) of this section, the emission standards and established parameter ranges of this part

shall apply at all times except during periods of startup, shutdown (as defined in § 65.2), malfunction, or nonoperation of the regulated source (or specific portion thereof) resulting in cessation of the emissions to which this part applies. However, if a startup, shutdown, malfunction, or period of nonoperation of one portion of a regulated source does not affect the ability of a particular emission point to comply with the specific provisions to which it is subject, then that emission point shall still be required to comply with the applicable provisions of this part during the startup, shutdown, malfunction, or period of nonoperation. For example, if there is an over pressure in the reactor area, a storage vessel in a chemical manufacturing process unit would still be required to be controlled in accordance with subpart C of this part. Similarly, the degassing of a storage vessel would not affect the ability of a process vent to meet the requirements of subpart D or G of this part.

(2) Sections 65.106 through 65.118 shall apply at all times except during periods of startup or shutdown (as defined in § 65.2), malfunction, process unit shutdown (as defined in § 65.2), or nonoperation of the regulated source (or specific portion thereof) in which the lines are drained and depressurized resulting in cessation of the emissions to which subpart F of this part applies.

(3) During startups, shutdowns, and malfunctions when the emission standards of this part do not apply pursuant to paragraphs (a)(1) and (2) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize emissions in excess of those that would have occurred if there were no startup, shutdown, or malfunction and the owner or operator complied with the relevant provisions of this part. The measures to be taken shall be identified in the applicable startup, shutdown, and malfunction plan and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the regulated source. Backup control devices are not required but may be used if available. This paragraph (a)(3) does not apply to Group 2A or Group 2B process vents.

(4) Malfunctions shall be corrected as soon as practical after their occurrence in accordance with the startup, shutdown, and malfunction plan required in § 65.6(a). This paragraph (a)(4) does not apply to Group 2A or Group 2B process vents.

(5) Operation and maintenance requirements established pursuant to section 112 of the Act are enforceable independent of emissions limitations or other requirements in relevant standards.

(b) *Compliance determination procedures.*—(1) *Parameter monitoring: Compliance with operating conditions.* The parameter monitoring data for emission points that are required to perform continuous monitoring shall be used to determine compliance with the required operating conditions for the monitored control devices or recovery devices. For each excursion, except for excused excursions and as provided for in paragraph (b)(2) of this section, the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating conditions. Excused excursions are provided for in § 65.156(d)(2).

(2) *Parameter monitoring: Excursions.* If the conditions of paragraph (b)(2)(i) or (ii) of this section are met, an excursion is not a violation and, in cases where continuous monitoring is required, the excursion does not count toward the number of excused excursions. Nothing in this paragraph (b)(2) shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this part.

(i) During periods of startup, shutdown, or malfunction (and the source is operated during such periods in accordance with the source's startup, shutdown, and malfunction plan as required by § 65.6(a)), a monitoring parameter is outside its established range or monitoring data cannot be collected; or

(ii) During periods of nonoperation of the regulated source or portion thereof (resulting in cessation of the emissions to which the monitoring applies).

(3) *Operation and maintenance procedures.* Determination of whether acceptable operation and maintenance procedures are being used will be based on information available to the Administrator that may include, but is not limited to, monitoring results, review of operation and maintenance procedures (including the startup, shutdown, and malfunction plan, if applicable, required in § 65.6(a), as applicable), review of operation and maintenance records, inspection of the regulated source, and alternatives approved as specified in § 65.7.

(4) *Emissions standards.* Paragraphs (b)(4)(i) and (ii) of this section shall govern the use of data, tests, and requirements to determine compliance with emissions standards. Paragraphs (b)(4)(i) and (ii) do not apply to Group 2A or Group 2B process vents. Compliance with design, equipment, work practice, and operational standards, including those for equipment leaks, shall be determined according to paragraph (b)(5) of this section.

(i) *Performance test.* The Administrator will determine compliance with emission standards of this part based on the results of performance tests conducted according to the procedures specified in subpart G of this part, unless otherwise specified in a subpart of this part.

(ii) *Operation and maintenance requirements.* The Administrator will determine compliance with emission standards of this part by evaluation of an owner or operator's conformance with operation and maintenance requirements, including the evaluation of monitoring data, as specified in subparts of this part.

(5) *Design, equipment, work practice, or operational standards.* Paragraphs (b)(5)(i) and (ii) do not apply to Group 2A or Group 2B process vents.

(i) *Records and inspection.* The Administrator will determine compliance with design, equipment, work practice, or operational standards by review of records, inspection of the regulated source, and other procedures specified in this part.

(ii) *Operation and maintenance.* The Administrator will determine compliance with design, equipment, work practice, or operational standards by evaluation of an owner or operator's conformance with operation and maintenance requirements as specified in paragraph (a) of this section, in other subparts of this part, and in applicable provisions of § 65.6(b).

(c) *Finding of compliance.* The Administrator will make a finding concerning a regulated source's compliance with an emission standard, design standard, work practice, operational standard or operating and maintenance requirement as specified in paragraphs (a) and (b) of this section upon obtaining all the compliance information required by the relevant standard (including the written reports of performance test results, monitoring results, and other information, if applicable) and any information available to the Administrator needed to determine whether proper operation and maintenance practices are being used. Standards in this part and methods of determining compliance are given in metric units followed by the equivalents in English units. The Administrator will make findings of

compliance with the standards of this part using metric units.

(d) *Compliance times.* All terms that define a period of time for completion of required tasks (for example, weekly, monthly, quarterly, annually) unless specified otherwise in the section or paragraph that imposes the requirement refer to the standard calendar periods.

(1) Notwithstanding time periods specified for completion of required tasks, time periods may be changed by mutual agreement between the owner or operator and the Administrator as specified in § 65.5(h)(3) (for example, a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period applies until it is changed. A new request is not necessary for each recurring period.

(2) When the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in the following paragraphs, as appropriate:

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision requires completion of a task during each of multiple successive periods, an owner or operator may perform the required task at any time during the specified period provided the task is conducted at a reasonable interval after completion of the task during the previous period.

### § 65.4 Recordkeeping.

(a) *Maintaining notifications, records, and reports.* Except as provided in paragraph (b) of this section, the owner or operator of each regulated source subject to this part shall keep copies of notifications, reports, and records required by this part for the length of time specified in the following, as applicable:

(1) If an owner or operator is required to obtain or operate a regulated source under a title V permit, then all applicable notifications, reports, and records for that regulated source shall be maintained for at least 5 years, except for the records required in § 65.47(b) for storage vessel capacity, § 65.104(e)(2) for valve and connector monitoring, and § 65.163(d)(1) for closed vent system design specifications.

(2) If an owner or operator is not required to obtain or operate a regulated source under a title V permit, then all notifications, reports, and records for that regulated source required by this part shall be maintained for at least 2 years, except for the records required in § 65.47(b) for storage vessel capacity, § 65.104(e)(2) for valve and connector monitoring, and § 65.163(d)(1) for closed vent system design specifications.

(b) *Copies of reports.* If an owner or operator submits reports to the applicable EPA Regional Office, the owner or operator is not required to maintain copies of those reports. If the EPA Regional Office has waived the requirement of § 65.5(g)(1) for submittal of copies of reports, the owner or operator is not required to maintain copies of the waived reports. Paragraph (b) of this section applies only to reports and not the underlying records which must be maintained as specified throughout this part.

(c) *Availability of records.* All applicable records shall be maintained in such a manner that they can be readily accessed and are suitable for inspection as specified in the following:

(1) Except as specified in paragraph (c)(2) of this section, records of the most recent 2 years shall be retained onsite or shall be accessible to an inspector while onsite. The records of the remaining 3 years, where required, may be retained offsite.

(2) For sources referenced to this part from 40 CFR part 63, subpart G or H, the most recent 6 months of records shall be retained on site or shall be accessible to an inspector while onsite from a central location by computer or other means that provides access within 2 hours after a request. The remaining 4 and one-half years of records, where required, may be retained offsite.

(3) Records specified in paragraph (c)(1) or (2) of this section may be maintained in hard copy or computer-readable form including, but not limited to, on paper, microfilm, computer, computer disk, magnetic tape, or microfiche.

### § 65.5 Reporting requirements.

(a) *Required reports.* Each owner or operator of a regulated source subject to this subpart shall submit the following reports, as applicable:

(1) A Notification of Initial Startup described in paragraph (b) of this section.

(2) An Initial Notification for Part 65 Applicability described in paragraph (c) of this section.

(3) An Initial Compliance Status Report described in paragraph (d) of this section.

(4) Periodic reports described in paragraph (e) of this section.

(5) Other reports shall be submitted as specified elsewhere in this part.

(6) Startup, Shutdown, and Malfunction Reports described in § 65.6(c).

(b) *Notification of Initial Startup.* (1) *Contents.* Any owner or operator of a regulated source which elects to comply with this part at initial startup shall send the Administrator written notification of the actual date of initial startup of a regulated source.

(2) *Due date.* The notification of the actual date of initial startup shall be postmarked within 15 days after such date.

(c) *Initial Notification for Part 65 Applicability.* Owners or operators of regulated sources that have been subject to a 40 CFR part 60, 61, or 63 standard, and who wish to comply with this part, and who are not operating the regulated source under an approved title V permit shall notify the Administrator of their intent. The notice shall include the information specified in paragraphs (c)(1) through (7) of this section, as applicable, and may accompany the application for a construction permit for the regulated source. This notification may be waived by the Administrator.

(1) Identification of the storage vessels subject to subpart C of this part.

(2) Identification of the process vents subject to subpart D of this part, including process vent group status as specified in § 65.62(a).

(3) Identification of the process vents subject to 40 CFR part 60, subpart DDD, complying with requirements of subpart G of this part.

(4) Identification of the transfer racks subject to subpart E of this part.

(5) For equipment leaks, identification of the process units subject to subpart F of this part.

(6) The proposed implementation schedule specified in § 65.1(f)(1) for sources identified in paragraphs (c)(1) through (5) of this section.

(7) *Process unit identification.* As an alternative to requirements specified in paragraphs (c)(1) through (4) of this section, the process units can be identified instead of the individual pieces of equipment. For this alternative, the kind of emission point

in the process unit that will comply must also be identified.

(d) *Initial Compliance Status Report*—(1) *Contents.* The owner or operator shall submit an Initial Compliance Status Report for each regulated source subject to this part containing the information specified in the subparts of this part. Unless the required information has already been submitted under requirements of the applicable referencing subpart, this information can be submitted as part of a title V permit application or amendment.

(2) *Due date.* The owner or operator shall submit the Initial Compliance Status Report for each regulated source within 240 days after the applicable compliance date specified in the referencing subparts, or within 60 days after the completion of the initial performance test or initial compliance determination, whichever is earlier. Initial compliance Status Reports may be combined for multiple regulated sources as long as the due date requirements for all sources covered in the combined report are met.

(e) *Periodic reports.* The owner or operator of a source subject to monitoring requirements of this part or to other requirements of this part where periodic reporting is specified, shall submit a periodic report.

(1) *Contents.* Periodic reports shall include all information specified in subparts of this part.

(2) *Due date.* The periodic report shall be submitted semiannually no later than 60 calendar days after the end of each 6-month period. The first report shall be submitted as specified in the following, as applicable:

(i) The first report shall be submitted no later than the last day of the month that includes the date 8 months after the date the source became subject to this part or since the last part 60, 61, or 63 periodic report was submitted for the applicable requirement, whichever is earlier.

(ii) For sources electing to comply with the CAR at initial startup, the first report shall cover the 6 months after the Initial Compliance Status Report is due. The first report shall be submitted no later than the last day of the month that includes the date 8 months after the Initial Compliance Status Report is due.

(3) *Overlap with title V reports.* Information required by this part, which is submitted with a title V periodic report, need not also be included in a subsequent periodic report required by this part. The title V report shall be referenced in the periodic report required by this part.

(f) *General report content.* All reports and notifications submitted pursuant to this part, including reports that combine information from this part and a referencing subpart, shall include the following information:

(1) The name, address, and telephone number (fax number may also be provided) of the owner or operator.

(2) The name, address and telephone number of the person to whom inquiries should be addressed, if different than the owner/operator.

(3) The address (physical location) of the reporting facility.

(4) Identification of each regulated source covered in the submission and identification of which subparts (referencing subparts and this part 65) options from this part are applicable to that regulated source. Summaries and groupings of this information are permitted.

(g) *Report and notification submission*—(1) *Submission.* All reports and notifications required under this part shall be sent to the Administrator at the appropriate EPA Regional Office and to the delegated State authority, except that requests for permission to use an alternative means of emission limitation as provided for in § 65.8(a) shall be submitted to the Director of the EPA Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, MD–10, Research Triangle Park, North Carolina, 27711. The EPA Regional Office may waive the requirement to receive a copy of any reports or notifications at its discretion.

(2) *Submission of copies.* If any State requires a notice that contains all the information required in a report or notification listed in this part, an owner or operator may send the appropriate EPA Regional Office a copy of the report or notification sent to the State to satisfy the requirements of this part for that report or notification.

(3) *Method of submission.* Wherever this subpart specifies ''postmark'' dates, submittals may be sent by methods other than the U.S. Mail (for example, by fax or courier). Submittals shall be sent on or before the specified date.

(4) *Submission by electronic media.* If acceptable to both the Administrator and the owner or operator of a source, reports may be submitted on electronic media.

(h) *Adjustment to timing of submittals and review of required communications*—(1) *Alignment with title V submission.* An owner or operator may submit periodic reports required by this part on the same schedule as the title V periodic report for the facility. The owner or operator using this option need not obtain prior approval, but must assure no reporting gaps from the last periodic report for the relevant standards. The owner or operator shall clearly identify the change in reporting schedule in the first report filed under paragraph (h) of this section. The requirements of paragraph (e) of this section are not waived when implementing this change.

(2) *Request for adjustment.* An owner or operator may arrange by mutual agreement (which may be a standing agreement) with the Administrator a common schedule on which periodic reports required by this part shall be submitted throughout the year as long as the reporting period is not extended. An owner or operator who wishes to request a change in a time period or postmark deadline for a particular requirement shall request the adjustment in writing as soon as practical before the subject activity is required to take place. The owner or operator shall include in the request whatever information he or she considers useful to convince the Administrator that an adjustment is warranted. A request for a change to the periodic reporting schedule need only be made once for every schedule change and not once for every semiannual report submitted.

(3) *Approval of request for adjustment.* If, in the Administrator's judgment, an owner or operator's request for an adjustment to a particular time period or postmark deadline is warranted, the Administrator will approve the adjustment. The Administrator will notify the owner or operator in writing of approval or disapproval of the request for an adjustment within 15 calendar days of receiving sufficient information to evaluate the request.

(4) *Notification of delay.* If the Administrator is unable to meet a specified deadline, the owner or operator will be notified of any significant delay and informed of the amended schedule.

(i) Unless already submitted in a previous report, an owner or operator shall report in a title V permit application or as otherwise specified by the permitting authority, the information listed in paragraphs (i)(1) through (5) of this section. This information shall be submitted to the Administrator if the regulated source is not a title V source.

(1) A list designating each emission point complying with subparts C through G of this part and whether each process vent is Group 1, Group 2A, or Group 2B.

(2) The control technology or method of compliance that will be applied to each emission point.

(3) A statement that the compliance demonstration, monitoring, inspection, recordkeeping, and reporting provisions in subparts C through G of this part that are applicable to each emission point will be implemented beginning on the date of compliance as specified in the referencing subpart.

(4) The monitoring information in § 65.162(e) if, for any emission point, the owner or operator of a source seeks to comply through use of a control technique other than those for which monitoring parameters are specified in §§ 65.148 through 65.154.

(5) Any requests for alternatives to the continuous operating parameter monitoring and recordkeeping provisions, as specified in § 65.162(d).

**§ 65.6 Startup, shutdown, and malfunction plan and procedures.**

(a) Paragraphs (b) and (c) of this section do not apply to Group 2A or Group 2B process vents.

(b) *Startup, shutdown, and malfunction plan.* (1) *Description and purpose of plan.* The owner or operator of a regulated source shall develop and implement a written startup, shutdown, and malfunction plan that describes, in detail, procedures for operating and maintaining the regulated 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 relevant standard. The plan shall also address routine or otherwise predictable CPMS malfunctions. This plan shall be developed by the owner or operator by the regulated source's implementation date as specified in § 65.1(f), or for sources referenced from 40 CFR part 63, subpart F, by the compliance date specified in that subpart. The requirement to develop and implement this plan shall be incorporated into the source's title V permit. This requirement is optional for equipment that must comply with subpart F of this part. It is not optional for equipment equipped with a closed vent system and control device subject to subpart G of this part. The purposes of the startup, shutdown, and malfunction plan are described in the following:

(i) To ensure that owners or operators are prepared to correct malfunctions as soon as practical after their occurrence in order to minimize excess emissions of regulated material (excess emissions are defined in § 65.3(a)(4)); and

(ii) To reduce the reporting burden associated with periods of startup, shutdown, and malfunction (including corrective action taken to restore malfunctioning process and air pollution control equipment to its normal or usual manner of operation).

(2) *Operation of source.* During periods of startup, shutdown, and malfunction, the owner or operator of a regulated source shall operate and maintain such source (including associated air pollution control equipment and CPMS) in accordance with the procedures specified in the startup, shutdown, and malfunction plan developed under paragraph (b)(1) of this section.

(3) *Use of additional procedures.* To satisfy the requirements of this section to develop a startup, shutdown, and malfunction plan, the owner or operator may use the regulated source's standard operating procedures (SOP) manual, or an Occupational Safety and Health Administration (OSHA) or other plan, provided the alternative plans meet all the requirements of this section and are made available for inspection when requested by the Administrator.

(4) *Revisions to the plan.* Based on the results of a determination made under § 65.3(b)(3), the Administrator may require that an owner or operator of a regulated source make changes to the startup, shutdown, and malfunction plan for that source. The Administrator may require reasonable revisions to a startup, shutdown, and malfunction plan, if the Administrator finds that the plan is inadequate as specified in the following:

(i) Does not address a startup, shutdown, and malfunction event of the CPMS, the air pollution control equipment, or the regulated source that has occurred; or

(ii) Fails to provide for the operation of the regulated source (including associated air pollution control equipment and CPMS) during a startup, shutdown, and malfunction event in a manner consistent with good air pollution control practices for minimizing emissions to the extent practical; or

(iii) Does not provide adequate procedures for correcting malfunctioning process and/or air pollution control equipment as quickly as practicable; or

(iv) Does not provide adequate measures to prevent or minimize excess emissions to the extent practical as specified and defined in § 65.3(a)(4).

(5) *Additional malfunction plan requirements.* If the startup, shutdown, and malfunction plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction but was not included in the startup, shutdown, and malfunction plan at the time the owner or operator developed the plan, the owner or operator shall revise the startup, shutdown, and malfunction plan within 45 days after the event to include detailed procedures for operating and maintaining the regulated source during similar malfunction events, and a program of corrective action for similar malfunctions of process or air pollution control equipment or CPMS.

(6) *Retain plan on site.* The current plan must be kept on site at all times.

(c) *Periodic startup, shutdown, and malfunction reports.* During the reporting period, reports shall only be required for startup, shutdown, and malfunction during which excess emissions as defined in § 65.3(a)(4) occur. A startup, shutdown, and malfunction report can be submitted as part of a periodic report required under § 65.5(e), or on a more frequent basis if specified otherwise in a relevant standard or as established otherwise by the permitting authority in the source's title V permit. The startup, shutdown, and malfunction report shall be delivered or postmarked by the 30th day following the end of each calendar half (or other calendar reporting period, as appropriate), unless the information is submitted with the periodic report. The report shall include the following information, as appropriate:

(1) The name, title, and signature of the owner or operator or other responsible official certifying its accuracy.

(2) The number of startup, shutdown, malfunction events and the total duration of all periods of startup, shutdown, and malfunction for the reporting period.

(3) If actions taken by an owner or operator during a startup, shutdown, and malfunction of a regulated source, or of a control device or monitoring system required for compliance (including actions taken to correct a malfunction) are consistent with the procedures specified in the source's startup, shutdown, and malfunction plan, then the owner or operator shall state such information in a startup, shutdown, and malfunction report.

(4) If at any time an action taken by an owner or operator, during a startup, shutdown, or malfunction (including actions taken to correct a malfunction) during which excess emissions occur, as defined in § 65.3(a)(4), is not consistent with the procedures specified in the regulated source's startup, shutdown, and malfunction plan, the owner or operator shall report the actions taken for that event as part of the periodic report. The report shall explain the circumstances of the event, the reasons for not following the startup, shutdown, and malfunction plan, and whether any

excess emissions and/or parameter monitoring exceedances are believed to have occurred.

**§ 65.7 Monitoring, recordkeeping, and reporting waivers and alternatives.**

(a) *Waiver of recordkeeping or reporting requirements.*—(1) *Waiver application.* The owner or operator may apply for a waiver from recordkeeping or reporting requirements if the regulated source is achieving the relevant standard(s), or the source is operating under an extension of compliance under 40 CFR 63.6(i), or a waiver of compliance under 40 CFR 61.10(b), or the owner or operator has requested an extension or waiver of compliance and the Administrator is still considering that request. The waiver application shall be submitted in writing to the Administrator.

(2) *Extension of compliance request.* If an application for a waiver of recordkeeping or reporting is made, the application shall accompany the request for an extension of compliance under 40 CFR 63.6(i) or the request for a waiver of compliance under 40 CFR 61.10(b), any required compliance progress report or compliance status report required in the source's title V permit application or a permit modification application, or a periodic report required under this part, whichever is applicable. The application shall include whatever information the owner or operator considers useful to convince the Administrator that a waiver of recordkeeping or reporting is warranted.

(3) *Approval or denial of waiver.* The Administrator will approve or deny a request for a waiver of recordkeeping or reporting requirements when performing one of the following actions:

(i) Approves or denies an extension of compliance under 40 CFR 63.6(i) or a waiver of compliance under 40 CFR 61.10(b); or

(ii) Makes a determination of compliance following the submission of a required compliance status report or periodic report; or

(iii) Makes a determination of suitable progress toward compliance following the submission of a compliance progress report, whichever is applicable.

(4) *Waiver conditions.* A waiver of any recordkeeping or reporting requirement granted under this paragraph (a) may be conditioned on other recordkeeping or reporting requirements deemed necessary by the Administrator.

(5) *Waiver cancellation.* Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notice is given to the owner or operator of the regulated source.

(b) *Requests for approval of alternative monitoring or recordkeeping.* An owner or operator may submit a written request for approval to use alternatives to the monitoring or recordkeeping provisions of this part. For process vents and transfer racks, except low-throughput transfer racks, the provisions in paragraph (c) of this section shall govern the review and approval of requests. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring or recordkeeping method, such as the technical or economic infeasibility, or the impracticality, of the regulated source using the required method. For storage vessels and low throughput transfer racks, owners and operators shall comply with the requirements of § 65.145(b) for preparing and submitting a design evaluation. For equipment leaks, owners and operators shall comply with the recordkeeping requirements of § 65.163(d).

(c) *Approval or denial of request to use alternative monitoring or recordkeeping.* The Administrator will notify the owner or operator of approval or intention to deny approval of the request to use an alternative monitoring or recordkeeping method within 90 calendar days after receipt of the original request and within 30 calendar days after receipt of any supplementary information that is submitted. Before disapproving any request to use an alternative method, the Administrator will notify the applicant of the Administrator's intention to disapprove the request together with the following:

(1) Notice of the information and findings on which the intended disapproval is based; and

(2) Notice of opportunity for the owner or operator to present additional information to the Administrator before final action on the request. At the time the Administrator notifies the applicant of the intention to disapprove the request, the Administrator will specify how much time the owner or operator will have after being notified of the intended disapproval to submit the additional information.

(d) *Use of an alternative monitoring or recordkeeping method.* (1) The owner or operator of a regulated source is subject to the monitoring and recordkeeping requirements of the relevant standard unless permission to use an alternative monitoring or recordkeeping method requested under paragraph (b) of this section or § 65.162(d) has been granted by the Administrator. Once an alternative is approved, the owner or operator shall use the alternative for the emission points or regulated sources cited in the approval and shall meet the monitoring and recordkeeping requirements of the relevant standard for all other emission points or regulated sources.

(2) If the Administrator approves the use of an alternative monitoring or recordkeeping method for a regulated source under paragraph (c) of this section, the owner or operator of such source shall continue to use the alternative monitoring or recordkeeping method unless he or she receives approval from the Administrator to use another method.

(3) If the Administrator finds reasonable grounds to dispute the results obtained by an alternative monitoring or recordkeeping method, requirement, or procedure, the Administrator may require the use of a method, requirement, or procedure specified in the relevant standard. If the results of the specified and alternative methods, requirements, or procedures do not agree, the results obtained by the specified method, requirement, or procedure shall prevail.

**§ 65.8 Procedures for approval of alternative means of emission limitation.**

(a) *Alternative means of emission limitation.* An owner or operator may request a determination of equivalence for an alternative means of emission limitation to the requirements of design, equipment, work practice, or operational standards of this part. If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in regulated material emissions at least equivalent to the reduction in emissions from that source achieved under any design, equipment, work practice, or operational standards (but not performance standards) in this part, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement.

(1) The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(2) Any such notice shall be published only after public notice and an opportunity for a hearing.

(b) *Content of submittal.* (1) In order to obtain approval, any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information showing that the alternative means achieves

equivalent emission reductions. An owner or operator seeking permission to use an alternative means of compliance who has not previously performed testing shall also submit a proposed test plan. If the owner or operator seeks permission to use an alternative means of compliance based on previously performed testing, they shall submit the results of that testing, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring.

(2) The owner or operator who requests an alternative means of emission limitation shall submit a description of the proposed testing, monitoring, recordkeeping, and reporting that will be used and the proposed basis for demonstrating compliance.

(3) For storage vessels, the owner or operator shall include the results of actual emissions tests using full-size or scale-model storage vessels that accurately collect and measure all regulated material emissions using a given control technique, and that accurately simulate wind and account for other emission variables such as temperature and barometric pressure, or an engineering analysis that the Administrator determines is an accurate method of determining equivalence.

(4) For proposed alternatives to equipment leak requirements, the owner or operator shall also submit the information and meet the requirements for alternative means of emission limitation specified in § 65.102(b) (alternative means of emission limitation).

(c) Manufacturers of equipment used to control equipment leaks of a regulated material may request a determination of equivalence for an alternative means of emission limitation for equipment leaks, as specified in § 65.102(c).

(d) *Compliance.* If the Administrator makes a determination that a means of emission limitation is a permissible alternative to the requirements of design, equipment, work practice, or operational standards of this part, the owner or operator shall either comply with the alternative or comply with the requirements of this part.

**§ 65.9 Availability of information and confidentiality.**

(a) *Availability of information.* The availability to the public of information provided to, or otherwise obtained by, the Administrator under this part shall be governed by part 2 of this chapter. With the exception of information protected under part 2 of this chapter, all reports, records, and other information collected by the Administrator under this part are available to the public. In addition, a copy of each permit application, compliance plan (including the schedule of compliance), initial compliance status report, periodic report, and title V permit is available to the public, consistent with protections recognized in section 503(e) of the Act.

(b) *Confidentiality.* (1) If an owner or operator is required to submit information entitled to protection from disclosure under section 114(c) of the Act, the owner or operator may submit such information separately. The requirements of section 114(c) shall apply to such information.

(2) The contents of a title V permit shall not be entitled to protection under section 114(c) of the Act; however, information submitted as part of an application for a title V permit may be entitled to protection from disclosure.

**§ 65.10 State authority.**

(a) The provisions of this part shall not be construed in any manner to preclude any State or political subdivision thereof from adopting and enforcing any emission standard or limitation applicable to a regulated source, provided that such standard, limitation, prohibition, or other regulation is not less stringent than the standard applicable to such a regulated source.

(b) The provisions of this part shall not be construed in any manner to preclude any State or political subdivision thereof from requiring the owner or operator of a regulated source to obtain permits, licenses, or approvals prior to initiating construction, modification, or operation of such a regulated source.

**§ 65.11 Circumvention and prohibited activities.**

(a) *Circumvention.* (1) No owner or operator subject to the provisions of this part shall build, erect, install, or use any article, machine, equipment, or process to conceal an emission that would otherwise constitute noncompliance with a relevant standard. Such concealment includes, but is not limited to, the following:

(1) The use of diluents to achieve compliance with a relevant standard based on the concentration of a pollutant in the effluent discharged to the atmosphere; and

(2) The fragmentation of an operation for the purpose of avoiding regulation by a relevant standard.

(b) *Prohibited activities.* (1) No owner or operator subject to the provisions of this part shall operate any regulated source in violation of the requirements of this part except under the following provisions:

(i) An extension or waiver of compliance granted by the Administrator under an applicable part; or

(ii) An extension of compliance granted under an applicable part by a State with an approved permit program; or

(iii) An exemption from compliance granted by the President under section 112(i)(4) of the Act.

(2) After the effective date of an approved permit program in a State, no owner or operator of a regulated source in that State who is required under an applicable part to obtain a title V permit shall operate such source except in compliance with the provisions of this part and the applicable requirements of the permit program in that State.

(3) An owner or operator of a regulated source who is subject to an emission standard promulgated under this part or a referencing part shall comply with the requirements of that standard by the date(s) established in the applicable subpart(s) (including this subpart) regardless of whether the following criteria are met:

(i) A title V permit has been issued to that source; or

(ii) If a title V permit has been issued to that source, whether such permit has been revised or modified to incorporate the emission standard.

(c) *Severability.* Notwithstanding any requirement incorporated into a title V permit obtained by an owner or operator subject to the provisions of this part, the provisions of this part are federally enforceable.

**§ 65.12 Delegation of authority.**

(a) In delegating implementation and enforcement authority to a State under sections 111(c) and 112(l) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities that will not be delegated to States: §§ 65.8, 65.46, 65.102, 65.156(b)(l)(ii), and 65.158(a)(2)(ii).

**§ 65.13 Incorporation by reference.**

(a) The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice

of any change in these materials will be published in the **Federal Register**. The materials are available for purchase at the corresponding addresses noted in paragraph (b) of this section, and all are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC; at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street, SW., Washington, DC; and at the EPA Library (MD–35), U.S. EPA, Research Triangle Park, North Carolina.

(b) The materials listed in this paragraph (b) are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, Michigan 48106.

(1) ASTM D1946–77, Standard Method for Analysis of Reformed Gas by Gas Chromatography, IBR approved December 14, 2000 for §§ 65.64(e)(2) and 65.147(a)(4)(i) and (b)(3)(ii).

(2) ASTM D2382–76, Standard Test Method for Heat of Combustion of Hydrocarbon Fuels by Bomb Calorimeter (High-Precision Method). IBR approved December 14, 2000 for §§ 65.64(e)(1) and 65.147(b)(3)(ii).

**§ 65.14 Addresses.**

(a) All requests, reports, applications, notifications, and other communications submitted pursuant to this part, except as specified under § 65.5(g)(1), shall be sent to the Administrator at the appropriate EPA Regional Office indicated in the following list:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Director, Air Management Division, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203.

Region II (New Jersey, New York, Puerto Rico, Virgin Islands), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10007.

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303.

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), Director, Air Management Division, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas); Director; Compliance Assurance and Enforcement Division; U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

Region VII (Iowa, Kansas, Missouri, Nebraska), Director, Air and Toxics Division, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado 80295.

Region IX (American Samoa, Arizona, California, Guam, Hawaii, Nevada), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

Region X (Alaska, Oregon, Idaho, Washington), Director, Air and Waste Management Division, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

(b) All information required to be submitted to the Administrator under this part shall also be submitted to the appropriate State agency of any State to which authority has been delegated under section 112(l) of the Act. The mailing addresses for State agencies are listed as follows:

(1) *Alabama.* Air Pollution Control Division, Air Pollution Control Commission, 645 S. McDonough Street, Montgomery, Alabama 36104.

(2) *Alaska.* Department of Environmental Conservation, 3220 Hospital Drive, Juneau, Alaska 99811.

(3) *Arizona.* Arizona Department of Health Services, 1740 West Adams Street, Phoenix, Arizona 85007.

(4) *Arkansas.* Chief, Division of Air Pollution Control, Arkansas Department of Pollution Control and Ecology, 8001 National Drive, P.O. Box 9583, Little Rock, Arkansas 72209.

(5) *California.* (i) Amador County Air Pollution Control District, P.O. Box 430, 810 Court Street, Jackson, California 95642.

(ii) Bay Area Air Pollution Control District, 939 Ellis Street, San Francisco, California 94109.

(iii) Butte County Air Pollution Control District, P.O. Box 1229, 316 Nelson Avenue, Oroville, California 95965.

(iv) Calaveras County Air Pollution Control District, Government Center, El Dorado Road, San Andreas, California 95249.

(v) Camino del Rimedio, Santa Barbara, California 93110.

(vi) Colusa County Air Pollution Control District, 751 Fremont Street, Colusa, California 95952.

(vii) El Dorado Air Pollution Control District, 330 Fair Lane, Placerville, California 95667.

(viii) Fresno County Air Pollution Control District, 1221 Fulton Mall, Fresno, California 93721.

(ix) Glenn County Air Pollution Control District, P.O. Box 351, 720 North Colusa Street, Willows, California 95988.

(x) Great Basin Unified Air Pollution Control District, 157 Short Street, suite 6, Bishop, California 93514.

(xi) Imperial County Air Pollution Control District, County Services Building, 939 West Main Street, El Centro, California 92243.

(xii) Kern County Air Pollution Control District, 1601 H Street, suite 250, Bakersfield, California 93301.

(xiii) Kings County Air Pollution Control District, 330 Campus Drive, Hanford, California 93230.

(xiv) Lake County Air Pollution Control District, 255 North Forbes Street, Lakeport, California 95453.

(xv) Lassen County Air Pollution Control District, 175 Russell Avenue, Susanville, California 96130.

(xvi) Madera County Air Pollution Control District, 135 West Yosemite Avenue, Madera, California 93637.

(xvii) Mariposa County Air Pollution Control District, Box 5, Mariposa, California 95338.

(xviii) Mendocino County Air Pollution Control District, County Courthouse, Ukiah, California 94582.

(xix) Merced County Air Pollution Control District, P.O. Box 471, 240 East 15th Street, Merced, California 95340.

(xx) Modoc County Air Pollution Control District, 202 West 4th Street, Alturas, California 96101.

(xxi) Monterey Bay Unified Air Pollution Control, 1164 Monroe Street, Suite 10, Salinas, California 93906.

(xxii) Nevada County Air Pollution Control District, H.E.W. Complex, Nevada City, California 95959.

(xxiii) North Coast Unified Air Quality Management District, 5630 South Broadway, Eureka California 95501.

(xxiv) Northern Sonoma County Air Pollution Control District, 134 ''A'' Avenue, Auburn, California 95448.

(xxv) Placer County Air Pollution Control District, 11491 ''B'' Avenue, Auburn, California 95603.

(xxvi) Shasta County Air Pollution Control District, 2650 Hospital Lane, Redding, California 96001.

(xxvii) Sierra County Air Pollution Control District, P.O. Box 286, Downieville, California 95936.

(xxviii) Siskiyou County Air Pollution

Control District, 525 South Foothill Drive, Yreka, California 96097.

(xxix) South Coast Air Quality Management District, 9150 Flair Drive, El Monte, California 91731.

(xxx) Stanislaus County Air Pollution Control District, 1030 Scenic Drive, Modesto, California 95350.

(xxxi) Sutter County Air Pollution Control District, Sutter County Office Building, 142 Garden Highway, Yuba City, California 95991.

(xxxii) Tehama County Air Pollution Control District, P.O. Box 38, 1760 Walnut Street, Red Bluff, California 96080.

(xxxiii) Tulare County Air Pollution Control District, County Civic Center, Visalia, California 93277.

(xxxiv) Tuolumne County Air Pollution Control District, 9 North Washington Street, Sonora, California 95370.

(xxxv) Ventura County Air Pollution Control District, 800 South Victoria Avenue, Ventura, California 93009.

(xxxvi) Yolo-Solano Air Pollution Control District, P.O. Box 1006, 323 First Street, i5, Woodland, California 95695.

(6) *Colorado.* Department of Health, Air Pollution Control Division, 4210 East 11th Avenue, Denver, Colorado 80220.

(7) *Connecticut.* Bureau of Air Management, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, Connecticut 06106.

(8) *Delaware.* Delaware Department of Natural Resources and Environmental Control, Tatnall Building, P.O. Box 1401, Dover, Delaware 19901.

(9) *Florida.* Florida Bureau of Air Quality Management, Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301.

(10) *Georgia.* Environmental Protection Division, Department of Natural Resources, 270 Washington Street, SW., Atlanta, Georgia 30334.

(11) *Hawaii.* (i) Hawaii Department of Health, 1250 Punchbowl Street, Honolulu, Hawaii 96813.

(ii) Hawaii Department of Health (mailing address), Post Office Box 3378, Honolulu, Hawaii 96801.

(12) *Idaho.* Idaho Division of Environmental Quality 601 Pole Line Rd. Ste. # 2 Twin Falls, Idaho 83301.

(13) *Illinois.* Illinois Environmental Protection Agency—Bureau of Air 1340 North Ninth St., Springfield Illinois 62702 1021 North Grand Avenue East (mailing address) P.O. Box 19276 62794–9276.

(14) *Indiana.* Indiana Department of Environmental Management, 105 South Meridian Street, P.O. Box 6015, Indianapolis, Indiana 46206.

(15) *Iowa.* Iowa Department of Natural Resources, Environmental Protection Division, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319.

(16) *Kansas.* Kansas Department of Health and Environment, Bureau of Air Quality and Radiation Control, Forbes Field, Topeka, Kansas 66620.

(17) *Kentucky.* Kentucky Division of Air Pollution Control, Department for Natural Resources and Environmental Protection, U.S. 127, Frankfort, Kentucky 40601.

(18) *Louisiana.* Program Administrator, Air Quality Division, Louisiana Department of Environmental Quality, P.O. Box 44096, Baton Rouge, Louisiana 70804.

(19) *Maine.* Bureau of Air Quality Control, Department of Environmental Protection, State House, Station No. 17, Augusta, Maine 04333.

(20) *Maryland.* Bureau of Air Quality and Noise Control, Maryland State Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, Maryland 21201.

(21) *Massachusetts.* Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 7th floor, Boston, Massachusetts 02108.

(22) *Michigan.* Air Pollution Control Division, Michigan Department of Natural Resources, Stevens T. Mason Building, 8th Floor, Lansing, Michigan 48926.

(23) *Minnesota.* Minnesota Pollution Control Agency, Division of Air Quality, 520 Lafayette Road, St. Paul, Minnesota 55155.

(24) *Mississippi.* Bureau of Pollution Control, Department of Natural Resources, P.O. Box 10385, Jackson, Mississippi 39209.

(25) *Missouri.* Missouri Department of Natural Resources, Division of Environmental Quality, P.O. Box 176, Jefferson City, Missouri 65102.

(26) *Montana.* Department of Health and Environmental Services, Air Quality Bureau, Cogswell Building, Helena, Montana 59601.

(27) *Nebraska.* Nebraska Department of Environmental Control, P.O. Box 94877, State House Station, Lincoln, Nebraska 68509.

(28) *Nevada.* Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 201 South Fall Street, Carson City, Nevada 89710.

(29) *New Hampshire.* Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, New Hampshire 03302–2033.

(30) *New Jersey.* New Jersey Department of Environmental Protection, John Fitch Plaza, P.O. Box 2807, Trenton, New Jersey 08625.

(31) *New Mexico.* Director, New Mexico Environmental Improvement Division, Health and Environment Department, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

(32) *New York.* New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233, Attention: Division of Air Resources.

(33) *North Carolina.* North Carolina Environmental Management Commission, Department of Environment and Natural Resources, Division of Air Quality, P.O. Box 29580, Raleigh, North Carolina 27626–0580.

(34) *North Dakota.* State Department of Health and Consolidated Laboratories, Division of Environmental Engineering, State Capitol, Bismarck, North Dakota 58505.

(35) *Ohio.* Ohio Environmental Protection Agency, Central District Office, Air Pollution Unit, P.O. Box 1049, Columbus, Ohio 43266–0149.

(36) *Oklahoma.* Oklahoma State Department of Health, Air Quality Service, P.O. Box 53551, Oklahoma City, Oklahoma 73152.

(37) *Oregon.* Department of Environmental Quality, Yeon Building, 522 SW. Fifth, Portland, Oregon 97204.

(38) *Pennsylvania.* Department of Environmental Resources, Post Office Box 2063, Harrisburg, Pennsylvania 17120.

(39) *Rhode Island.* Division of Air and Hazardous Materials, Department of Environmental Management, 291 Promenade Street, Providence, Rhode Island 02908.

(40) *South Carolina.* Office of Environmental Quality Control, Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201.

(41) *South Dakota.* Department of Water and Natural Resources, Office of Air Quality and Solid Waste, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501–3181.

(42) *Tennessee.* Division of Air Pollution Control, Tennessee Department of Public Health, 256 Capitol Hill Building, Nashville, Tennessee 37219.

(43) *Texas.* Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711–3087.

(44) *Utah.* Department of Health, Bureau of Air Quality, 288 North 1460

West, P.O. Box 16690, Salt Lake City, Utah 84116–0690.

(45) *Vermont.* Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, Vermont 05676.

(46) *Virginia.* Virginia State Air Pollution Control Board, Room 1106, Ninth Street Office Building, Richmond, Virginia 23219.

(47) *Washington.* Department of Ecology, Olympia, Washington 98504.

(48) *West Virginia.* Air Pollution Control Commission, 1558 Washington Street, East, Charleston, West Virginia 25311.

(49) *Wisconsin.* Wisconsin Department of Natural Resources, P.O. Box 7921, Madison, Wisconsin 53707.

(50) *Wyoming.* Wyoming Department of Environmental Quality Air Division, 122 West 25th St.—4th Floor, Cheyenne, Wyoming 82002.

**§§ 65.15–65.19 [Reserved]**

TABLE 1 TO SUBPART A OF PART 65—APPLICABLE 40 CFR PARTS 60, 61, AND 63 GENERAL PROVISIONS

| |
|---|
| **A. 40 CFR part 60, subpart A provisions for referencing subparts Ka, Kb, VV, DDD, III, NNN, and RRR** |
| § 60.1,<br>§ 60.2,<br>§ 60.5,<br>§ 60.6,<br>§ 60.7(a)(1), and (a)(4),<br>§ 60.14,<br>§ 60.15,<br>§ 60.16 |
| **B. 40 CFR part 61, subpart A provisions for referencing subparts Y, V, and BB** |
| § 61.01,<br>§ 61.02,<br>§ 61.05,<br>§ 61.06,<br>§ 61.07,<br>§ 61.08,<br>§ 61.10(b), and (c),<br>§ 61.11, § 61.15 |
| **C. 40 CFR part 63, subpart A provisions for referencing subparts G and H** |
| § 63.1(a)(1), (a)(2), (a)(3), (a)(13), (a)(14), (b)(2) and (c)(4)<br>§ 63.2<br>§ 63.5 (a)(1), (a)(2), (b), (d)(1)(ii), (d)(3)(i)[a], (d)(3)(iii)[a], (d)(3)(iv)[a], (d)(3)(v)[a], (d)(3)(vi)[a], (d)(4), (e), (f)(1), and (f)(2)<br>§ 63.6 (a), (b)(3), (c)(5), (i)(1), (i)(2), (i)(4)(i)(A), (i)(5) through (i)(14), (i)(16) and (j)<br>§ 63.9(a)(2), (b)(4)(i)[b], (b)(4)(ii), (b)(4)(iii), (b)(5)[b], (c) and (d)<br>§ 63.10(d)(4)<br>§ 63.12(b) |

[a] These provisions do not apply to equipment leaks.
[b] The notifications specified in 40 CFR 63.9(b)(4)(i) and 63.9(b)(5) shall be submitted at the times specified in this part 65.

TABLE 2 TO SUBPART A OF PART 65—APPLICABLE REFERENCING SUBPART PROVISIONS

| If you have been referenced from * * * | You must comply with * * * |
|---|---|
| 40 CFR part 60, subpart Ka | 60.110a, 60.111a, and 60.115a |
| 40 CFR part 60, subpart Kb | 60.110b, 60.111b, 60.116b(c), (e), (f)(1), and (g) |
| 40 CFR part 60, subpart VV | 60.480, 60.481, 60.482–1(a), 60.485(d), (e), and (f), and 60.486(i) and (j), 60.488, and 60.489 |
| 40 CFR part 60, subpart DDD | 60.560(a), (b) and (d) through (j), 60.561, 60.562–1, 60.562–2, and 60.565(g)(1) |
| 40 CFR part 60, subpart III | 60.610(a), (b) and (d), 60.611, 60.616, 60.617 |
| 40 CFR part 60, subpart NNN | 60.660(a), (b), (c)(1) through (c)(3), (c)(5), (d), 60.661, 60.666, and 60.667 |
| 40 CFR part 60, subpart RRR | 60.700(a), (b), (c)(1), (c)(3), (c)(5), (c)(6), (c)(7), (d), 60.701, 60.706, 60.707 |
| 40 CFR part 61, subpart V | 61.240, 61.241, 61.245(d), 61.246(i) and (j), and 61.247(a) and (f) |
| 40 CFR part 61, subpart Y | 61.270, 61.271(d)(2), and 61.274(a) |
| 40 CFR part 61, subpart BB | 61.300 and 61.301 |
| 40 CFR part 63, subpart G For process vents, group 1 storage vessels, and group 1 transfer racks. | 63.100, 63.101, 63.104 and 63.105 of subpart F and 63.110 and 63.111 of subpart G |
| 40 CFR part 63, subpart H | 63.100, 63.101, 63.104 and 63.105 of subpart F, and 63.160, 63.161, 63.180(d) of subpart H |

## Subpart B—[Reserved]

## Subpart C—Storage Vessels

### § 65.40 Applicability.

(a) The provisions of this subpart and of subpart A of this part apply to control of regulated material emissions from surge control vessels, bottoms receivers, and other storage vessels where a referencing subpart references the use of this subpart for such emissions control.

(b) If a physical or process change is made that causes a storage vessel to fall outside the criteria in the referencing subpart that required the storage vessel to control emissions of regulated material, the owner or operator may elect to no longer comply with the provisions of this subpart. Instead, the owner or operator shall comply with any applicable provisions of the referencing subpart.

### § 65.41 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

### § 65.42 Control requirements.

(a) For each storage vessel to which this subpart applies, the owner or operator shall comply with the requirements of paragraph (b) or (c) of this section.

(b) For each storage vessel storing a liquid for which the maximum true vapor pressure of the total regulated material in the liquid is less than 76.6 kilopascals (10.9 pounds per square inch), the owner or operator shall reduce regulated material emissions to the atmosphere as provided in any one of the paragraphs (b)(1) through (7) of this section.

(1) *Internal floating roof (IFR).* Operate and maintain a fixed roof and internal floating roof meeting the requirements of § 65.43.

(2) *External floating roof (EFR).* Operate and maintain an external floating roof meeting the requirements of § 65.44.

(3) *EFR converted to IFR.* Operate and maintain an external floating roof converted to an internal floating roof meeting the requirements of § 65.45.

(4) *Closed vent system and flare.* Operate and maintain a closed vent system and flare as specified in § 65.142(a)(1). Periods of planned routine maintenance of the flare during which the flare does not meet the specifications of § 65.147 shall not exceed 240 hours per year. The specifications and requirements in § 65.147 for flares do not apply during periods of planned routine maintenance or during a control system malfunction. The owner or operator shall report the periods of planned routine maintenance as specified in § 65.166(d).

(5) *Closed vent system and control device.* Operate and maintain a closed vent system and control device as specified in the following and § 65.142(a)(2):

(i) Except as provided in paragraph (b)(5)(ii) of this section, the control device shall be designed and operated to reduce inlet emissions of regulated material by 95 percent or greater.

(ii) For owners or operators referenced to this part from 40 CFR part 63, subpart G, and if the owner or operator of a storage vessel can demonstrate that a control device installed on the storage vessel on or before December 31, 1992 is designed to reduce inlet emissions of total organic HAP by greater than or equal to 90 percent but less than 95 percent, then the control device is required to be operated to reduce inlet emissions of total organic HAP by 90 percent or greater.

(iii) Periods of planned routine maintenance of the control device, during which the control device does not meet the specifications of paragraph (b)(5)(i) or (ii) of this section, shall not exceed 240 hours per year. The owner or operator shall report the periods of planned routine maintenance as specified in § 65.166(d).

(iv) The requirements in paragraph (b)(5)(i) of this section for control devices do not apply during periods of planned routine maintenance or during a control system malfunction.

(6) *Route to process or fuel gas system.* Route the emissions to a process or a fuel gas system as specified in § 65.142(a)(3). Whenever the owner or operator bypasses the fuel gas system or process, the owner or operator shall comply with the recordkeeping requirement in § 65.163(b)(3). Bypassing is permitted if the owner or operator complies with one or more of the following conditions:

(i) The liquid level in the storage vessel is not increased;

(ii) The emissions are routed through a closed vent system to a control device complying with paragraph (b)(4) or (5) of this section; or

(iii) The total aggregate amount of time during which the emissions bypass the fuel gas system or process during the calendar year without being routed to a control device, for all reasons (except startups/shutdowns/malfunctions or product changeovers of flexible operation units and periods when the storage vessel has been emptied and degassed), does not exceed 240 hours.

(7) *Equivalent requirements.* Comply with an equivalent to the requirements in any one of the paragraphs (b)(1) through (6) of this section, as provided in § 65.46.

(c) For each storage vessel storing a liquid for which the maximum true vapor pressure of the total regulated material in the liquid is greater than or equal to 76.6 kilopascals (10.9 pounds per square inch), the owner or operator shall meet the requirements in paragraph (b)(4), (5), or (6) of this section, or equivalent as provided in § 65.46.

### § 65.43 Fixed roof with an internal floating roof (IFR).

(a) *IFR design requirements.* The owner or operator who elects to control storage vessel regulated material emissions by using a fixed roof and an internal floating roof shall comply with the design requirements in paragraphs (a)(1) through (4) of this section.

(1) The internal floating roof shall be designed to float on the stored liquid surface except when the floating roof must be supported by the leg supports.

(2) Except as provided in paragraph (a)(3) of this section, the internal floating roof shall be equipped with a closure device between the wall of the storage vessel and the floating roof edge and shall consist of one of the following devices:

(i) A liquid-mounted seal.

(ii) A metallic shoe seal.

(iii) Two continuous seals mounted one above the other. The lower seal may be vapor-mounted.

(3) If the internal floating roof is equipped with a vapor-mounted seal as of December 31, 1992, paragraph (a)(2) of this section does not apply until the next time the storage vessel is emptied and degassed, or by April 22, 2004, whichever occurs first.

(4) Except as provided in paragraph (a)(4)(viii) of this section, each internal floating roof shall meet the following specifications:

(i) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents is to provide a projection below the stored liquid surface.

(ii) Except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains, each opening shall be equipped with a gasketed cover or gasketed lid.

(iii) Each penetration of the internal floating roof shall be a sample well.

Each sample well shall have a slit fabric cover that covers at least 90 percent of the opening.

(iv) Each automatic bleeder vent and rim space vent shall be gasketed.

(v) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(vi) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(vii) Covers on each access hatch and each gauge float well shall be designed to be bolted or fastened when they are closed.

(viii) If the internal floating roof does not meet any one of the specifications listed in paragraphs (a)(4)(i) through (vii) of this section as of December 31, 1992, the requirement for meeting those specifications does not apply until the next time the storage vessel is emptied and degassed, or by April 22, 2004, whichever occurs first.

(b) *IFR operational requirements.* The owner or operator using a fixed roof and an internal floating roof shall comply with the following operational requirements:

(1) The internal floating roof shall float on the stored liquid surface at all times except when the floating roof must be supported by the leg supports.

(2) When the floating roof is resting on the leg supports, the process of filling or refilling shall be continuous and shall be accomplished as soon as practical and the owner or operator shall maintain the record specified in § 65.47(e).

(3) Automatic bleeder vents are to be set to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.

(4) Each cover, access hatch, gauge float well, or lid on any opening in the internal floating roof shall be maintained in a closed position at all times (*i.e.,* no visible gaps) except when the device is in actual use. Prior to filling the storage vessel, rim space vents are to be set to open only when the internal floating roof is not floating, or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(c) *IFR inspection requirements.* To demonstrate compliance, the owner or operator shall visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service) according to paragraphs (c)(1) through (4) of this section and maintain records of the IFR inspection results as specified in § 65.47(c)(1).

(1) *Single seal.* For vessels equipped with a single-seal system, the owner or operator shall perform the following inspections:

(i) Visually inspect for IFR type A failures, the internal floating roof, and the seal through manholes and roof hatches on the fixed roof no less frequently than once every 12 months.

(ii) Visually inspect for IFR type B failures, the internal floating roof, the seal, gaskets, slotted membranes, and sleeve seals (if any) each time the storage vessel is emptied, but no less frequently than once every 10 years.

(2) *Double seal.* For vessels equipped with two continuous seals mounted one above the other, the owner or operator shall perform either the inspection required in paragraph (c)(2)(i) of this section or the inspections required in paragraph (c)(2)(ii) of this section:

(i) Visually inspect for IFR type B failures, the internal floating roof, the primary seal, the secondary seal, gaskets, slotted membranes, and sleeve seals (if any) each time the storage vessel is emptied, but no less frequently than once every 5 years; or

(ii) Visually inspect the internal floating roof and the other components as specified in the following:

(A) For IFR type A failures, inspect the secondary seal through manholes and roof hatches on the fixed roof no less frequently than once every 12 months; and

(B) For IFR type B failures, inspect the primary seal, the secondary seal, gaskets, slotted membranes, and sleeve seals (if any) each time the vessel is emptied, but no less frequently than once every 10 years.

(3) For inspections to determine if any IFR type B failures are present as required by paragraphs (c)(1)(ii), (c)(2)(i), and (c)(2)(ii)(B) of this section, the owner or operator shall comply with the refilling notification requirements specified in § 65.48(c)(1).

(4) After installing the control equipment required to comply with § 65.42(b)(1) or (3), visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service) prior to filling the storage vessel with regulated material. If there are holes, tears, or other openings in the primary seal, the secondary seal, or the seal fabric, or defects in the internal floating roof, the owner or operator shall repair the items before filling the storage vessel.

(d) *IFR repair requirements.* The owner or operator shall repair any observed or determined failures according to paragraphs (d)(1) and (2) of this section:

(1) If an IFR type A failure is observed, the owner or operator shall repair the items or empty and remove the storage vessel from service within 45 calendar days. If the failure cannot be repaired within 45 calendar days or if the vessel cannot be emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each and keep the records specified in § 65.47(d).

(2) If an IFR type B failure is determined, the owner or operator shall repair the items and comply with the refilling notification requirements of § 65.48(c)(1) before refilling the storage vessel with regulated material.

**§ 65.44 External floating roof (EFR).**

(a) *EFR design requirements.* The owner or operator who elects to control storage vessel regulated material emissions by using an external floating roof shall comply with the design requirements listed in paragraphs (a)(1) through (3) of this section.

(1) The external floating roof shall be designed to float on the stored liquid surface except when the floating roof must be supported by the leg supports.

(2) The external floating roof shall be equipped with a closure device between the wall of the storage vessel and the roof edge.

(i) Except as provided in paragraph (a)(2)(iii) of this section, the closure device is to consist of two continuous seals, one above the other. The lower seal is referred to as the primary seal and the upper seal is referred to as the secondary seal.

(ii) Except as provided in paragraph (a)(2)(iv) of this section, the primary seal shall be either a metallic shoe seal or a liquid-mounted seal.

(iii) If the external floating roof is equipped with a liquid-mounted or metallic shoe primary seal as of December 31, 1992, the requirement for a secondary seal in paragraph (a)(2)(i) of this section does not apply until the next time the storage vessel is emptied and degassed, or by April 22, 2004, whichever occurs first.

(iv) If the external floating roof is equipped with a vapor-mounted primary seal and a secondary seal as of December 31, 1992, the requirement for a liquid-mounted or metallic shoe primary seal in paragraph (a)(2)(ii) of this section does not apply until the next time the storage vessel is emptied and degassed, or by April 22, 2004, whichever occurs first.

(3) The external floating roof shall meet the following specifications:

(i) Except for automatic bleeder vents (vacuum breaker vents) and rim space vents, each opening in the noncontact

external floating roof shall provide a projection below the stored liquid surface except as provided in paragraph (a)(3)(xiii) of this section.

(ii) Covers on each access hatch and each gauge float well shall be designed to be bolted or fastened when they are closed.

(iii) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening shall be equipped with a gasketed cover, seal, or lid.

(iv) Automatic bleeder vents and rim space vents shall be equipped with a gasket.

(v) Each roof drain that empties into the stored liquid shall be equipped with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(vi) Each unslotted and slotted guide pole well shall be equipped with a gasketed sliding cover or a flexible fabric sleeve seal.

(vii) Except for antirotational devices equipped with a welded cap, each unslotted guide pole shall be equipped with a gasketed cap on the end of the pole.

(viii) Each slotted guide pole shall be equipped with a gasketed float or other device that closes off the stored liquid surface from the atmosphere.

(ix) Each gauge hatch/sample well shall be equipped with a gasketed cover.

(x) Where a metallic shoe seal is in use as the primary seal, one end of the metallic shoe shall be designed to extend into the stored liquid and the other end shall extend a minimum vertical distance of 61 centimeters (24 inches) above the stored liquid surface.

(xi) The secondary seal shall be designed to be installed above the primary seal so that it completely covers the space between the roof edge and the vessel wall.

(xii) For the primary and secondary seals, there shall be no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.

(xiii) If each opening in a noncontact external floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents does not provide a projection below the liquid surface as of December 31, 1992, the requirement for providing these projections below the liquid surface does not apply until the next time the storage vessel is emptied and degassed, or by April 22, 2004, whichever occurs first.

(b) *EFR operational requirements.* The owner or operator using an external floating roof shall comply with the following operational requirements:

(1) The external floating roof shall float on the stored liquid surface at all times except when the floating roof must be supported by the leg supports.

(2) When the floating roof is resting on the leg supports, the process of filling or refilling shall be continuous and shall be accomplished as soon as practical, and the owner or operator shall maintain the record specified in § 65.47(e).

(3) Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening shall be maintained in a closed position (*i.e.*, no visible gap) at all times except when the device is in actual use.

(4) Covers on each access hatch and each gauge float well shall be bolted or fastened when they are closed.

(5) Automatic bleeder vents are to be set to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.

(6) Rim space vents are to be set to open only when the roof is being floated off the roof leg supports or when the pressure beneath the rim seal exceeds the manufacturer's recommended setting.

(7) The cap on the end of each unslotted guide pole shall be closed at all times except when gauging the stored liquid level or taking samples of the stored liquid.

(8) The cover on each gauge hatch/sample well shall be closed at all times except when the hatch or well must be open for access.

(9) Except during the inspections required by paragraph (c) of this section, both the primary seal and the secondary seal shall completely cover the annular space between the external floating roof and the wall of the storage vessel in a continuous fashion.

(c) *EFR inspection requirements.* To demonstrate compliance for an external floating roof vessel, the owner or operator shall use the procedures in paragraphs (c)(4) through (9) of this section for seal gaps according to the frequency specified in paragraphs (c)(1) through (3) of this section and meet the requirements of paragraph (c)(10) of this section.

(1) Measurements of gaps between the vessel wall and the primary seal shall be performed no less frequently than once every 5 years and at the times specified in paragraphs (c)(1)(i) and (ii) of this section. The owner or operator shall maintain records of the EFR seal gap measurements as specified in § 65.47(c)(2).

(i) During the hydrostatic testing of the vessel, by initial startup, or within 90 days of the initial fill with regulated material.

(ii) For an external floating roof vessel equipped with a liquid-mounted or metallic shoe primary seal and without a secondary seal as provided for in paragraph (a)(2)(iii) of this section, measurements of gaps between the vessel wall and the primary seal shall be performed at least once per year until a secondary seal is installed. When a secondary seal is installed above the primary seal, measurements of gaps between the vessel wall and both the primary and secondary seals shall be performed within 90 calendar days of installation of the secondary seal and according to the frequency specified in paragraphs (c)(1) through (3) of this section thereafter.

(2) Measurements of gaps between the vessel wall and the secondary seal shall be performed no less frequently than once per year and within 90 days of the initial fill with regulated material, within 90 days of installation of the secondary seal, or by initial startup. The owner or operator shall maintain records of the EFR seal gap measurements as specified in § 65.47(c)(2).

(3) If any storage vessel ceases to store regulated material for a period of 1 year or more, measurements of gaps between the vessel wall and the primary seal, and gaps between the vessel wall and the secondary seal shall be performed within 90 days of the vessel being refilled with regulated material. The owner or operator shall maintain records of the EFR seal gap measurements as specified in § 65.47(c)(2).

(4) If the tank contains regulated material, all primary seal inspections or gap measurements that require the removal or dislodging of the secondary seal shall be accomplished as soon as possible, and the secondary seal shall be replaced as soon as possible.

(5) The owner or operator shall notify the Administrator 30 days before any EFR seal gap measurement as specified in § 65.48(c)(2).

(6) Except as provided in paragraph (d) of this section, the owner or operator shall determine gap widths and gap areas in the primary and secondary seals (seal gaps) individually by the following procedures:

(i) Seal gaps, if any, shall be measured at one or more floating roof levels when the roof is not resting on the roof leg supports.

(ii) Seal gaps, if any, shall be measured around the entire circumference of the vessel in each place where a 0.32 centimeter (⅛ inch) diameter uniform probe passes freely

(without forcing or binding against the seal) between the seal and the wall of the storage vessel. The circumferential distance of each such location shall also be measured.

(iii) The total surface area of each gap described in paragraph (c)(6)(ii) of this section shall be determined by using probes of various widths to measure accurately the actual distance from the vessel wall to the seal and multiplying each such width by its respective circumferential distance.

(7) The owner or operator shall add the gap surface area of each gap location for the primary seal and divide the sum by the nominal diameter of the vessel. The owner or operator shall include the calculations in the record of the seal gap measurement as specified in § 65.47(c)(2). For metallic shoe primary seals or liquid-mounted primary seals, the accumulated area of gaps between the vessel wall and the primary seal shall not exceed 212 square centimeters per meter of vessel diameter (10.0 square inches per foot of vessel diameter) and the width of any portion of any gap shall not exceed 3.81 centimeters (1.50 inches).

(8) The owner or operator shall add the gap surface area of each gap location for the secondary seal and divide the sum by the nominal diameter of the vessel. The owner or operator shall include the calculations in the record of the seal gap measurement as specified in § 65.47(c)(2). The accumulated area of gaps between the vessel wall and the secondary seal used in combination with a metallic shoe seal or liquid-mounted primary seal shall not exceed 21.2 square centimeters per meter of vessel diameter (1.00 square inch per foot of vessel diameter) and the width of any portion of any gap shall not exceed 1.27 centimeters (0.50 inch). The secondary seal gap requirements may be exceeded during the measurement of primary seal gaps as required by paragraph (c)(1) of this section.

(9) If the owner or operator determines that it is unsafe to perform the seal gap measurements or to inspect the vessel to determine compliance because the floating roof appears to be structurally unsound and poses an imminent or potential danger to inspecting personnel, the owner or operator shall comply with one of the following requirements:

(i) The owner or operator shall measure the seal gaps or inspect the storage vessel no later than 30 calendar days after the determination that the roof is unsafe; or

(ii) The owner or operator shall empty and remove the storage vessel from service no later than 45 calendar days after determining that the roof is unsafe. If the vessel cannot be emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each and comply with the recordkeeping requirements in § 65.47(d).

(10) The owner or operator shall visually inspect for EFR failures, the external floating roof, the primary seal, secondary seal, and fittings prior to initial filling and each time the vessel is emptied (including initially before the vessel is filled with regulated material), shall maintain records of the EFR inspection results as specified in § 65.47(c)(1), and shall comply with the refilling notification requirements specified in § 65.48(c)(1).

(d) *EFR repair requirements.* (1) The owner or operator shall repair conditions that do not meet seal gap specifications listed in paragraphs (c)(7) and (8) of this section or any EFR failure observed by the inspection required by paragraph (c)(10) of this section no later than 45 calendar days after identification, or shall empty and remove the storage vessel from service no later than 45 calendar days after identification. If the vessel cannot be repaired or emptied within 45 calendar days, the owner or operator may utilize up to two extensions of up to 30 additional calendar days each and comply with the recordkeeping requirements in § 65.47(d).

(2) If an EFR failure is observed by the inspection required by paragraph (c)(10) of this section, the owner or operator shall repair the items as necessary so that none of the conditions specified in paragraph (c)(10) of this section exist before filling or refilling the storage vessel with regulated material.

### § 65.45 External floating roof converted into an internal floating roof.

The owner or operator who elects to control storage vessel regulated material emissions by using an external floating roof converted into an internal floating roof shall comply with the internal floating roof requirements of § 65.43 except § 65.43(a)(3), (b)(2), and (b)(3) and the external floating roof deck fitting requirements of § 65.44 except § 65.44(a)(1), (a)(2), (b)(1), (b)(8), (b)(9), (c), and (d), including the recordkeeping and reporting provisions referenced therein.

### § 65.46 Alternative means of emission limitation.

Any person seeking permission to use an alternative means of compliance under this section shall use the procedures of § 65.8.

### § 65.47 Recordkeeping provisions.

(a) *Retention time.* Each owner or operator of a storage vessel subject to this subpart shall meet the requirements of § 65.4, except the record specified in paragraph (b) of this section shall be kept as long as the storage vessel is in operation.

(b) *Vessel dimensions and capacity.* Each owner or operator of a storage vessel subject to this subpart shall keep readily accessible records showing the dimensions of the storage vessel and an analysis of the capacity of the storage vessel.

(c) *Inspection results.* The owner or operator shall keep the records specified in paragraphs (c)(1) and (2) of this section.

(1) For each IFR or EFR inspection required by § 65.43(c)(1) and (2), or § 65.44(c)(10), respectively, a record containing the following information, as appropriate:

(i) In the event that no IFR type A failure, IFR type B failure, or EFR failure is observed, a record showing that the inspection was performed. The record shall identify the storage vessel on which the inspection was performed, the date the storage vessel was inspected, and references indicating which items were inspected.

(ii) In the event that an IFR type A failure, IFR type B failure, or EFR failure is observed, a record that identifies the storage vessel on which the inspection was performed, the date the storage vessel was inspected, a description of the failure and of the repair made, the date the vessel was emptied (if applicable), and the date that the repair was made. As specified in § 65.48(b)(1), the owner or operator shall include this record in the periodic report.

(2) For each EFR seal gap measurement required by § 65.44(c)(1), (2), or (3), a record describing the results of the measurement. The record shall identify the vessel on which the measurement was performed, shall include the date of the measurement, the raw data obtained in the measurement, and the calculations described in § 65.44(c)(7) and (8), and shall meet the following two additional requirements, as appropriate:

(i) In the event that the seal gap measurements do conform to the specifications in § 65.44(c)(7) and (8), the owner or operator shall submit the information specified in § 65.48(b)(2)(i) in the periodic report.

(ii) In the event that the seal gap measurements do not conform to the specifications in § 65.44(c)(7) and (8), the owner or operator shall also keep a description of the repairs that were made, the date the repairs were made,

and the date the storage vessel was emptied and shall include a report of the seal gap measurement results in the periodic report as specified in § 65.48(b)(2)(ii).

(d) *Emptying and repairing extension.* The owner or operator who elects to utilize an extension in emptying a storage vessel for purposes of repair shall prepare by the initiation of the extension the following documentation, as appropriate, of the decision to utilize an extension:

(1) For an extension pursuant to § 65.43(d)(1) or § 65.44(d)(1), a description of the failure, documentation that alternative storage capacity is unavailable, and a schedule of actions that will ensure that the control equipment will be repaired or the vessel will be emptied as soon as practical. As specified in § 65.48(b)(1)(i), the owner or operator shall include this information in the periodic report.

(2) For an extension pursuant to § 65.44(c)(9), an explanation of why it was unsafe to perform the inspection or seal gap measurement, documentation that alternate storage capacity is unavailable, and a schedule of actions that will ensure that the vessel will be emptied as soon as practical. As specified in § 65.48(b)(3), the owner or operator shall include this information in the periodic report.

(e) *Floating roof set on its legs.* The owner or operator shall maintain a record for each storage vessel subject to § 65.43(b)(2) and § 65.44(b)(2) identifying the date when the floating roof was set on its legs and the date when the roof was refloated. The record shall also indicate whether this was a continuous operation.

### § 65.48 Reporting provisions.

(a) *Notification of initial startup.* If § 65.5(b) requires that a notification of initial startup be filed, then the content of the notification of initial startup shall at least include the information specified in § 65.5(b) and the identification of each storage vessel, its capacity, and the types of regulated material stored in the storage vessel.

(b) *Periodic reports.* Report the information specified in paragraphs (b)(1) through (3) of this section, as applicable, in the periodic report specified in § 65.5(e).

(1) *Inspection results.* Report the following information for each inspection conducted in accordance with § 65.43(c) and § 65.44(c) in which an IFR or EFR failure is detected in the control equipment:

(i) If an IFR type A failure or an EFR failure is observed for vessels for which inspections are required under § 65.43(c)(1)(i), § 65.43(c)(2)(ii)(A), or § 65.44(c)(10), each report shall include the inspection results record listed in § 65.47(c)(1)(ii). If an extension is utilized in accordance with § 65.43(d)(1) or § 65.44(d)(1), the report shall include the records listed in § 65.47(c)(1)(ii) plus the documentation specified in § 65.47(d)(1).

(ii) If an IFR type B failure is observed for vessels for which inspections are required under § 65.43(c)(1)(ii), (c)(2)(i), or (c)(2)(ii)(B), each report shall include a copy of the records listed in § 65.47(c)(1)(ii).

(2) *Seal gap measurement results.* (i) For each vessel whose seal gaps are measured during the reporting period, identify each seal gap measurement made in accordance with § 65.44(c) in which the requirements of § 65.44(c)(7) or (8) are met.

(ii) For each seal gap measurement made in accordance with § 65.44(c) in which the requirements of § 65.44(c)(7) or (8) are not met, from the records kept pursuant to § 65.47(c)(2), report the date of the measurements, results of the calculations, and note which seal gap measurements did not conform to the specifications in § 65.44(c)(7) and (8).

(3) *Extension documentation.* If an extension is utilized in accordance with § 65.44(c)(9), the owner or operator shall include the documentation specified in § 65.47(d)(2) in the next report required by § 65.5(e).

(c) *Special notifications.* An owner or operator who elects to comply with § 65.43, § 65.44, or § 65.45 shall submit, as applicable, the reports specified in paragraphs (c)(1) and (2) of this section except as specified in paragraph (c)(3) of this section. Each written notification or report shall also include the information specified in § 65.5(f).

(1) *Refilling notification.* In order to afford the Administrator the opportunity to have an observer present, notify the Administrator prior to refilling of a storage vessel that has been emptied. If the storage vessel is equipped with an internal floating roof as specified in § 65.43, an external floating roof as specified in § 65.44, or an external floating roof converted to an internal floating roof as specified in § 65.45, the notification shall meet either of the following requirements, as applicable.

(i) Notify the Administrator in writing at least 30 calendar days prior to the refilling of each storage vessel; or

(ii) If the inspection is not planned and the owner or operator could not have known about the inspection 30 calendar days in advance of refilling the vessel, the owner or operator shall notify the Administrator as soon as practical, but no later than 7 calendar days prior to the refilling of the storage vessel. Notification may be made by telephone and immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, the notification including the written documentation may be made in writing and sent so that it is received by the Administrator at least 7 calendar days prior to refilling.

(2) *Seal gap measurement notification.* In order to afford the Administrator the opportunity to have an observer present during seal gap measurements, the owner or operator of a storage vessel equipped with an external floating roof as specified in § 65.44 shall meet either of the following notification requirements, as applicable:

(i) Notify the Administrator in writing at least 30 calendar days in advance of any seal gap measurements; or

(ii) If the seal gap measurements are not planned and the owner or operator could not have known about the seal gap measurements 30 calendar days in advance, the owner or operator shall notify the Administrator as soon as practical, but no later than 7 calendar days prior to the seal gap measurements. Notification may be made by telephone and immediately followed by written documentation demonstrating why the seal gap measurements were unplanned. Alternatively, the notification including the written documentation may be made in writing and sent so that it is received by the Administrator at least 7 calendar days prior to refilling.

(3) *Notification waiver.* Where a notification required by paragraphs (c)(1) or (2) of this section is sent to a delegated State or local agency, a copy of the notification to the Administrator is not required. A delegated State or local agency may waive the requirements for these notifications.

(d) *Compliance certification.* For sources subject to the compliance certification provisions of title V, a recertification of continuous compliance with § 65.43(b)(1) and § 65.44(b)(1) shall be based on the annual inspections required by § 65.43(c)(1)(i) and (c)(2)(ii)(A) and any observations made at other times when the roof is viewed.

### §§ 65.49–65.59 [Reserved]

## Subpart D—Process Vents

### § 65.60 Applicability.

The provisions of this subpart and of subpart A of this part apply to regulated material emissions from process vents where a referencing subpart references the use of this subpart.

**§ 65.61 Definitions.**

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

**§ 65.62 Process vent group determination.**

(a) *Group status.* The owner or operator of a process vent shall determine the group status (*i.e.,* Group 1, Group 2A, or Group 2B) for each process vent. Group 1 process vents require control, and Group 2A and 2B process vents do not. Group 2A process vents require parameter monitoring, and Group 2B process vents do not. The owner or operator shall report the group status of each process vent as specified in § 65.5(c)(2).

(b) *Group 1.* A process vent is considered Group 1 if it meets at least one of the following specifications:

(1) The owner or operator designates the process vent as Group 1.

(2) At representative operating conditions expected to yield the lowest TRE index value for the process vent, the TRE index value is less than or equal to 1.0, the flow rate is greater than or equal to 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute), and the concentration is greater than or equal to the applicable criterion in table 1 of this subpart. Procedures for determining the TRE index value, flow rate, and concentration are specified in § 65.64.

(c) *Group 2A.* A process vent is considered Group 2A if, at representative operating conditions expected to yield the lowest TRE index value, it has a TRE index value of greater than 1.0 and less than or equal to 4.0, a flow rate of greater than or equal to 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute), and a concentration greater than or equal to the applicable table 1 criterion. Procedures for determining the TRE index value, flow rate, and concentration are specified in § 65.64.

(d) *Group 2B.* A process vent is considered Group 2B if, at representative operating conditions expected to yield the lowest TRE index value, it has a TRE index value of greater than 4.0; or a flow rate of less than 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute); or a concentration less than the applicable criterion in table 1 of this subpart. Procedures for determining the TRE index value, flow rate, and concentration are specified in § 65.64.

**§ 65.63 Performance and group status change requirements.**

(a) *Group 1 performance requirements.* Except for the additional requirement for halogenated vent streams as provided in paragraph (b) of this section, the owner or operator of a Group 1 process vent shall comply with the requirements of either paragraph (a)(1), (2), or (3) of this section.

(1) *Flare.* Reduce emissions of regulated material using a flare meeting the applicable requirements of § 65.142(b).

(2) *98 percent or 20 parts per million standard.* Reduce emissions of regulated material or TOC by at least 98 weight-percent or to a concentration of less than 20 parts per million by volume, whichever is less stringent. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, and corrected to 3 percent oxygen. The owner or operator shall meet the requirements in § 65.142(b) and paragraphs (a)(2)(i) and/or (a)(2)(ii) of this section.

(i) Compliance with paragraph (a)(2) of this section may be achieved by using any combination of recovery and/or control device to meet the 20 parts per million by volume concentration standard; or by using any combination of recovery and/or control device to meet the 98 weight percent reduction standard, if the recovery device meets the conditions of paragraph (a)(2)(ii) of this section.

(ii) An owner or operator may use a recovery device alone or in combination with one or more control devices to reduce emissions of total regulated material by 98 weight-percent if all of the following conditions are met:

(A) For process vents referenced to this part by 40 CFR part 63, subpart G, the recovery device (and any control device that operates in combination with the recovery device to reduce emissions of total regulated material by 98 weight-percent) was installed before December 31, 1992.

(B) The recovery device that will be used to reduce emissions of total regulated material by 98 weight-percent is the last recovery device before emission to the atmosphere.

(C) The recovery device alone or in combination with one or more control devices is capable of reducing emissions of total regulated material by 98 weight-percent but is not capable of reliably reducing emissions of total regulated material to a concentration of 20 parts per million by volume.

(D) If the owner or operator disposed of the recovered material, the recovery device would be considered a control device and comply with the requirements of this subpart and § 65.142(b) for control devices.

(3) *TRE index value.* Achieve and maintain a TRE index value greater than 1.0 at the outlet of the final recovery device, or prior to release from the process vent to the atmosphere if no recovery device is present. If the TRE index value is greater than 1.0, the process vent shall meet the provisions for a Group 2A or 2B process vent specified in either paragraph (c), (d), (e), or (f) of this section, whichever is applicable.

(b) *Halogenated Group 1 performance requirement.* Halogenated Group 1 process vents that are combusted shall be controlled according to paragraph (b)(1) or (2) of this section. The owner or operator shall either designate the Group 1 process vent as a halogenated Group 1 process vent or shall determine whether the process vent is halogenated using the procedures specified in § 65.64(g). If determined, the halogen concentration in the vent stream shall be recorded and reported in the Initial Compliance Status Report as specified in § 65.160(d). If the owner or operator designates the process vent as a halogenated Group 1 process vent, then this shall also be recorded and reported in the Initial Compliance Status Report.

(1) *Halogen reduction device following combustion.* If a combustion device is used to comply with paragraph (a)(2) of this section for a halogenated process vent, then the process vent exiting the combustion device shall be ducted to a halogen reduction device including, but not limited to, a scrubber before it is discharged to the atmosphere, and the halogen reduction device shall meet the requirements of paragraph (b)(1)(i) or (ii) of this section, as applicable. The halogenated process vent shall not be combusted using a flare.

(i) Except as provided in paragraph (b)(1)(ii) of this section, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens by 99 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilogram per hour (0.99 pound per hour), whichever is less stringent. The owner or operator shall meet the requirements in § 65.142(b).

(ii) If a scrubber or other halogen reduction device was installed prior to December 31, 1992, the device shall reduce overall emissions of hydrogen halides and halogens by 95 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilogram per hour (0.99 pound per hour), whichever is less stringent.

The owner or operator shall meet the requirements in § 65.142(b).

(2) *Halogen reduction device prior to combustion.* A halogen reduction device, such as a scrubber, or other technique may be used to reduce the process vent halogen atom mass emission rate to less than 0.45 kilogram per hour (0.99 pound per hour) prior to any combustion control device and thus make the process vent nonhalogenated; the process vent must comply with the requirements of paragraph (a)(1) or (2) of this section. The mass emission rate of halogen atoms contained in organic compounds prior to the combustor shall be determined according to the procedures in § 65.64(g). The owner or operator shall maintain the record specified in § 65.160(d) and submit the report specified in § 65.165(d).

(c) *Performance requirements for Group 2A process vents with recovery devices.* For Group 2A process vents, where the owner or operator is using a recovery device to maintain a TRE index value greater than 1.0, the owner or operator shall maintain a TRE index value greater than 1.0 and comply with the requirements for recovery devices in § 65.142(b).

(d) *Performance requirements for Group 2A process vents without recovery devices.* For Group 2A process vents where the owner or operator is not using a recovery device to maintain a TRE index value greater than 1.0, determine the appropriate parameters to be monitored and submit the information as specified in paragraphs (d)(1), (2), and (3) of this section. Such information shall be submitted for approval to the Administrator as part of a title V permit application or by separate notice. The owner or operator shall monitor as specified in § 65.65(a), maintain the record specified in § 65.66(e), and submit reports as specified in § 65.67(c).

(1) *Parameter monitoring.* A description of the parameter(s) to be monitored to ensure the owner or operator of a process vent achieves and maintains the TRE above 1.0. and an explanation of the criteria used to select the parameter(s).

(2) *Demonstration methods and procedures.* A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the process, the schedule for this demonstration, and a statement that the owner or operator will establish a range for the monitored parameter as part of the Initial Compliance Status Report required in § 65.5(d), unless this information has already been included in the operating permit application.

(3) *Monitoring, recordkeeping, and reporting frequency.* The frequency and content of monitoring, recording, and reporting if monitoring and recordkeeping are not continuous, or if reports of daily average values when the monitored parameter value is outside the range established in the operating permit or Initial Compliance Status Report will not be included in periodic reports required under § 65.5(e). The rationale for the proposed monitoring, recording, and reporting system shall be included.

(e) *Group 2B performance requirements.* For Group 2B process vents, the owner or operator shall maintain a TRE index greater than 4.0, a flow rate less than 0.011 scmm, or a concentration less than the applicable criteria in table 1 to this subpart.

(f) *Group 2A or 2B process change requirements.* Whenever process changes are made that could reasonably be expected to change a Group 2A or 2B process vent to a Group 1 vent, the owner or operator shall recalculate the TRE index value, flow, or TOC or organic hazardous air pollutant (HAP) concentration according to paragraph (f)(1), (2), or (3) of this section as specified for each process vent as necessary to determine whether the process vent is Group 1, Group 2A, or Group 2B and shall maintain the applicable records specified in § 65.66(d) and submit the applicable reports specified in § 65.67(b). The owner or operator shall perform the group status determination as soon as practical after the process change and within 180 days after the process change. Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of paragraph (f) of this section, process changes do not include process upsets; unintentional, temporary process changes; and changes that are within the range on which the original TRE index value calculation was based.

(1) *Flow rate.* The flow rate shall be determined as specified in the sampling site and flow rate determination procedures in § 65.64(b) and (d) or by using best engineering assessment of the effects of the change. Engineering assessments shall meet the specifications in § 65.64(i).

(2) *Concentration.* The TOC or organic HAP concentration shall be determined as specified in § 65.64(b) and (c) or by using best engineering assessment of the effects of the change. Engineering assessments shall meet the specifications in § 65.64(i).

(3) *TRE index value.* The TRE index value shall be recalculated based on measurements of process vent flow rate, TOC, and/or organic HAP concentrations, and heating values as specified in § 65.64(b), (c), (d), (e), (f), (g), and (h) as applicable, or based on best engineering assessment of the effects of the change. Engineering assessments shall meet the specifications in § 65.64(i).

(4) *Group status change to Group 1.* Where the process change causes the group status to change to Group 1, the owner or operator shall comply with the Group 1 process vent provisions in paragraph (a) of this section and, if they apply, the halogenated Group 1 process vent provisions in paragraph (b) of this section upon initial startup after the change and thereafter unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making the process change. If this demonstration is made to the Administrator's satisfaction, the owner or operator shall comply as expeditiously as practical, but in no event later than 3 years after the emission point becomes Group 1, and shall comply with the following procedures to establish a compliance date:

(i) The owner or operator shall submit to the Administrator for approval a compliance schedule, along with a justification for the schedule.

(ii) The compliance schedule shall be submitted with the operating permit application or amendment or by other appropriate means.

(iii) The Administrator shall approve the compliance schedule or request changes within 120 calendar days of receipt of the compliance schedule and justification.

(5) *Group status change to Group 2A.* Whenever a process change causes the process vent group status to change to Group 2A, the owner or operator shall comply with the provisions of paragraph (c) or (d) of this section upon completion of the group status determination of the process vent.

(6) *Group status change to Group 2B.* Whenever a process change causes the process vent group status to change to Group 2B, the owner or operator shall comply with the provisions of paragraph (e) of this section as soon as practical after the process change.

**§ 65.64 Group determination procedures.**

(a) *General.* The provisions of this section provide calculation and measurement methods for parameters that are used to determine group status.

(b)(1) *Sampling site.* For purposes of determining TOC or HAP concentration, process vent volumetric flow rate, heating value, or TRE index value as specified under paragraph (c), (d), (e), (f), or (h) of this section, the sampling site shall be located after the last recovery device (if any recovery devices are present) but prior to the inlet of any control device that is present, and prior to release to the atmosphere.

(2) *Sampling site when a halogen reduction device is used prior to a combustion device.* An owner or operator using a scrubber or other halogen reduction device to reduce the process vent halogen atom mass emission rate to less than 0.45 kilogram per hour (0.99 pound per hour) prior to a combustion control device in compliance with § 65.63(b)(2) shall determine the halogen atom mass emission rate prior to the combustor and after the scrubber or other halogen reduction device according to the procedures in paragraph (g) of this section.

(3) *Sampling site selection method.* Method 1 or 1A of appendix A of 40 CFR part 60, as appropriate, shall be used for selection of the sampling site. No traverse site selection method is needed for process vents smaller than 0.10 meter (4 inches) in nominal inside diameter.

(c) *TOC or HAP concentration.* The TOC or HAP concentrations used for TRE index value calculations in paragraph (h) of this section shall be determined based on paragraph (c)(1) or (i) of this section, or any other method or data that have been validated according to the protocol in Method 301 of appendix A of 40 CFR part 63. For concentrations needed for comparison with the appropriate concentration in table 1 of this subpart, TOC or HAP concentration shall be determined based on paragraph (c)(1), (c)(2), or (i) of this section or any other method or data that have been validated according to the protocol in Method 301 of appendix A of 40 CFR part 63. The owner or operator shall record the TOC or HAP concentration as specified in § 65.66(c).

(1) *Method 18.* The procedures specified in paragraph (c)(1)(i) and (ii) of this section shall be used to calculate parts per million by volume concentration using Method 18 of appendix A of 40 CFR part 60.

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(ii) The concentration of either TOC (minus methane and ethane) or organic HAP emissions shall be calculated using the following two procedures, as applicable.

(A) The TOC concentration ($C_{TOC}$) is the sum of the concentrations of the individual components and shall be computed for each run using Equation 64–1 of this section:

$$C_{TOC} = \frac{\sum_{i=1}^{x}\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad \text{(Eq. 64-1)}$$

Where:

$C_{TOC}$ = Concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

x = Number of samples in the sample run.

n = Number of components in the sample.

$C_{ji}$ = Concentration of sample component j of the sample i, dry basis, parts per million by volume.

(B) The total organic HAP concentration ($C_{HAP}$) shall be computed according to the equation in paragraph (c)(1)(ii)(A) of this section except that only the organic HAP species shall be summed.

(2) *Method 25A.* The following procedures shall be used to calculate parts per million by volume concentration using Method 25A of appendix A of 40 CFR part 60:

(i) Method 25A of appendix A of 40 CFR part 60 shall be used only if a single organic compound of regulated material is greater than 50 percent of total organic HAP or TOC, by volume, in the process vent.

(ii) The process vent composition may be determined by either process knowledge, test data collected using an appropriate EPA method, or a method or data validated according to the protocol in Method 301 of appendix A of 40 CFR part 63. Examples of information that could constitute process knowledge include calculations based on material balances, process stoichiometry, or previous test results provided the results are still relevant to the current process vent conditions.

(iii) The organic compound used as the calibration gas for Method 25A of appendix A of 40 CFR part 60 shall be the single organic compound of regulated material present at greater than 50 percent of the total organic HAP or TOC by volume.

(iv) The span value for Method 25A of appendix A of 40 CFR part 60 shall be equal to the appropriate concentration value in table 1 to this subpart.

(v) Use of Method 25A of appendix A of 40 CFR part 60 is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(vi) The owner or operator shall demonstrate that the concentration of TOC including methane and ethane measured by Method 25A of appendix A of 40 CFR part 60 is below one-half the appropriate value in table 1 to this subpart to be considered a Group 2B vent with an organic HAP or TOC concentration below the appropriate value in table 1 to this subpart.

(d) *Volumetric flow rate.* The process vent volumetric flow rate ($Q_S$) in standard cubic meters per minute at 20 °C (68 °F) shall be determined as specified in paragraphs (d)(1) and (2) of this section and shall be recorded as specified in § 65.66(b):

(1) Use Method 2, 2A, 2C, or 2D of appendix A of 40 CFR part 60, as appropriate. If the process vent tested passes through a final steam jet ejector and is not condensed, the stream volumetric flow shall be corrected to 2.3 percent moisture; or

(2) The engineering assessment procedures in paragraph (i) of this section can be used for determining volumetric flow rates.

(e) *Heating value.* The net heating value shall be determined as specified in paragraphs (e)(1) and (2) of this section or by using the engineering assessment procedures in paragraph (i) of this section.

(1) The net heating value of the process vent shall be calculated using Equation 64–2 of this section:

$$H_T = K_1\left(\sum_{j=1}^{n} D_j H_j\right) \qquad \text{(Eq. 64-2)}$$

Where:

$H_T$ = Net heating value of the sample, megajoule per standard cubic meter, where the net enthalpy per mole of process vent is based on combustion at 25 °C and 760 millimeters of mercury, but the standard temperature for determining the volume corresponding to 1 mole is 20 °C as in the definition of $Q_S$ (process vent volumetric flow rate).

$K_1$ = Constant, $1.740 \times 10^{-7}$ (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (megajoule per kilocalorie), where standard temperature for (gram-mole per standard cubic meter) is 20 °C.

n = Number of components in the sample.

$D_j$ = Concentration on a wet basis of compound j in parts per million as measured by procedures indicated in paragraph (e)(2) of this section. For process vents that pass through a final steam jet and are not condensed, the moisture is assumed to be 2.3 percent by volume.

$H_j$ = Net heat of combustion of compound j, kilocalorie per gram-mole, based on combustion at 25 °C and 760 millimeters of mercury. The heat of combustion of process vent components shall be determined using American Society for Testing and Materials (ASTM) D2382–76 (incorporated by reference as specified in § 65.13) if published values are not available or cannot be calculated.

(2) The molar composition of the process vent ($D_j$) shall be determined using the following methods:

(i) Method 18 of appendix A of 40 CFR part 60 to measure the concentration of each organic compound.

(ii) American Society for Testing and Materials (ASTM) D1946–77 (incorporated by reference as specified in § 65.13) to measure the concentration of carbon monoxide and hydrogen.

(iii) Method 4 of appendix A of 40 CFR part 60 to measure the moisture content of the stack gas.

(f) *TOC or HAP emission rate.* The emission rate of TOC (minus methane and ethane) ($E_{TOC}$) and/or the emission rate of total organic HAP ($E_{HAP}$) in the process vent as required by the TRE index value equation specified in paragraph (h) of this section, shall be calculated using Equation 64.3 of this section:

$$E = K_2\left(\sum_{j=1}^{n} C_j M_j\right) Q_s \qquad \text{(Eq. 64-3)}$$

Where:

E = Emission rate of TOC (minus methane and ethane) ($E_{TOC}$) or emission rate of total organic HAP ($E_{HAP}$) in the sample, kilograms per hour.

$K_2$ = Constant, $2.494 \times 10^{-6}$ (parts per million) (gram-mole per standard cubic meter) (kilogram per gram) (minutes per hour), where standard temperature for (gram-mole per standard cubic meter) is 20 °C.

n = Number of components in the sample.

$C_j$ = Concentration on a dry basis of organic compound j in parts per million as measured by Method 18 of appendix A of 40 CFR part 60 as indicated in paragraph (c) of this section. If the TOC emission rate is being calculated, $C_j$ includes all organic compounds measured minus methane and ethane; if the total organic HAP emission rate is being calculated, only organic HAP compounds are included.

$M_j$ = Molecular weight of organic compound j, gram/gram-mole.

$Q_s$ = Process vent flow rate, dry standard cubic meter per minute, at a temperature of 20 °C.

(g) *Halogenated vent determination.* In order to determine whether a process vent is halogenated, the mass emission rate of halogen atoms contained in organic compounds shall be calculated according to the procedures specified in paragraphs (g)(1) and (2) of this section. A process vent is considered halogenated if the mass emission rate of halogen atoms contained in the organic compounds is equal to or greater than 0.45 kilogram per hour (0.99 pound per hour).

(1) The process vent concentration of each organic compound containing halogen atoms (parts per million by volume, by compound) shall be determined based on one of the following procedures:

(i) Process knowledge that no halogen or hydrogen halides are present in the process vent; or

(ii) Applicable engineering assessment as discussed in paragraph (i)(3) of this section; or

(iii) Concentration of organic compounds containing halogens measured by Method 18 of appendix A of 40 CFR part 60; or

(iv) Any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63.

(2) Equation 64–4 of this section shall be used to calculate the mass emission rate of halogen atoms:

$$E = K_2 Q\left(\sum_{j=1}^{n}\sum_{i=1}^{m} C_j * L_{j,i} * M_{j,i}\right) \qquad \text{(Eq. 64-4)}$$

Where:

E = Mass of halogen atoms, dry basis, kilogram per hour.

$K_2$ = Constant, $2.494 \times 10^{-6}$ (parts per million)$^{-1}$ (kilogram-mole per standard cubic meter) (minute per hour), where standard temperature is 20 °C.

Q = Flow rate of gas stream, dry standard cubic meters per minute, determined according to paragraph (d) or (i) of this section.

n = Number of halogenated compounds j in the gas stream.

j = Halogenated compound j in the gas stream.

m = Number of different halogens i in each compound j of the gas stream.

i = Halogen atom i in compound j of the gas stream.

$C_j$ = Concentration of halogenated compound j in the gas stream, dry basis, parts per million by volume.

$L_{ji}$ = Number of atoms of halogen i in compound j of the gas stream.

$M_{ji}$ = Molecular weight of halogen atom i in compound j of the gas stream, kilogram per kilogram-mole.

(h) *TRE index value.* The owner or operator shall calculate the TRE index value of the process vent using the equations and procedures specified in paragraphs (h)(1) through (3) of this section, as applicable, and shall maintain the records specified in § 65.66(a) or § 65.66(d)(4), as applicable.

(1) *TRE index value equation.* Equation 64–5 of this section shall be used to calculate the TRE index:

$$TRE = A * [B + C + D + E + F] \qquad \text{(Eq. 64-5)}$$

Where:

TRE = TRE index value.

A, B, C, D, E, and F = Parameters presented in tables 2 and 3 of this subpart that include the following variables:

Q = Process vent flow rate, standard cubic meters per minute, at a standard temperature of 20 °C, as calculated according to paragraph (d) or (i) of this section.

H = Process vent net heating value, megajoules per standard cubic meter, as calculated according to paragraph (e) or (i) of this section.

$E_{TOC}$ = Emission rate of TOC (minus methane and ethane), kilograms per hour, as calculated according to paragraph (f) or (i) of this section.

$E_{HAP}$ = Emission rate of total organic HAP, kilograms per hour, as calculated according to paragraph (f) or (i) of this section.

(2) *Nonhalogenated process vents.* The owner or operator of a nonhalogenated process vent shall calculate the TRE index value using either one of the following procedures, as applicable:

(i) *TRE calculations: Part 60 regulated sources.* Use the parameters in table 2 to this subpart and calculate the TRE index value twice, once using the appropriate equation (depending on the heating value and flow rate of the process vent) in equations 15 through 30 and once using the appropriate equation (depending on the heating value of the process vent) in equations 31 and 32. Select the lowest TRE index value.

(ii) *TRE calculations: Part 63 regulated sources.* Use the equation and parameters in table 3 to this subpart and calculate the TRE index value using equations 34, 35, and 36 for process vents at existing sources; or equations 38, 39, and 40 for process vents at new sources. Select the lowest TRE index value.

(3) *Halogenated process vents.* The owner or operator of a halogenated process vent stream as determined according to procedures specified in paragraph (g) of this section shall calculate the TRE index value using either one of the following procedures, as applicable:

(i) *TRE Calculations: Part 60 regulated sources.* Use the parameters in table 2 to this subpart and calculate the TRE index value using the appropriate equation chosen from equations 1 through 14 depending on the heating value and flow rate of the process vent.

(ii) *TRE calculations: Part 63 regulated sources.* Use the appropriate parameters in table 3 to this subpart and calculate the TRE index value using equation 33 or 37 depending on whether the process vent is at a new or existing source.

(i) *Engineering assessment.* For purposes of TRE index value determination, engineering assessment may be used to determine process vent flow rate, net heating value, TOC emission rate, and total organic HAP emission rate for the representative operating condition expected to yield the lowest TRE index value. Engineering assessments shall meet the requirements of paragraphs (i)(1) through (4) of this section. If process vent flow rate or process vent organic HAP or TOC concentration is being determined for comparison with the 0.011 scmm (0.40 standard cubic foot) flow rate or the applicable concentration value in table 1 to this subpart, engineering assessment may be used to determine the flow rate or concentration for the representative operating condition expected to yield the highest flow rate or concentration.

(1) If the TRE index value calculated using such engineering assessment and the TRE index value equation in paragraph (h) of this section is greater than 4.0, then the owner or operator is not required to perform the measurements specified in paragraphs (c) through (g) of this section.

(2) If the TRE index value calculated using such engineering assessment and the TRE index value equation in paragraph (h) of this section is less than or equal to 4.0, then the owner or operator is required either to perform the measurements specified in paragraphs (c) through (g) of this section for group determination or to consider the process vent a Group 1 process vent and comply with the requirement (or standard) specified in § 65.63(a) and, if applicable, § 65.63(b).

(3) Engineering assessment includes, but is not limited to, the examples specified in paragraphs (i)(3)(i) through (iv) of this section.

(i) Previous test results provided the tests are representative of current operating practices at the process unit.

(ii) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(iii) Maximum flow rate, TOC emission rate, organic HAP emission rate, organic HAP or TOC concentration, or net heating value limit specified or implied within a permit limit applicable to the process vent.

(iv) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to, the following examples:

(A) Use of material balances based on process stoichiometry to estimate maximum TOC or organic HAP concentrations;

(B) Estimation of maximum flow rate based on physical equipment design such as pump or blower capacities;

(C) Estimation of TOC or organic HAP concentrations based on saturation conditions; and

(D) Estimation of maximum expected net heating value based on the stream concentration of each organic compound or, alternatively, as if all TOC in the stream were the compound with the highest heating value.

(4) All data, assumptions, and procedures used in the engineering assessment shall be documented. The owner or operator shall maintain the records specified in § 65.66(a), (b), (c), or (d), as applicable.

**§ 65.65 Monitoring.**

(a) An owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 without a recovery device shall monitor based on the approved plan as specified in § 65.63(d).

(b) As required in § 65.63(a) and (c), an owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 with a recovery device or a Group 1 process vent shall comply with § 65.142(b).

**§ 65.66 Recordkeeping provisions.**

(a) *TRE index value records.* The owner or operator shall maintain records of measurements, engineering assessments, and calculations performed to determine the TRE index value of the process vent according to the procedures of § 65.64(h), including those records associated with halogen vent stream determination. Documentation of engineering assessments shall include all data, assumptions, and procedures used for the engineering assessments, as specified in § 65.64(i). As specified in § 65.67(a), the owner or operator shall include this information in the Initial Compliance Status Report.

(b) *Flow rate records.* Each owner or operator who elects to demonstrate that a process vent is Group 2B based on a flow rate less than 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute) shall record the flow rate as measured using the sampling site and flow rate determination procedures specified in § 65.64(b) and (d) or determined through engineering assessment as specified in § 65.64(i). As specified in § 65.67(a), the owner or operator shall include this information in the Initial Compliance Status Report.

(c) *Concentration records.* Each owner or operator who elects to demonstrate that a process vent is Group 2B based on a concentration less than the

applicable criteria in table 1 to this subpart shall record the organic HAP or TOC concentration as measurement using the sampling site and HAP or TOC concentration determination procedures specified in § 65.64(b) and (c) or determined through engineering assessment as specified in § 65.64(i). As specified in § 65.67(a), the owner or operator shall include this information in the Initial Compliance Status Report.

(d) *Process change records.* The owner or operator shall keep up-to-date, readily accessible records as specified in the following and shall report this information as specified in § 65.67(b):

(1) If the process vent is Group 2B on the basis of flow rate being less than 0.011 scmm (0.40 standard cubic foot), then the owner or operator shall keep records of any process changes as defined in § 65.63(f) that increase the process vent flow rate and any recalculation or measurement of the flow rate pursuant to § 65.63(f).

(2) If the process vent is Group 2B on the basis of organic HAP or TOC concentration being less than the applicable value in table 1 to this subpart, then the owner or operator shall keep records of any process changes as defined in § 65.63(f) that increase the organic HAP or TOC concentration of the process vent and any recalculation or measurement of the concentration pursuant to § 65.63(f).

(3) If the process vent is Group 2A or Group 2B on the basis of the TRE index value being greater than 1.0, then the owner or operator shall keep records of any process changes as defined in § 65.63(f) and any recalculation of the TRE index value pursuant to § 65.63(f).

(4) As a result of a process change, if a process vent that was Group 2B on any basis becomes a Group 2B process vent only on the basis of having a TRE greater than 4.0, then the owner or operator shall keep records of the TRE index value determination performed according to the sample site and TRE index value determination procedures of § 65.64(b)(1) and (h) or determined through engineering assessment as specified in § 65.64(i).

(e) *Other Group 2A records.* An owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 without a recovery device shall record the parameters monitored based on the approved plan as specified in § 65.63(d).

**§ 65.67 Reporting provisions.**

(a) *Initial compliance status report.* The owner or operator shall submit as part of the Initial Compliance Status Report specified in § 65.5(d) the information recorded in § 65.66(a), (b), and (c), as applicable.

(b) *Process change.* (1) Whenever a process change, as described in § 65.63(f), is made that causes a Group 2A or 2B process vent to become a Group 1 process vent or a Group 2B process vent to become a Group 2A process vent, the owner or operator shall either submit a report within 60 days after the performance test or group determination or submit a report included as part of the next periodic report. The report shall include the following information:

(i) A description of the process change;

(ii) The results of the recalculation of the flow rate, organic HAP or TOC concentration, and/or TRE index value required under § 65.63(f) and recorded under § 65.66(d); and

(iii) A statement that the owner or operator will comply with the provisions of § 65.63 by the schedules specified in § 65.63(f)(4) through (6).

(2) For process vents that become Group 1 process vents after a process change requiring a performance test to be conducted for the control device being used as specified in subpart G of this part, the owner or operator shall specify that the performance test has become necessary due to a process change. This specification shall be made in the notification to the Administrator of the intent to conduct a performance test as provided in § 65.164(b)(1).

(3) Whenever a process change as described in § 65.63(f) is made that changes the group status of a process vent from Group 1 to Group 2A, or from Group 1 to Group 2B, or from Group 2A to Group 2B, the owner or operator shall include a statement in the next periodic report after the process change that a process change has been made and the new group status of the process vents.

(4) The owner or operator is not required to submit a report of a process change if one of the following conditions is met:

(i) The change does not meet the definition of a process change in § 65.63(f); or

(ii) For a Group 2B process vent, the vent stream flow rate is recalculated according to § 65.63(f) and the recalculated value is less than 0.011 standard cubic meter per minute (0.40 standard cubic foot per minute); or

(iii) For a Group 2B process vent, the organic HAP or TOC concentration of the vent stream is recalculated according to § 65.63(f), and the recalculated value is less than the applicable value in table 1 to this subpart; or

(iv) For a Group 2B process vent, the TRE index value is recalculated according to § 65.63(f) and the recalculated value is greater than 4.0.

(c) *Parameters for Group 2A without a recovery device.* An owner or operator of a Group 2A process vent maintaining a TRE index value greater than 1.0 without using a recovery device shall report the information specified in the approved plan under § 65.63(d).

**§§ 65.68–65.79 [Reserved]**

TABLE 1 TO SUBPART D OF PART 65.—CONCENTRATION FOR GROUP DETERMINATION

| Referencing subpart | Concentration [1] |
|---|---|
| Subpart III of Part 60 ..... | NA. |
| Subpart NNN of Part 60 ... | 300 ppmv of TOC. |
| Subpart RRR of Part 60 ... | 300 ppmv of TOC. |
| Subpart G of Part 63 ..... | 50 ppmv of HAP [2]. |

[1] The 50 ppm HAP concentration cutoff only applies to 40 CFR part 63, subpart G sources. Process vents subject to only 40 CFR part 60, subparts RRR or NNN are eligible for the 300 ppm TOC cutoff. There is no concentration cutoff for subpart III sources. The process vent provisions of subpart DDD are not consolidated under this subpart.

[2] For process vents subject to subpart G of 40 CFR part 63, the owner or operator may measure HAP or TOC concentration with regard to the low concentration exemption provisions of this part.

TABLE 2 TO SUBPART D OF PART 65.—TRE PARAMETERS FOR NSPS REFERENCING SUBPARTS[a]

| Halogenated vent stream? | Net heating value (MJ/scm)[b] | Vent stream flow rate (scm/min)[c] | Values of terms for TRE equation: TRE=A * [ B + C + D + E + F ] | | | | | | Equation number |
|---|---|---|---|---|---|---|---|---|---|
| | | | A | B | C | D | E | F | |
| Yes | 0≤ H ≤3.5 | Q <14.2 | $1/E_{TOC}$ | 30.96334 | 0 | 0 | −0.13064QH | 0 | 1 |
| | | 14.2≤ Q ≤18.8 | $1/E_{TOC}$ | 19.18370 | 0.27580Q | $0.757620Q^{0.88}$ | −0.13064QH | $0.01025Q^{0.5}$ | 2 |
| | | 18.8< Q ≤699 | $1/E_{TOC}$ | 20.00563 | 0.27580Q | $0.303870Q^{0.88}$ | −0.13064QH | $0.01025Q^{0.5}$ | 3 |
| | | 699< Q ≤1400 | $1/E_{TOC}$ | 39.87022 | 0.29973Q | $0.303870Q^{0.88}$ | −0.13064QH | $0.01449Q^{0.5}$ | 4 |
| | | 1400< Q ≤2100 | $1/E_{TOC}$ | 59.73481 | 0.31467Q | $0.303870Q^{0.88}$ | −0.13064QH | $0.01775Q^{0.5}$ | 5 |
| | | 2100< Q ≤2800 | $1/E_{TOC}$ | 79.59941 | 0.32572Q | $0.303870Q^{0.88}$ | −0.13064QH | $0.02049Q^{0.5}$ | 6 |
| | | 2800< Q ≤3500 | $1/E_{TOC}$ | 99.46400 | 0.33456Q | $0.303870Q^{0.88}$ | −0.13064QH | $0.02291Q^{0.5}$ | 7 |
| | H >3.5 | Q <14.2 | $1/E_{TOC}$ | 20.61052 | 0 | 0 | 0 | 0 | 8 |
| | | 14.2≤ Q ≤18.8 | $1/E_{TOC}$ | 18.84466 | 0.26742Q | $-0.200440Q^{0.88}$ | 0 | $0.01025Q^{0.5}$ | 9 |
| | | 18.8< Q ≤699 | $1/E_{TOC}$ | 19.66658 | 0.26742Q | $-0.253320Q^{0.88}$ | 0 | $0.01025Q^{0.5}$ | 10 |
| | | 699< Q ≤1400 | $1/E_{TOC}$ | 39.19213 | 0.29062Q | $-0.253320Q^{0.88}$ | 0 | $0.01449Q^{0.5}$ | 11 |
| | | 1400< Q ≤2100 | $1/E_{TOC}$ | 58.71768 | 0.30511Q | $-0.253320Q^{0.88}$ | 0 | $0.01775Q^{0.5}$ | 12 |
| | | 2100< Q ≤2800 | $1/E_{TOC}$ | 78.24323 | 0.31582Q | $-0.253320Q^{0.88}$ | 0 | $0.02049Q^{0.5}$ | 13 |
| | | 2800< Q ≤3500 | $1/E_{TOC}$ | 97.76879 | 0.32439Q | $-0.253320Q^{0.88}$ | 0 | $0.02291Q^{0.5}$ | 14 |
| No | 0≤ H ≤0.48 | Q <14.2 | $1/E_{TOC}$ | 11.01250 | 0 | 0 | −0.17109QH | 0 | 15 |
| | | 14.2≤ Q ≤1340 | $1/E_{TOC}$ | 8.54245 | 0.10555Q | $0.090300Q^{0.88}$ | −0.17109QH | $0.01025Q^{0.5}$ | 16 |
| | | 1340< Q ≤2690 | $1/E_{TOC}$ | 16.94386 | 0.11470Q | $0.090300Q^{0.88}$ | −0.17109QH | $0.01449Q^{0.5}$ | 17 |
| | | 2690< Q ≤4040 | $1/E_{TOC}$ | 25.34528 | 0.12042Q | $0.090300Q^{0.88}$ | −0.17109QH | $0.01775Q^{0.5}$ | 18 |
| | 0.48< H ≤1.9 | Q <14.2 | $1/E_{TOC}$ | 13.45630 | 0 | 0 | −0.16181QH | 0 | 19 |
| | | 14.2≤ Q ≤1340 | $1/E_{TOC}$ | 9.25233 | 0.06105Q | $0.319370Q^{0.88}$ | −0.16181QH1 | $0.01025Q^{0.5}$ | 20 |
| | | 1340< Q ≤2690 | $1/E_{TOC}$ | 18.36363 | 0.06635Q | $0.319370Q^{0.88}$ | −0.16181QH | $0.01449Q^{0.5}$ | 21 |
| | | 2690< Q ≤4040 | $1/E_{TOC}$ | 27.47492 | 0.06965Q | $0.319370Q^{0.88}$ | −0.16181QH | $0.01775Q^{0.5}$ | 22 |
| | 1.9< H ≤3.6 | Q <14.2 | $1/E_{TOC}$ | 7.96988 | 0 | 0 | 0 | 0 | 23 |
| | | 14.2≤ Q ≤1180 | $1/E_{TOC}$ | 6.67868 | 0.06943Q | $0.025820Q^{0.88}$ | 0 | $0.01025Q^{0.5}$ | 24 |
| | | 1180< Q ≤2370 | $1/E_{TOC}$ | 13.21633 | 0.07546Q | $0.025820Q^{0.88}$ | 0 | $0.01449Q^{0.5}$ | 25 |
| | | 2370< Q ≤3550 | $1/E_{TOC}$ | 19.75398 | 0.07922Q | $0.025820Q^{0.88}$ | 0 | $0.01775Q^{0.5}$ | 26 |
| | H >3.6 | Q <14.2 | $1/E_{TOC}$ | 6.67868 | 0 | $0.02220Q^{0.88}H^{0.88}$ | −0.00707QH | $0.02036H^{0.5}$ | 27 |
| | | Q ≥14.2 and 14.2≤ Q*(H/3.6) ≤1180 | $1/E_{TOC}$ | 6.67868 | 0 | $0.02220Q^{0.88}H^{0.88}$ | −0.00707QH | $0.00540Q^{0.5}H^{0.5}$ | 28 |
| | | Q ≥14.2 and 1180< Q*(H/3.6) ≤2370 | $1/E_{TOC}$ | 13.21633 | 0 | $0.02412Q^{0.88}H^{0.88}$ | −0.00707QH | $0.00764Q^{0.5}H^{0.5}$ | 29 |
| | | Q ≥14.2 and 2370< Q*(H/3.6) ≤3550 | $1/E_{TOC}$ | 19.75398 | 0 | $0.02533Q^{0.88}H^{0.88}$ | −0.00707QH | $0.00936Q^{0.5}H^{0.5}$ | 30 |
| No | 0≤ H <11.2 | All | $1/E_{TOC}$ | 2.08 | 2.25Q | $0.288Q^{0.8}$ | −0.193QH | $-0.0051E_{TOC}$ | 31 |
| | H ≥11.2 | All | $1/E_{TOC}$ | 2.08 | 0.309Q | $0.0619Q^{0.8}$ | −0.0043QH | $-0.0043E_{TOC}$ | 32 |

[a] Use according to procedures outlined in § 65.64(h).
[b] MJ/scm = mega Joules per standard cubic meter.
[c] scm/min = standard cubic meters per minute.

TABLE 3 TO SUBPART D OF PART 65.—TRE PARAMETERS FOR HON REFERENCING SUBPARTS[a]

| Existing or new? | Halogenated vent stream? | Values of terms for TRE equation: TRE = A * [ B + C + D + E + F ] | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | A | B | C | D | E | F | Equation number |
| Existing | Yes | $1/E_{HAP}$ | 3.995 | 0.05200Q | 0 | −0.001769H | $0.0009700E_{TOC}$ | 33 |
| | No | $1/E_{HAP}$ | 1.935 | 0.3660Q | 0 | −0.007687H | $-0.000733E_{TOC}$ | 34 |
| | | $1/E_{HAP}$ | 1.492 | 0.06267Q | 0 | 0.03177H | $-0.001159E_{TOC}$ | 35 |
| | | $1/E_{HAP}$ | 2.519 | 0.01183Q | 0 | 0.01300H | $0.04790E_{TOC}$ | 36 |
| New | Yes | $1/E_{HAP}$ | 1.0895 | 0.01417Q | 0 | −0.000482H | $0.0002645E_{TOC}$ | 37 |
| | No | $1/E_{HAP}$ | 0.5276 | 0.0998Q | 0 | −0.002096H | $-0.0002000E_{TOC}$ | 38 |
| | | $1/E_{HAP}$ | 0.4068 | 0.0171Q | 0 | 0.008664H | $-0.000316E_{TOC}$ | 39 |
| | | $1/E_{HAP}$ | 0.6868 | 0.00321Q | 0 | 0.003546H | $0.01306E_{TOC}$ | 40 |

[a] Use according to procedures outlined in § 65.64(h).

## Subpart E—Transfer Racks

### § 65.80 Applicability.

(a) The provisions of this subpart and of subpart A of this part apply to control of regulated material emissions from transfer racks where a referencing subpart references the use of this subpart for such emissions control.

(b) If a physical or process change is made that causes a transfer rack to fall outside the criteria in the referencing subpart that required the transfer rack to control emission of regulated material, the owner or operator may elect to comply with the provisions for transfer racks not subject to control contained in the referencing subpart instead of the provisions of this subpart.

### § 65.81 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

### § 65.82 Design requirements.

(a) The owner or operator shall equip each transfer rack with either one of the following equipment:

(1) A closed vent system which routes the regulated material vapors to a control device as provided in § 65.83(a)(1) and (2).

(2) Process piping which routes the regulated material vapors to a process or a fuel gas system as provided in § 65.83(a)(4), or to a vapor balance system as provided in § 65.83(a)(3).

(b) Each closed vent system shall be designed to collect the regulated material displaced from tank trucks or railcars during loading and to route the collected regulated material to a control device as provided in § 65.83(a)(1) and (2).

(c) Process piping shall be designed to collect the regulated material displaced from tank trucks or railcars during loading and to route the collected regulated material vapors to a process or a fuel gas system as provided in § 65.83(a)(4), or to a vapor balance system as provided in § 65.83(a)(3).

(d) Each closed vent system shall meet the applicable requirements of § 65.143.

(e) If the collected regulated material vapors are routed to a process or a fuel gas system as provided in § 65.83(a)(4), then each owner or operator shall meet the applicable requirements of § 65.142(c).

### § 65.83 Performance requirements.

(a) The owner or operator of the transfer rack shall comply with paragraph (a)(1), (2), (3), or (4) of this section.

(1) *98 Percent or 20 parts per million by volume standard.* Use a control device to reduce emissions of regulated material by 98 weight-percent or to an exit concentration of 20 parts per million by volume, whichever is less stringent. For combustion devices, the emission reduction or concentration shall be calculated on a dry basis, corrected to 3 percent oxygen. The owner or operator shall meet the applicable requirements of § 65.142(c). Compliance may be achieved by using any combination of control devices.

(2) *Flare.* Reduce emissions of regulated material using a flare meeting the applicable requirements of § 65.142(c).

(3) *Vapor balancing.* Reduce emissions of regulated material using a vapor balancing system designed and operated to collect regulated material vapors displaced from tank trucks or railcars during loading; and to route the collected regulated material vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected to a common header, or to compress and route collected regulated material vapors to a process. Transfer racks for which the owner or operator is using a vapor balancing system are exempt from the closed vent system design requirements of § 65.82(b) and (d), the halogenated vent stream control requirements of paragraph (b) of this section, the control device operation requirements of § 65.84(b), the monitoring requirements of § 65.86, and the requirements of subpart G of this part.

(4) *Route to a process or fuel gas system.* Route emissions of regulated material to a process or fuel gas system. The owner or operator shall meet the applicable requirements of § 65.142(c) and is exempt from the closed vent system design requirements of paragraphs § 65.82(b) and (d), the halogenated vent stream control requirements of paragraph (b) of this section, the control device operation requirements of § 65.84(b), and the monitoring requirements of § 65.86. If the emissions are routed to a process, the regulated material in the emissions shall predominantly meet one of, or a combination of, the ends specified in the following:

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not regulated materials;

(iii) Incorporated into a product; and/or

(iv) Recovered.

(b) *Additional control requirements for halogenated vent streams.* Halogenated vent streams from transfer racks that are combusted shall be controlled according to paragraph (b)(1) or (2) of this section. The owner or operator shall either designate the transfer rack vent stream as a halogenated vent stream or shall determine whether the vent stream is halogenated using the procedures specified in § 65.85(c). If determined, the halogen concentration in the vent stream shall be recorded and reported in the Initial Compliance Status Report as specified in § 65.160(d). If the owner or operator designates the vent stream as a halogenated vent stream, then this shall also be recorded and reported in the Initial Compliance Status Report.

(1) *Halogen reduction device following combustion.* If a combustion device is used to comply with paragraph (a)(1) of this section for a halogenated vent stream, then the vent stream exiting the combustion device shall be ducted to a halogen reduction device including, but not limited to, a scrubber before it is discharged to the atmosphere, and the halogen reduction device shall meet the requirements of paragraph (b)(1)(i) or (ii) of this section, as applicable. The halogenated vent stream shall not be combusted using a flare.

(i) Except as provided in paragraph (b)(1)(ii) of this section, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens by 99 percent or shall reduce the outlet mass emission rate of total hydrogen halides and halogens to 0.45 kilogram per hour (0.99 pound per hour) or less, whichever is less stringent. The owner or operator shall meet the applicable requirements of § 65.142(c).

(ii) If a scrubber or other halogen reduction device was installed prior to December 31, 1992, the halogen reduction device shall reduce overall emissions of hydrogen halides and halogens by 95 percent or shall reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilogram per hour (0.99 pound per hour), whichever is less stringent. The owner or operator shall meet the applicable requirements of § 65.142(c).

(2) *Halogen reduction device prior to combustion.* A halogen reduction device, such as a scrubber, or other technique may be used to make the vent stream nonhalogenated by reducing the vent stream halogen atom mass emission rate to less than 0.45 kilogram per hour (0.99 pound per hour) prior to any combustion control device used to comply with the requirements of paragraph (a)(1) or (2) of this section. The mass emission rate of halogen atoms contained in organic compounds prior to the combustor shall be determined according to the procedures in § 65.85(c). The owner or operator shall maintain the record specified in § 65.160(d) and submit the report specified in § 65.165(d).

**§ 65.84 Operating requirements.**

(a) *Closed vent systems or process piping.* An owner or operator of a transfer rack shall operate it in such a manner that emissions are routed through the equipment specified in either paragraph (a)(1) or (2) of this section.

(1) A closed vent system which routes the regulated material vapors to a control device as provided in § 65.83(a)(1) and (2).

(2) Process piping which routes the regulated material vapors to a process or a fuel gas system as provided in § 65.83(a)(4) or to a vapor balance system as provided in § 65.83(a)(3).

(b) *Control device operation.* Whenever regulated material emissions are vented to a control device used to comply with the provisions of this subpart, such control device shall be operating.

(c) *Tank trucks and railcars.* The owner or operator shall load regulated material only into tank trucks and railcars that meet one of the following two requirements and shall maintain the records specified in § 65.87:

(1) Have a current certification in accordance with the U.S. Department of Transportation (DOT) pressure test requirements of 49 CFR part 180 for tank trucks and 49 CFR 173.31 for railcars; or

(2) Have been demonstrated to be vapor-tight within the preceding 12 months as determined by the procedures in § 65.85(a). Vapor-tight means that the pressure in a truck or railcar tank will not drop more than 750 pascals (0.11 pound per square inch) within 5 minutes after it is pressurized to a minimum of 4,500 pascals (0.65 pound per square inch).

(d) *Pressure relief device.* The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the loading equipment of each tank truck or railcar shall begin to open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to paragraph (d) of this section.

(e) *Compatible system.* The owner or operator of a transfer rack subject to the provisions of this subpart shall load regulated material only to tank trucks or railcars equipped with a vapor collection system that is compatible with the transfer rack's closed vent system or process piping.

(f) *Loading while systems connected.* The owner or operator of a transfer rack subject to this subpart shall load regulated material only to tank trucks or railcars whose collection systems are connected to the transfer rack's closed vent systems or process piping.

**§ 65.85 Procedures.**

(a) *Vapor tightness.* For the purposes of demonstrating vapor tightness to determine compliance with § 65.84(c)(2), the following procedures and equipment shall be used:

(1) The pressure test procedures specified in Method 27 of appendix A of 40 CFR part 60; and

(2) A pressure measurement device that has a precision of ±2.5 millimeters of mercury (0.10 inch) or better and that is capable of measuring above the pressure at which the tank truck or railcar is to be tested for vapor tightness.

(b) *Engineering assessment.* Engineering assessment to determine if a vent stream is halogenated or flow rate of a gas stream includes, but is not limited to, the following examples:

(1) Previous test results, provided the tests are representative of current operating practices at the process unit.

(2) Bench-scale or pilot-scale test data representative of the process under representative operating conditions.

(3) Maximum flow rate or halogen emission rate specified or implied within a permit limit applicable to the process vent.

(4) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties.

(5) All data, assumptions, and procedures used in the engineering assessment shall be documented.

(c) *Halogenated vent stream determination.* In order to determine whether a vent stream is halogenated, the mass emission rate of halogen atoms contained in organic compounds shall be calculated as specified in paragraphs (c)(1) and (2) of this section.

(1) The vent stream concentration of each organic compound containing halogen atoms (parts per million by volume by compound) shall be determined based on any of the following procedures:

(i) Process knowledge that no halogen or hydrogen halides are present in the vent stream; or

(ii) Applicable engineering assessment as specified in paragraph (b) of this section; or

(iii) Concentration of organic compounds containing halogens measured by Method 18 of appendix A of 40 CFR part 60; or

(iv) Any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63.

(2) Equation 85–1 of this section shall be used to calculate the mass emission rate of halogen atoms:

$$E = K_2 V_s \left( \sum_{j=1}^{n} \sum_{i=1}^{m} C_j * L_{ji} * M_{ji} \right) \qquad \text{(Eq. 85-1)}$$

Where:

E = Mass of halogen atoms, dry basis, kilograms per hour.

$K_2$ = Constant, $2.494 \times 10^{-6}$ (parts per million)$^{-1}$ (kilogram-mole per standard cubic meter) (minute/hour), where standard temperature is 20° C.

$V_s$ = Flow rate of gas stream, dry standard cubic meters per minute, determined according to Method 2, 2A, 2C, or 2D of appendix A of 40 CFR part 60, as appropriate, or determined using engineering assessment as specified in paragraph (b) of this section.

n = Number of halogenated compounds j in the gas stream.

j = Halogenated compound j in the gas stream.

m = Number of different halogens i in each compound j of the gas stream.

i = Halogen atom i in compound j of the gas stream.

$C_j$ = Concentration of halogenated compound j in the gas stream, dry basis, parts per million by volume.

$L_{ji}$ = Number of atoms of halogen i in compound j of the gas stream.

$M_{ji}$ = Molecular weight of halogen atom i in compound j of the gas stream, kilogram per kilogram-mole.

### § 65.86 Monitoring.

The owner or operator of a transfer rack equipped with a closed vent system and control device pursuant to § 65.83(a)(1) or (2) shall monitor the closed vent system and control device as required under the applicable paragraphs specified in § 65.142(c).

### § 65.87 Recordkeeping provisions.

The owner or operator of a transfer rack shall record that either the verification of U.S. Department of Transportation (DOT) tank certification or Method 27 of appendix A of 40 CFR part 60 testing required in § 65.84(c) has been performed. Various methods for the record of verification can be used, such as a check off on a log sheet, a list of DOT serial numbers or Method 27 data, or a position description for gate security showing that the security guard will not allow any trucks on-site that do not have the appropriate documentation.

### §§ 65.88–65.99 [Reserved]

## Subpart F—Equipment Leaks

### § 65.100 Applicability.

(a) *Equipment subject to this subpart.* The provisions of this subpart and subpart A of this part apply to equipment that contains or contacts regulated material. Compliance with this subpart instead of the referencing subpart does not alter the applicability of the referencing subpart. This subpart applies only to the equipment to which the referencing subpart applies. This part does not extend applicability to equipment that is not regulated by the referencing subpart.

(b) *Equipment in vacuum service.* Equipment in vacuum service is excluded from the requirements of this subpart.

(c) *Equipment in service less than 300 hours per calendar year.* Equipment intended to be in regulated material service less than 300 hours per calendar year is excluded from the requirements of §§ 65.106 through 65.115 and § 65.117 if it is identified as required in § 65.103(b)(6).

(d) *Lines and equipment not containing process fluids.* Lines and equipment not containing process fluids are not subject to the provisions of this subpart. Utilities and other nonprocess lines, such as heating and cooling systems that do not combine their materials with those in the processes they serve, are not considered to be part of a process unit.

### § 65.101 Definitions.

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

### § 65.102 Alternative means of emission limitation.

(a) *Performance standard exemption.* The provisions of paragraph (b) of this section do not apply to the performance standards of § 65.111(b) for pressure relief devices or § 65.112(f) for compressors operating under the alternative compressor standard.

(b) *Requests by owners or operators.* An owner or operator may request a determination of alternative means of emission limitation to the requirements of §§ 65.106 through 65.115 as provided in paragraph (d) of this section. If the Administrator makes a determination that a means of emission limitation is a permissible alternative, the owner or operator shall either comply with the alternative or comply with the requirements of §§ 65.106 through 65.115.

(c) *Requests by manufacturers of equipment.* (1) Manufacturers of equipment used to control equipment leaks of a regulated material may apply to the Administrator for approval of an alternative means of emission limitation that achieves a reduction in emissions of the regulated material equivalent to the reduction achieved by the equipment, design, and operational requirements of this subpart.

(2) The Administrator will grant permission according to the provisions of paragraph (d) of this section.

(d) *Permission to use an alternative means of emission limitation.* Permission to use an alternative means of emission limitation shall be governed by the procedures in paragraph (d)(1) through (4) of this section.

(1) Where the standard is an equipment, design, or operational requirement, the following requirements apply:

(i) Each owner or operator applying for permission to use an alternative means of emission limitation shall be responsible for collecting and verifying emission performance test data for an alternative means of emission limitation.

(ii) The Administrator will compare test data for the means of emission limitation to test data for the equipment, design, and operational requirements.

(iii) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve at least the same emission reduction as the equipment, design, and operational requirements of this subpart.

(2) Where the standard is a work practice, the following requirements apply:

(i) Each owner or operator applying for permission to use an alternative means of emission limitation shall be responsible for collecting and verifying test data for the alternative.

(ii) The owner or operator shall demonstrate the emission reduction achieved by the required work practice and the proposed alternative means of emission limitation.

(iii) The Administrator will compare the demonstrated emission reduction for the alternative means of emission limitation to the demonstrated emission reduction for the required work practices and will consider the commitment in paragraph (d)(2)(iv) of this section.

(iv) The Administrator may condition the permission on requirements that may be necessary to ensure operation and maintenance to achieve the same or greater emission reduction as the required work practices of this subpart.

(3) An owner or operator may offer a unique approach to demonstrate the alternative means of emission limitation.

(4) If in the judgment of the Administrator an alternative means of emission limitation will be approved, the Administrator will publish a notice of the determination in the **Federal Register** using the procedures pursuant to § 65.8(a).

**§ 65.103 Equipment identification.**

(a) *General equipment identification.* Equipment subject to this subpart shall be identified. Identification of the equipment does not require physical tagging of the equipment. For example, the equipment may be identified on a plant site plan, in log entries, by designation of process unit boundaries, by some form of weatherproof identification, or by other appropriate methods.

(b) *Additional equipment identification.* In addition to the general identification required by paragraph (a) of this section, equipment subject to any of the provisions in §§ 65.106 through 65.115 shall be specifically identified as required in paragraphs (b)(1) through (6) of this section, as applicable. Paragraph (b) of this section does not apply to an owner or operator of a batch product-process who elects to pressure test the batch product-process equipment train pursuant to § 65.117.

(1) *Connectors.* Except for inaccessible, ceramic, or ceramic-lined connectors meeting the provisions of § 65.108(e)(2), and instrumentation systems identified pursuant to paragraph (b)(5) of this section, identify the connectors subject to the requirements of this subpart. Connectors subject to § 65.108(e)(3) shall be distinguished from other connectors. Connectors need not be individually identified if all connectors in a designated area or length of pipe subject to the provisions of this subpart are identified as a group, and the number of connectors subject is indicated. With respect to connectors, the identification shall be complete no later than the completion of the initial survey required by § 65.108(a).

(2) [Reserved]

(3) *Routed to a process or fuel gas system or equipped with a closed vent system and control device.* Identify the equipment that the owner or operator elects to route to a process or fuel gas system or equip with a closed vent system and control device under the provisions of § 65.107(e)(3) (pumps in light liquid service), § 65.109(e)(3) (agitators), § 65.111(d) (pressure relief devices in gas/vapor service), § 65.112(e) (compressors), or § 65.118 (alternative means of emission limitation for enclosed-vented process units).

(4) *Pressure relief devices.* Identify the pressure relief devices equipped with rupture disks under the provisions of § 65.111(e).

(5) *Instrumentation systems.* Identify instrumentation systems subject to the provisions of this subpart. Individual components in an instrumentation system need not be identified.

(6) *Equipment in service less than 300 hours per calendar year.* Identify either by list, location (area or group), or other method, equipment in regulated material service less than 300 hours per calendar year within a process unit subject to the provisions of this subpart.

(c) *Special equipment designations: Equipment that is unsafe or difficult-to-monitor.* (1) *Designation and criteria for unsafe-to-monitor.* Valves meeting the provisions of § 65.106(e)(1), pumps meeting the provisions of § 65.107(e)(6), connectors meeting the provisions of § 65.108(e)(1), and agitators meeting the provisions of § 65.109(e)(7) may be designated unsafe-to-monitor if the owner or operator determines that monitoring personnel would be exposed to an immediate danger as a consequence of complying with the monitoring requirements of this subpart.

(2) *Designation and criteria for difficult-to-monitor.* Valves meeting the provisions of § 65.106(e)(2) may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(i) of this section apply. Agitators meeting the provisions of § 65.109(e)(5) may be designated difficult-to-monitor if the provisions of paragraph (c)(2)(ii) of this section apply.

(i) *Valves.* The owner or operator of the valve: (A) Determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface, or it is not accessible in a safe manner when it is in regulated material service, and the process unit within which the valve is located is a regulated source for which the owner or operator commenced construction, reconstruction, or modification prior to the compliance date of the referencing subpart; or

(B) Designates less than 3 percent of the total number of valves within the process unit as difficult-to-monitor.

(ii) *Agitators.* The owner or operator determines that the agitator cannot be monitored without elevating the monitoring personnel more than 2 meters (7 feet) above a support surface, or it is not accessible in a safe manner when it is in regulated material service.

(3) *Identification of unsafe or difficult-to-monitor equipment.* The owner or operator shall record the identity of equipment designated as unsafe-to-monitor according to the provisions of paragraph (c)(1) of this section and the planned schedule for monitoring this equipment. The owner or operator shall record the identity of equipment designated as difficult-to-monitor according to the provisions of paragraph (c)(2) of this section, the planned schedule for monitoring this equipment, and an explanation why the equipment is difficult-to-monitor.

(4) *Written plan requirements.* (i) The owner or operator of equipment designated as unsafe-to-monitor according to the provisions of paragraph (c)(1) of this section shall have a written plan that requires monitoring of the equipment as frequently as practical during safe-to-monitor times, but not more frequently than the periodic monitoring schedule otherwise applicable, and repair of the equipment according to the procedures in § 65.105 if a leak is detected.

(ii) The owner or operator of equipment designated as difficult-to-monitor according to the provisions of paragraph (c)(2) of this section shall have a written plan that requires monitoring of the equipment at least once per calendar year and repair of the equipment according to the procedures in § 65.105 if a leak is detected.

(d) *Special equipment designations: Equipment that is unsafe to repair.*—(1) *Designation and criteria.* Connectors subject to the provisions of § 65.105(e) may be designated unsafe to repair if the owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with the repair requirements of this subpart, and if the connector will be repaired before the end of the next process unit shutdown as specified in § 63.105(e).

(2) *Identification of equipment.* The identity of connectors designated as unsafe to repair and an explanation why the connector is unsafe to repair shall be recorded.

(e) *Special equipment designations: Compressors operating with an instrument reading of less than 500 parts per million.* Identify the compressors that the owner or operator elects to designate as operating with an instrument reading of less than 500 parts per million under the provisions of § 65.112(f).

(f) *Special equipment designations: Equipment in heavy liquid service.* The owner or operator of equipment in heavy liquid service shall comply with the requirements of either paragraph (f)(1) or (2) of this section as provided in paragraph (f)(3) of this section.

(1) Retain information, data, and analyses used to determine that a piece of equipment is in heavy liquid service.

(2) When requested by the Administrator, demonstrate that the piece of equipment or process is in heavy liquid service.

(3) A determination or demonstration that a piece of equipment or process is in heavy liquid service shall include an analysis or demonstration that the process fluids do not meet the definition of ''in light liquid service.'' Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

**§ 65.104 Instrument and sensory monitoring for leaks.**

(a) *Monitoring for leaks.* The owner or operator of a regulated source subject to this subpart shall monitor regulated equipment as specified in paragraph (a)(1) of this section for instrument monitoring and paragraph (a)(2) of this section for sensory monitoring.

(1) *Instrument monitoring for leaks.* (i) Valves in gas/vapor service and in light liquid service shall be monitored pursuant to § 65.106(b).

(ii) Pumps in light liquid service shall be monitored pursuant to § 65.107(b).

(iii) Connectors in gas/vapor service and in light liquid service shall be monitored pursuant to § 65.108(b).

(iv) Agitators in gas/vapor service and in light liquid service shall be monitored pursuant to § 65.109(b).

(v) Pressure relief devices in gas/vapor service shall be monitored pursuant to § 65.111(b) and (c).

(vi) Compressors designated to operate with an instrument reading less than 500 parts per million as described in § 65.103(e) shall be monitored pursuant to § 65.112(f).

(2) *Sensory monitoring for leaks.* (i) Pumps in light liquid service shall be observed pursuant to § 65.107(b)(4) and (e)(1)(v).

(ii) Agitators in gas/vapor service and in light liquid service shall be observed pursuant to § 65.109(b)(3) or (e)(1)(v).

(b) *Instrument monitoring methods.* Instrument monitoring as required under this subpart shall comply with the requirements specified in paragraphs (b)(1) through (6) of this section.

(1) *Monitoring method.* Monitoring shall comply with Method 21 of appendix A of 40 CFR part 60, except as otherwise provided in this section.

(2) *Detection instrument performance criteria.* (i) Except as provided for in paragraph (b)(2)(ii) of this section, the detection instrument shall meet the performance criteria of Method 21 of appendix A of 40 CFR part 60, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the representative composition of the process fluid not each individual organic compound in the stream. For process streams that contain nitrogen, air, water, or other inerts that are not organic hazardous air pollutants or volatile organic compounds, the response factor shall be determined on an inert-free basis. The response factor may be determined at any concentration for which monitoring for leaks will be conducted. Maintain the record specified by § 65.119(b)(8).

(ii) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (b)(2)(i) of this section, the instrument readings may be adjusted by multiplying by the representative response factor of the process fluid calculated on an inert-free basis as described in paragraph (b)(2)(i) of this section.

(3) *Detection instrument calibration procedure.* The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of appendix A of 40 CFR part 60.

(4) *Detection instrument calibration gas.* Calibration gases shall be zero air (less than 10 parts per million of hydrocarbon in air) and the gases specified in paragraph (b)(4)(i) of this section except as provided in paragraph (b)(4)(ii) of this section.

(i) Mixtures of methane in air at a concentration no more than 2,000 parts per million greater than the leak definition concentration of the equipment monitored. If the monitoring instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,000 parts per million above the concentration specified as a leak, and the highest scale shall be calibrated with a calibration gas that is approximately equal to 10,000 parts per million. If only one scale on an instrument will be used during monitoring, the owner or operator need not calibrate the scales that will not be used during that day's monitoring.

(ii) A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (b)(2)(i) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(5) *Monitoring performance.* Monitoring shall be performed when the equipment is in regulated material service or is in use with any other detectable material.

(6) *Monitoring data.* Monitoring data obtained prior to the regulated source becoming subject to the referencing subpart that do not meet the criteria specified in paragraphs (b)(1) through (5) of this section may still be used to qualify initially for less frequent monitoring under the provisions in § 65.106(a)(2), (b)(3), or (b)(4) for valves or § 65.108(b)(3) for connectors, provided the departures from the criteria or from the specified monitoring frequency of § 65.106(b)(3) or (4) are minor and do not significantly affect the quality of the data. Examples of minor departures are monitoring at a slightly different frequency (such as every 6 weeks instead of monthly or quarterly), following the performance criteria of section 3.1.2(a) of Method 21 of appendix A of 40 CFR part 60 instead of paragraph (b)(2) of this section, or monitoring using a different leak definition if the data would indicate the presence or absence of a leak at the concentration specified in this subpart. Failure to use a calibrated instrument is not considered a minor departure.

(c) *Instrument monitoring readings and background adjustments.* The owner or operator may elect to adjust or not to adjust the instrument readings for background. If an owner or operator elects not to adjust instrument readings for background, the owner or operator shall monitor the equipment according to the procedures specified in paragraphs (b)(1) through (5) of this section. In such cases, all instrument readings shall be compared directly to the applicable leak definition for the monitored equipment to determine whether there is a leak or to determine compliance with § 65.111(b) (pressure relief devices) or § 65.112(f) (alternative compressor standard). If an owner or operator elects to adjust instrument readings for background, the owner or

operator shall monitor the equipment according to the following procedures:

(1) The requirements of paragraphs (b)(1) through (5) of this section shall apply.

(2) The background level shall be determined using the procedures in Method 21 of appendix A of 40 CFR part 60.

(3) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21 of appendix A of 40 CFR part 60.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared to the applicable leak definition for the monitored equipment to determine whether there is a leak or to determine compliance with § 65.111(b) (pressure relief devices) or § 65.112(f) (alternative compressor standard).

(d) *Sensory monitoring methods.* Sensory monitoring consists of visual, audible, olfactory, or any other detection method used to determine a potential leak to the atmosphere.

(e) *Leaking equipment identification and records.* (1) When each leak is detected, a weatherproof and readily visible identification shall be attached to the leaking equipment.

(2) When each leak is detected, the information specified in paragraphs (e)(2)(i) and (ii) of this section shall be recorded and kept pursuant to § 65.4(a), except the information for valves complying with the 2-year monitoring period allowed under § 65.106(b)(3)(v), and connectors complying with the 8-year monitoring period allowed under § 65.108(b)(3)(iii) shall be kept 5 years beyond the date of the last use of the information to set a monitoring period.

(i) The instrument, the equipment identification, and the instrument operator's name, initials, or identification number if a leak is detected or confirmed by instrument monitoring.

(ii) The date the leak was detected.

**§ 65.105 Leak repair.**

(a) *Leak repair schedule.* The owner or operator shall repair each leak detected as soon as practical but not later than 15 calendar days after it is detected except as provided in paragraph (d) or (e) of this section. A first attempt at repair as defined in subpart A of this part shall be made no later than 5 calendar days after the leak is detected. First attempt at repair for pumps includes, but is not limited to, tightening the packing gland nuts and/or ensuring that the seal flush is operating at design pressure and temperature. First attempt at repair for valves includes, but is not limited to, tightening the bonnet bolts, and/or replacing the bonnet bolts, and/or tightening the packing gland nuts, and/or injecting lubricant into the lubricated packing.

(b) [Reserved]

(c) *Leak identification removal.* (1) *Valves and connectors.* The leak identification on a valve in gas/vapor or light liquid service may be removed after it has been monitored as specified in § 65.106(d)(2) and no leak has been detected during that monitoring. The leak identification on a connector in gas/vapor or light liquid service may be removed after it has been monitored as specified in § 65.108(b)(3)(iv) and no leak has been detected during that monitoring.

(2) *Other equipment.* The identification that has been placed pursuant to § 65.104(e)(1) on equipment determined to have a leak, except for a valve or for a connector that is subject to the provisions of § 65.108(b)(3)(iv), may be removed after it is repaired.

(d) *Delay of repair.* Delay of repair is allowed for any of the conditions specified in paragraphs (d)(1) through (5) of this section. The owner or operator shall maintain a record of the facts that explain any delay of repairs and, where appropriate, why repair within 15 days was technically infeasible without a process unit shutdown.

(1) Delay of repair of equipment for which leaks have been detected is allowed if repair within 15 days after a leak is detected is technically infeasible without a process unit shutdown. Repair of this equipment shall occur as soon as practical, but no later than the end of the next process unit shutdown, except as provided in paragraph (d)(5) of this section.

(2) Delay of repair of equipment for which leaks have been detected is allowed for equipment that is isolated from the process and that does not remain in regulated material service.

(3) Delay of repair for valves, connectors, and agitators is also allowed if the following provisions are met:

(i) The owner or operator determines that emissions of purged material resulting from immediate repair would be greater than the fugitive emissions likely to result from delay of repair; and

(ii) When repair procedures are effected, the purged material is collected and routed to a process or fuel gas system or is collected and destroyed or recovered in a control device complying with § 65.115.

(4) Delay of repair for pumps is also allowed if the provisions of paragraphs (d)(4)(i) and (ii) of this section are met.

(i) Repair requires replacing the existing seal design with a new system that the owner or operator has determined under the provisions of § 65.116(d) will provide better performance or one of the following specifications are met:

(A) A dual mechanical seal system that meets the requirements of § 65.107(e)(1) will be installed;

(B) A pump that meets the requirements of § 65.107(e)(2) will be installed; or

(C) A system that routes emissions to a process or a fuel gas system or a closed vent system and control device that meets the requirements of § 65.107(e)(3) will be installed.

(ii) Repair is completed as soon as practical but not later than 6 months after the leak was detected.

(5) Delay of repair beyond a process unit shutdown will be allowed for a valve if valve assembly replacement is necessary during the process unit shutdown, and valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the second process unit shutdown will not be allowed unless the third process unit shutdown occurs sooner than 6 months after the first process unit shutdown.

(e) *Unsafe-to-repair: Connectors.* Any connector that is designated as described in § 65.103(d) as an unsafe-to-repair connector is exempt from the requirements of § 65.108(d) and paragraph (a) of this section if the provisions of § 65.103(d) are met.

(f) *Leak repair records.* For each leak detected, the information specified in paragraphs (f)(1) through (5) of this section shall be recorded and kept pursuant to § 65.4(a).

(1) The date of first attempt to repair the leak.

(2) The date of successful repair of the leak.

(3) Maximum instrument reading measured by Method 21 of appendix A of 40 CFR part 60 at the time the leak is successfully repaired or determined to be nonrepairable.

(4) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak as specified in the paragraphs (f)(4)(i) and (ii) of this section.

(i) The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. The written procedures may be included as part of the startup/

shutdown/malfunction plan required by § 65.6 for the source or may be part of a separate document that is maintained at the plant site. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(ii) If delay of repair was caused by depletion of stocked parts, there must be documentation that the spare parts were sufficiently stocked onsite before depletion and the reason for depletion.

(5) Dates of process unit shutdowns that occur while the equipment is unrepaired.

**§ 65.106 Standards: Valves in gas/vapor service and in light liquid service.**

(a) *Compliance schedule.* (1) The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(2) The use of monitoring data generated before the regulated source became subject to the referencing subpart to qualify initially for less frequent monitoring is governed by the provisions of § 65.104(b)(6).

(b) *Leak detection.* Unless otherwise specified in § 65.102(b) or paragraph (e) of this section, the owner or operator shall monitor all valves at the intervals specified in paragraphs (b)(3) and/or (b)(4) of this section and shall comply with all other provisions of this section.

(1) *Monitoring method.* The valves shall be monitored to detect leaks by the method specified in § 65.104(b) and (c).

(2) *Instrument reading that defines a leak.* The instrument reading that defines a leak is 500 parts per million or greater.

(3) *Monitoring frequency.* The owner or operator shall monitor valves for leaks at the intervals specified in paragraphs (b)(3)(i) through (v) of this section and shall keep the record specified in paragraph (b)(3)(vi) of this section.

(i) If at least the greater of two valves or 2 percent of the valves in a process unit leak, as calculated according to paragraph (c) of this section, the owner or operator shall monitor each valve once per month.

(ii) At process units with less than the greater of two leaking valves or 2 percent leaking valves, the owner or operator shall monitor each valve once each quarter except as provided in paragraphs (b)(3)(iii) through (v) of this section. Monitoring data generated before the regulated source became subject to the referencing subpart and meeting the criteria of either § 65.104(b)(1) through (5) or § 65.104(b)(6) may be used to qualify initially for less frequent monitoring under paragraphs (b)(3)(iii) through (v) of this section.

(iii) At process units with less than 1 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 quarters.

(iv) At process units with less than 0.5 percent leaking valves, the owner or operator may elect to monitor each valve once every 4 quarters.

(v) At process units with less than 0.25 percent leaking valves, the owner or operator may elect to monitor each valve once every 2 years.

(vi) The owner or operator shall keep a record of the monitoring schedule for each process unit.

(4) *Valve subgrouping.* For a process unit or a group of process units to which this subpart applies, an owner or operator may choose to subdivide the valves in the applicable process unit or group of process units and apply the provisions of paragraph (b)(3) of this section to each subgroup. If the owner or operator elects to subdivide the valves in the applicable process unit or group of process units, then the provisions of paragraphs (b)(4)(i) through (viii) of this section apply.

(i) The overall performance of total valves in the applicable process unit or group of process units to be subdivided shall be less than 2 percent leaking valves, as detected according to paragraphs (b)(1) and (2) of this section and as calculated according to paragraphs (c)(1)(ii) and (c)(2) of this section.

(ii) The initial assignment or subsequent reassignment of valves to subgroups shall be governed by the following provisions:

(A) The owner or operator shall determine which valves are assigned to each subgroup. Valves with less than 1 year of monitoring data or valves not monitored within the last 12 months must be placed initially into the most frequently monitored subgroup until at least 1 year of monitoring data have been obtained.

(B) Any valve or group of valves can be reassigned from a less frequently monitored subgroup to a more frequently monitored subgroup provided that the valves to be reassigned were monitored during the most recent monitoring period for the less frequently monitored subgroup. The monitoring results must be included with that less frequently monitored subgroup's associated percent leaking valves calculation for that monitoring event.

(C) Any valve or group of valves can be reassigned from a more frequently monitored subgroup to a less frequently monitored subgroup provided that the valves to be reassigned have not leaked for the period of the less frequently monitored subgroup (for example, for the last 12 months, if the valve or group of valves is to be reassigned to a subgroup being monitored annually). Nonrepairable valves may not be reassigned to a less frequently monitored subgroup.

(iii) The owner or operator shall determine every 6 months if the overall performance of total valves in the applicable process unit or group of process units is less than 2 percent leaking valves and so indicate the performance in the next periodic report. If the overall performance of total valves in the applicable process unit or group of process units is 2 percent leaking valves or greater, the owner or operator shall no longer subgroup and shall revert to the program required in paragraphs (b)(1) through (3) of this section for that applicable process unit or group of process units. An owner or operator can again elect to comply with the valve subgrouping procedures of paragraph (b)(4) of this section if future overall performance of total valves in the process unit or group of process units is again less than 2 percent. The overall performance of total valves in the applicable process unit or group of process units shall be calculated as a weighted average of the percent leaking valves of each subgroup according to Equation 106–1 of this section:

$$\%V_{LO} = \frac{\sum_{i=1}^{n}\left(\%V_{Li} \times V_i\right)}{\sum_{i=1}^{n} V_i} \qquad \text{(Eq. 106-1)}$$

Where:

$\%V_{LO}$ = Overall performance of total valves in the applicable process unit or group of process units.

$\%V_{Li}$ = Percent leaking valves in subgroup i, most recent value calculated according to the procedures in paragraphs (c)(1)(ii) and (c)(2) of this section.

$V_i$ = Number of valves in subgroup i.

n = Number of subgroups.

(iv) The owner or operator shall maintain the following records:

(A) Which valves are assigned to each subgroup;

(B) Monitoring results and calculations made for each subgroup for each monitoring period;

(C) Which valves are reassigned, the last monitoring result prior to reassignment, and when they were reassigned; and

(D) The results of the semiannual overall performance calculation

required in paragraph (b)(4)(iii) of this section.

(v) The owner or operator shall notify the Administrator no later than 30 days prior to the beginning of the next monitoring period of the decision to begin or end subgrouping valves. The notification shall identify the participating process units and the number of valves assigned to each subgroup, if applicable. The notification may be included in a periodic report if the periodic report is submitted no later than 30 days prior to the beginning of the next monitoring period.

(vi) The owner or operator shall submit in the periodic reports the following information:

(A) Total number of valves in each subgroup; and

(B) Results of the semiannual overall performance calculation required by paragraph (b)(4)(iii) of this section.

(vii) To determine the monitoring frequency for each subgroup, the calculation procedures of paragraph (c)(2) of this section shall be used.

(viii) Except for the overall performance calculations required by paragraphs (b)(4)(i) and (iii) of this section, each subgroup shall be treated as if it were a separate process unit for the purposes of applying the provisions of this section.

(c) *Percent leaking valves calculation*—(1) *Calculation basis and procedures.* (i) The owner or operator shall decide no later than the implementation date of this part or upon revision of an operating permit whether to calculate percent leaking valves on a process unit or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis, and this shall be the basis used for comparison with the subgrouping criteria specified in paragraph (b)(4)(i) of this section.

(ii) The percent leaking valves for each monitoring period for each process unit or valve subgroup, as provided in paragraph (b)(4) of this section, shall be calculated using Equation 106–2 of this section:

$$\%V_L = (V_L / V_T) \times 100 \qquad \text{(Eq. 106-2)}$$

Where:

$\%V_L$ = Percent leaking valves.

$V_L$ = Number of valves found leaking, including those valves found leaking pursuant to paragraphs (d)(2)(iii)(A) and (d)(2)(iii)(B) of this section and excluding nonrepairable valves as provided in paragraph (c)(3) of this section.

$V_T$ = The sum of the total number of valves monitored.

(2) *Calculation for monitoring frequency.* When determining monitoring frequency for each process unit or valve subgroup subject to monthly, quarterly, or semiannual monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last two monitoring periods. When determining monitoring frequency for each process unit or valve subgroup subject to annual or biennial (once every 2 years) monitoring frequencies, the percent leaking valves shall be the arithmetic average of the percent leaking valves from the last three monitoring periods.

(3) *Nonrepairable valves.* (i) Nonrepairable valves shall be included in the calculation of percent leaking valves the first time the valve is identified as leaking and nonrepairable and as required to comply with paragraph (c)(3)(ii) of this section. Otherwise, a number of nonrepairable valves (identified and included in the percent leaking valves calculation in a previous period) up to a maximum of 1 percent of the total number of valves in regulated material service at a process unit may be excluded from calculation of percent leaking valves for subsequent monitoring periods.

(ii) If the number of nonrepairable valves exceeds 1 percent of the total number of valves in regulated material service at a process unit, the number of nonrepairable valves exceeding 1 percent of the total number of valves in regulated material service shall be included in the calculation of percent leaking valves.

(d) *Leak repair.* (1) If a leak is determined pursuant to paragraph (b), (e)(1), or (e)(2) of this section, then the leak shall be repaired using the procedures in § 65.105, as applicable.

(2) After a leak determined under paragraph (b) or (e)(2) of this section has been repaired, the valve shall be monitored at least once within the first 3 months after its repair. The monitoring required by paragraph (d) of this section is in addition to the monitoring required to satisfy the definition of repair.

(i) The monitoring shall be conducted as specified in § 65.104(b) and (c), as appropriate, to determine whether the valve has resumed leaking.

(ii) Periodic monitoring required by paragraph (b) of this section may be used to satisfy the requirements of paragraph (d) of this section if the timing of the monitoring period coincides with the time specified in paragraph (d) of this section. Alternatively, other monitoring may be performed to satisfy the requirements of paragraph (d) of this section regardless of whether the timing of the monitoring period for periodic monitoring coincides with the time specified in paragraph (d) of this section.

(iii) If a leak is detected by monitoring that is conducted under paragraph (d)(2) of this section, the owner or operator shall comply with the following provisions to determine whether that valve must be counted as a leaking valve for purposes of paragraph (c)(1)(ii) of this section:

(A) If the owner or operator elected to use periodic monitoring required by paragraph (b) of this section to satisfy the requirements of paragraph (d)(2) of this section, then the valve shall be counted as a leaking valve.

(B) If the owner or operator elected to use other monitoring, prior to the periodic monitoring required by paragraph (b) of this section, to satisfy the requirements of paragraph (d)(2) of this section, then the valve shall be counted as a leaking valve unless it is repaired and shown by periodic monitoring not to be leaking.

(e) *Special provisions for valves*—(1) *Unsafe-to-monitor valves.* Any valve that is designated as described in § 65.103(c)(1) as an unsafe-to-monitor valve is exempt from the requirements of paragraph (b) and (d)(2) of this section, and the owner or operator shall monitor the valve according to the written plan specified in § 65.103(c)(4).

(2) *Difficult-to-monitor valves.* Any valve that is designated as described in § 65.103(c)(2) as a difficult-to-monitor valve is exempt from the requirements of paragraph (b) of this section, and the owner or operator shall monitor the valve according to the written plan specified in § 65.103(c)(4).

(3) *Less than 250 valves.* Any equipment located at a plant site with fewer than 250 valves in regulated material service is exempt from the requirements for monthly monitoring specified in paragraph (b)(3)(i) of this section. Instead, the owner or operator shall monitor each valve in regulated material service for leaks once each quarter or comply with paragraph (b)(3)(iii), (iv), or (v) of this section except as provided in paragraphs (e)(1) and (2) of this section.

**§ 65.107 Standards: Pumps in light liquid service.**

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Leak detection.* Unless otherwise specified in § 65.102(b) or paragraph (e) of this section, the owner or operator

shall monitor each pump to detect leaks and shall comply with all other provisions of this section.

(1) *Monitoring method.* The pumps shall be monitored monthly to detect leaks by the method specified in § 65.104(b) and (c).

(2) *Instrument reading that defines a leak.* The following leak definitions determined through instrument readings apply:

(i) 5,000 parts per million or greater for pumps handling polymerizing monomers;

(ii) 2,000 parts per million or greater for pumps in food/medical service; and

(iii) 1,000 parts per million or greater for all other pumps.

(3) *Leak repair exception.* For pumps to which a 1,000 parts per million leak definition applies, repair is not required unless an instrument reading of 2,000 parts per million or greater is detected.

(4) *Visual inspection.* Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator shall comply with either of the following procedures:

(i) The owner or operator shall monitor the pump as specified in § 65.104(b) and (c) unless the pump has already been monitored since the last routine monthly monitoring required by paragraph (b)(1) of this section. If monitoring is performed and the instrument reading indicates a leak as specified in paragraph (b)(2) of this section, a leak is detected and the leak shall be repaired using the procedures in § 65.105, except as specified in paragraph (b)(3) of this section; or

(ii) The owner or operator shall eliminate the visual indications of liquids dripping.

(c) *Percent leaking pumps calculation.* (1) The owner or operator shall decide no later than the implementation date of this part or upon revision of an operating permit whether to calculate percent leaking pumps on a process unit basis or group of process units basis. Once the owner or operator has decided, all subsequent percentage calculations shall be made on the same basis.

(2) If, when calculated on a 6-month rolling average, at least the greater of either 10 percent of the pumps in a process unit or three pumps in a process unit leak, the owner or operator shall implement a quality improvement program for pumps that complies with the requirements of § 65.116.

(3) The number of pumps at a process unit shall be the sum of all the pumps in regulated material service, except that pumps found leaking in a continuous process unit within 1 month after startup of the pump shall not count in the percent leaking pumps calculation for that one monitoring period only.

(4) Percent leaking pumps shall be determined by Equation 107–1 of this section:

$$\%P_L = \left(\left(P_L - P_S\right)/\left(P_T - P_S\right)\right) * 100 \qquad \text{(Eq. 107-1)}$$

Where:

$\%P_L$ = Percent leaking pumps.

$P_L$ = Number of pumps found leaking as determined through monthly monitoring as required in paragraph (b)(1) of this section.

$P_S$ = Number of pumps leaking within 1 month of startup during the current monitoring period.

$P_T$ = Total pumps in regulated material service, including those meeting the criteria in paragraphs (e)(1), (e)(2), (e)(3), and (e)(6) of this section.

(d) *Leak repair.* If a leak is detected pursuant to paragraph (b) of this section, then the leak shall be repaired using the procedures in § 65.105, as applicable.

(e) *Special provisions for pumps.*—(1) *Dual mechanical seal pumps.* Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section, provided the requirements specified in paragraphs (e)(1)(i) through (viii) of this section are met.

(i) The owner or operator determines, based on design considerations and operating experience, criteria applicable to the presence and frequency of drips and to the sensor that indicates failure of the seal system, the barrier fluid system, or both. The owner or operator shall keep records of the design criteria and an explanation of the design criteria, and any changes to these criteria and the reasons for the changes.

(ii) Each dual mechanical seal system shall meet the following three requirements:

(A) Operated with the barrier fluid at a pressure that is at all times (except periods of start-up, shutdown, or malfunction) greater than the pump stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system or connected by a closed vent system to a control device that complies with the requirements of § 65.115; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(iii) The barrier fluid is not in light liquid service.

(iv) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(v) Each pump is checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the pump seal at the time of the weekly inspection, the owner or operator shall follow either one of the following procedures prior to the next required inspection:

(A) The owner or operator shall monitor the pump as specified in § 65.104(b) and (c) to determine if there is a leak of regulated material in the barrier fluid. If an instrument reading of 1,000 parts per million or greater is measured, a leak is detected and it shall be repaired using the procedures in § 65.105; or

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(vi) If indications of liquids dripping from the pump seal exceed the criteria established in paragraph (e)(1)(i) of this section, or if based on the criteria established in paragraph (e)(1)(i) of this section the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected.

(vii) Each sensor as described in paragraph (e)(1)(iv) of this section is observed daily or is equipped with an alarm unless the pump is located within the boundary of an unmanned plant site.

(viii) When a leak is detected pursuant to paragraph (e)(1)(vi) of this section, it shall be repaired as specified in § 65.105.

(2) *No external shaft.* Any pump that is designed with no externally actuated shaft penetrating the pump housing is exempt from the requirements of paragraph (b) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any pump that is routed to a process or fuel gas system or equipped with a closed vent system that captures and transports leakage from the pump to a control device meeting the requirements of § 65.115 is exempt from the requirements of paragraph (b) of this section.

(4) *Unmanned plant site.* Any pump that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(4) and (e)(1)(v) of this section and the daily requirements of paragraph (e)(1)(vii) of this section provided that each pump is visually inspected as often as practical and at least monthly.

(5) *Ninety percent exemption.* If more than 90 percent of the pumps at a process unit meet the criteria in either paragraph (e)(1) or (2) of this section, the process unit is exempt from the percent leaking calculation in paragraph (c) of this section.

(6) *Unsafe-to-monitor pumps.* Any pump that is designated as described in § 65.103(c)(1) as an unsafe-to-monitor pump is exempt from the requirements of paragraph (b) of this section, the monitoring and inspection requirements of paragraphs (e)(1)(v) through (viii) of this section, and the owner or operator shall monitor and repair the pump according to the written plan specified in § 65.103(c)(4).

**§ 65.108 Standards: Connectors in gas/vapor service and in light liquid service.**

(a) *Compliance schedule.* Except as allowed in § 65.102(b) or as specified in paragraph (e) of this section, the owner or operator shall monitor all connectors in each process unit initially for leaks by either 12 months after the implementation date as specified in § 65.1(f) or 12 months after initial startup, whichever is later. If all connectors in each process unit have been monitored for leaks prior to the implementation date specified in § 65.1(f), no initial monitoring is required provided either no process changes have been made since the monitoring or the owner or operator can determine that the results of the monitoring, with or without adjustments, reliably demonstrate compliance despite process changes. If required to monitor because of a process change, the owner or operator is required to monitor only those connectors involved in the process change.

(b) *Leak detection.* Except as allowed in § 65.102(b) or as specified in paragraph (e) of this section, the owner or operator shall monitor all connectors in gas/vapor and light liquid service as specified in paragraphs (a) and (b)(3) of this section.

(1) *Monitoring method.* The connectors shall be monitored to detect leaks by the method specified in § 65.104(b) and (c).

(2) *Instrument reading that defines a leak.* If an instrument reading greater than or equal to 500 parts per million is measured, a leak is detected.

(3) *Monitoring periods.* The owner or operator shall perform monitoring, subsequent to the initial monitoring required in paragraph (a) of this section, as specified in paragraphs (b)(3)(i) through (iii) of this section, and shall comply with the requirements of paragraphs (b)(3)(iv) and (v) of this section. The required period in which monitoring must be conducted shall be determined from paragraphs (b)(3)(i) through (iii) of this section using the monitoring results from the preceding monitoring period. The percent leaking connectors shall be calculated as specified in paragraph (c) of this subpart.

(i) If the percent leaking connectors in the process unit was greater than or equal to 0.5 percent, then monitor within 12 months (1 year).

(ii) If the percent leaking connectors in the process unit was greater than or equal to 0.25 percent but less than 0.5 percent, then monitor within 4 years. An owner or operator may comply with the requirements of paragraph (b)(3)(ii) of this section by monitoring at least 40 percent of the connectors within 2 years of the start of the monitoring period, provided all connectors have been monitored by the end of the 4-year monitoring period.

(iii) If the percent leaking connectors in the process unit was less than 0.25 percent, then monitor as provided in paragraph (b)(3)(iii)(A) of this section and either paragraph (b)(3)(iii)(B) or (C) of this section, as appropriate.

(A) An owner or operator shall monitor at least 50 percent of the connectors within 4 years of the start of the monitoring period.

(B) If the percent leaking connectors calculated from the monitoring results in paragraph (b)(3)(iii)(A) of this section is greater than or equal to 0.35 percent of the monitored connectors, the owner or operator shall monitor as soon as practical, but within the next 6 months, all connectors that have not yet been monitored during the monitoring period. At the conclusion of monitoring, a new monitoring period shall be started pursuant to paragraph (b)(3) of this section, based on the percent leaking connectors of the total monitored connectors.

(C) If the percent leaking connectors calculated from the monitoring results in paragraph (b)(3)(iii)(A) of this section is less than 0.35 percent of the monitored connectors, the owner or operator shall monitor all connectors that have not yet been monitored within 8 years of the start of the monitoring period.

(iv) If, during the monitoring conducted pursuant to paragraphs (b)(3)(i) through (iii) of this section, a connector is found to be leaking, it shall be re-monitored once within 90 days after repair to confirm that it is not leaking.

(v) The owner or operator shall keep a record of the start date and end date of each monitoring period under this section for each process unit.

(c) *Percent leaking connectors calculation.* For use in determining the monitoring frequency as specified in paragraphs (a) and (b)(3) of this section, the percent leaking connectors as used in paragraphs (a) and (b)(3) of this section shall be calculated by using Equation 108–1 of this section:

$$\%C_L = C_L / C_t * 100 \qquad \text{(Eq. 108-1)}$$

Where:

$\%C_L$ = Percent leaking connectors as determined through periodic monitoring required in paragraphs (a) and (b)(3)(i) through (b)(3)(iii) of this section.

$C_L$ = Number of connectors measured at 500 parts per million or greater by the method specified in § 65.104(b).

$C_t$ = Total number of monitored connectors in the process unit.

(d) *Leak repair.* If a leak is detected pursuant to paragraphs (a) and (b) of this section, then the leak shall be repaired using the procedures in § 65.105, as applicable.

(e) *Special provisions for connectors.*—(1) *Unsafe-to-monitor connectors.* Any connector that is designated, as described in § 65.103(c)(1), as an unsafe-to-monitor connector is exempt from the requirements of paragraphs (a) and (b) of this section and the owner or operator shall monitor according to the written plan specified in § 65.103(c)(4).

(2) *Inaccessible, ceramic, or ceramic-lined connectors.* (i) Any connector that is inaccessible or that is ceramic or ceramic-lined (for example, porcelain, glass, or glass-lined), is exempt from the monitoring requirements of paragraphs (a) and (b) of this section and from the recordkeeping and reporting requirements of §§ 65.119 and 65.120. An inaccessible connector is one that

meets any of the following provisions, as applicable:

(A) Buried;

(B) Insulated in a manner that prevents access to the connector by a monitor probe;

(C) Obstructed by equipment or piping that prevents access to the connector by a monitor probe;

(D) Unable to be reached from a wheeled scissor-lift or hydraulic-type scaffold that would allow access to connectors up to 7.6 meters (25 feet) above the ground;

(E) Inaccessible because it would require elevating the monitoring personnel more than 2 meters (7 feet) above a permanent support surface or would require the erection of scaffold;

(F) Not able to be accessed at any time in a safe manner to perform monitoring. Unsafe access includes, but is not limited to, the use of a wheeled scissor-lift on unstable or uneven terrain, the use of a motorized man-lift basket in areas where an ignition potential exists, or access would require near proximity to hazards such as electrical lines or would risk damage to equipment.

(ii) If any inaccessible, ceramic, or ceramic-lined connector is observed by visual, audible, olfactory, or other means to be leaking, the visual, audible, olfactory, or other indications of a leak to the atmosphere shall be eliminated as soon as practical.

(3) *Connectors referenced from 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V.* For sources referenced to this part from 40 CFR part 61, subpart VV, or from 40 CFR part 61, subpart V, connectors are exempt from the requirements of paragraphs (a) through (d) of this section and the owner or operator shall comply with the following paragraphs:

(i) Connectors shall be monitored within 5 days by the method specified in § 65.104(b) and (c) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

(ii) If an instrument reading of 500 parts per million or greater is measured, a leak is detected.

(iii) When a leak is detected, it shall be repaired using the procedures in § 65.105, as applicable.

**§ 65.109 Standards: Agitators in gas/vapor service and in light liquid service.**

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Leak detection.* (1) *Monitoring method.* Each agitator seal shall be monitored monthly to detect leaks by the methods specified in § 65.104(b) and (c), except as provided in § 65.102(b) or paragraph (e) of this section.

(2) *Instrument reading that defines a leak.* If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected.

(3) *Visual inspection.* Each agitator seal shall be checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal. The owner or operator shall document that the inspection was conducted and the date of the inspection. If there are indications of liquids dripping from the agitator seal, the owner or operator shall comply with either of the following procedures prior to the next required inspection:

(i) The owner or operator shall monitor the agitator seal as specified in § 65.104(b) and (c) to determine if there is a leak of regulated material. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected, and it shall be repaired according to paragraph (d) of this section.

(ii) The owner or operator shall eliminate the indications of liquids dripping from the agitator seal.

(c) [Reserved]

(d) *Leak repair.* If a leak is detected, then the leak shall be repaired using the procedures in § 65.105(a).

(e) *Special provisions for agitators.* (1) *Dual mechanical seal.* Each agitator equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of paragraph (b) of this section provided the requirements specified in paragraphs (e)(1)(i) through (vi) of this section are met.

(i) Each dual mechanical seal system shall meet any one of the following requirements:

(A) Operated with the barrier fluid at a pressure that is at all times (except during periods of startup, shutdown, or malfunction) greater than the agitator stuffing box pressure; or

(B) Equipped with a barrier fluid degassing reservoir that is routed to a process or fuel gas system, or connected by a closed vent system to a control device that meets the requirements of § 65.115; or

(C) Equipped with a closed-loop system that purges the barrier fluid into a process stream.

(ii) The barrier fluid is not in light liquid service.

(iii) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(iv) Each agitator seal is checked by visual inspection each calendar week for indications of liquids dripping from the agitator seal. If there are indications of liquids dripping from the agitator seal at the time of the weekly inspection, the owner or operator shall follow either of the following procedures prior to the next required inspection:

(A) The owner or operator shall monitor the agitator seal as specified in § 65.104(b) and (c) to determine the presence of regulated material in the barrier fluid. If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected and it shall be repaired using the procedures in § 65.105; or

(B) The owner or operator shall eliminate the visual indications of liquids dripping.

(v) Each sensor as described in paragraph (e)(1)(iii) of this section is observed daily or is equipped with an alarm unless the agitator seal is located within the boundary of an unmanned plant site.

(vi) The owner or operator of each dual mechanical seal system shall meet the following requirements:

(A) The owner or operator shall determine based on design considerations and operating experience criteria that indicates failure of the seal system, the barrier fluid system, or both and that are applicable to the presence and frequency of drips. If indications of liquids dripping from the agitator seal exceed the criteria, or if based on the criteria the sensor indicates failure of the seal system, the barrier fluid system, or both, a leak is detected and shall be repaired pursuant to § 65.105, as applicable.

(B) The owner or operator shall keep records of the design criteria and an explanation of the design criteria, and any changes to these criteria and the reasons for the changes.

(2) *No external shaft.* Any agitator that is designed with no externally actuated shaft penetrating the agitator housing is exempt from paragraph (b) of this section.

(3) *Routed to a process or fuel gas system or equipped with a closed vent system.* Any agitator that is routed to a process or fuel gas system or equipped with a closed vent system that captures and transports leakage from the agitator to a control device meeting the requirements of § 65.115 is exempt from the requirements of paragraph (b) of this section.

(4) *Unmanned plant site.* Any agitator that is located within the boundary of an unmanned plant site is exempt from the weekly visual inspection requirement of paragraphs (b)(3) and (e)(1)(iv) of this section, and the daily requirements of paragraph (e)(1)(v) of

this section provided that each agitator is visually inspected as often as practical and at least monthly.

(5) *Difficult-to-monitor agitator seals.* Any agitator seal that is designated as described in § 65.103(c)(2) as a difficult-to-monitor agitator seal is exempt from the requirements of paragraph (b) of this section and the owner or operator shall monitor the agitator seal according to the written plan specified in § 65.103(c)(4).

(6) *Equipment obstructions.* Any agitator seal that is obstructed by equipment or piping that prevents access to the agitator by a monitor probe is exempt from the monitoring requirements of paragraph (b) of this section.

(7) *Unsafe-to-monitor agitator seals.* Any agitator seal that is designated as described in § 65.103(c)(1) as an unsafe-to-monitor agitator seal is exempt from the requirements of paragraph (b) of this section and the owner or operator of the agitator seal monitors the agitator seal according to the written plan specified in § 65.103(c)(4).

**§ 65.110 Standards: Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in liquid service; and instrumentation systems.**

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Leak detection.* Unless otherwise specified in § 65.102(b), the owner or operator shall comply with the following:

(1) *Monitoring method.* Pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems shall be monitored within 5 calendar days by the method specified in § 65.104(b) and (c) if evidence of a potential leak to the atmosphere is found by visual, audible, olfactory, or any other detection method, unless the potential leak is repaired as required in paragraph (c) of this section.

(2) *Instrument reading that defines a leak.* If an instrument reading of 10,000 parts per million or greater for agitators, 5,000 parts per million or greater for pumps handling polymerizing monomers, 2,000 parts per million or greater for all other pumps (including pumps in food/medical service), or 500 parts per million or greater for valves, connectors, instrumentation systems, and pressure relief devices is measured pursuant to paragraph (b)(1) of this section, a leak is detected and it shall be repaired pursuant to § 65.105, as applicable.

(c) *Leak repair.* For equipment identified in paragraph (b) of this section that is not monitored by the method specified in § 65.104(b), repaired shall mean that the visual, audible, olfactory, or other indications of a leak to the atmosphere have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

**§ 65.111 Standards: Pressure relief devices in gas/vapor service.**

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Compliance standard.* Except during pressure releases as provided for in paragraph (c) of this section, each pressure relief device in gas/vapor service shall be operated with an instrument reading of less than 500 parts per million as measured by the method specified in § 65.104(b) and (c).

(c) *Pressure relief requirements.* (1) After each pressure release, the pressure relief device shall be returned to a condition indicated by an instrument reading of less than 500 parts per million, as soon as practical, but no later than 5 calendar days after each pressure release except as provided in § 65.105(d).

(2) The pressure relief device shall be monitored no later than 5 calendar days after the pressure release and being returned to regulated material service to confirm the condition indicated by an instrument reading of less than 500 parts per million as measured by the method specified in § 65.104(b) and (c).

(3) The owner or operator shall record the dates and results of the monitoring required by paragraph (c)(2) of this section following a pressure release including maximum instrument reading measured during the monitoring and the background level measured if the instrument reading is adjusted for background.

(d) *Pressure relief devices routed to a process or fuel gas system or equipped with a closed vent system and control device.* Any pressure relief device that is routed to a process or fuel gas system or equipped with a closed vent system capable of capturing and transporting leakage from the pressure relief device to a control device meeting the requirements of § 65.115 is exempt from the requirements of paragraphs (b) and (c) of this section.

(e) *Rupture disk exemption.* Any pressure relief device that is equipped with a rupture disk upstream of the pressure relief device is exempt from the requirements of paragraphs (b) and (c) of this section provided the owner or operator installs a new rupture disk upstream of the pressure relief device as soon as practical after each pressure release, but no later than 5 calendar days after each pressure release except as provided in § 65.105(d).

**§ 65.112 Standards: Compressors.**

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Seal system standard.* Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of process fluid to the atmosphere except as provided in § 65.102(b) and paragraphs (e) and (f) of this section. Each compressor seal system shall meet any one of the following requirements:

(1) Operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure at all times (except during periods of start-up, shutdown, or malfunction); or

(2) Equipped with a barrier fluid system degassing reservoir that is routed to a process or fuel gas system, or connected by a closed vent system to a control device that meets the requirements of § 65.115; or

(3) Equipped with a closed-loop system that purges the barrier fluid directly into a process stream.

(c) *Barrier fluid system.* The barrier fluid shall not be in light liquid service. Each barrier fluid system shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both. Each sensor shall be observed daily or shall be equipped with an alarm unless the compressor is located within the boundary of an unmanned plant site.

(d) *Failure criterion and leak detection.* (1) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both. If the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion, a leak is detected and shall be repaired pursuant to § 65.105, as applicable.

(2) The owner or operator shall keep records of the design criteria and an explanation of the design criteria, and any changes to these criteria and the reasons for the changes.

(e) *Routed to a process or fuel gas system or equipped with a closed vent*

*system.* A compressor is exempt from the requirements of paragraphs (b) through (d) of this section if it is equipped with a system to capture and transport leakage from the compressor drive shaft seal to a process or a fuel gas system or to a closed vent system that captures and transports leakage from the compressor to a control device meeting the requirements of § 65.115.

(f) *Alternative compressor standard.* (1) Any compressor that is designated as described in § 65.103(e) shall operate at all times with an instrument reading of less than 500 parts per million. A compressor so designated is exempt from the requirements of paragraphs (b) through (d) of this section if the compressor is demonstrated initially upon designation, annually, and at other times requested by the Administrator to be operating with an instrument reading of less than 500 parts per million as measured by the method specified in § 65.104(b) and (c).

(2) The owner or operator shall record the dates and results of each compliance test including the background level measured and the maximum instrument reading measured during each compliance test.

**§ 65.113 Standards: Sampling connection systems.**

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Equipment requirement.* Each sampling connection system shall be equipped with a closed-purge, closed-loop, or closed vent system except as provided in paragraph (d) of this section or § 65.102(b). Gases displaced during filling of the sample container are not required to be collected or captured.

(c) *Equipment design and operation.* Each closed-purge, closed-loop, or closed vent system as required in paragraph (b) of this section shall meet the following applicable requirements:

(1) The system shall return the purged process fluid directly to a process line or to a fuel gas system; or

(2) Collect and recycle the purged process fluid to a process; or

(3) Be designed and operated to capture and transport all the purged process fluid to a control device that meets the requirements of § 65.115; or

(4) Collect, store, and transport the purged process fluid to any of the following systems or facilities:

(i) A waste management unit as defined in 40 CFR 63.111, if the waste management unit is complying with the provisions of 40 CFR part 63, subpart G, applicable to Group 1 wastewater streams. For sources referenced to this part from 40 CFR part 63, subpart H, and if the purged process fluid does not contain any organic HAP listed in table 9 of 40 CFR part 63, subpart G, the waste management unit need not be subject to and operated in compliance with the requirements of 40 CFR part 63, subpart G, applicable to Group 1 wastewater steams provided the facility has a National Pollution Discharge Elimination System (NPDES) permit or sends the wastewater to an NPDES-permitted facility; or

(ii) A treatment, storage, or disposal facility subject to regulation under 40 CFR part 262, 264, 265, or 266; or

(iii) A facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste, if the process fluids are not hazardous waste as defined in 40 CFR part 261; and

(5) Containers that are part of a closed-purge system must be covered or closed when not being filled or emptied.

(d) *In-situ sampling systems.* In-situ sampling systems and sampling systems without purges are exempt from the requirements of paragraphs (b) and (c) of this section.

**§ 65.114 Standards: Open-ended valves or lines.**

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Equipment and operational requirements.* (1) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve except as provided in § 65.102(b) and paragraphs (c) and (d) of this section. The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line, or during maintenance. The operational provisions of paragraphs (b)(2) and (3) of this section also apply.

(2) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(3) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (b)(1) of this section at all other times.

(c) *Emergency shutdown exemption.* Open-ended valves or lines in an emergency shutdown system that are designed to open automatically in the event of a process upset are exempt from the requirements of paragraph (b) of this section.

(d) *Polymerizing materials exemption.* Open-ended valves or lines containing materials that would autocatalytically polymerize or would present an explosion, serious overpressure, or other safety hazard if capped or equipped with a double block and bleed system as specified in paragraph (b) of this section are exempt from the requirements of paragraph (b) of this section.

**§ 65.115 Standards: Closed vent systems and control devices; or emissions routed to a fuel gas system or process.**

(a) *Compliance schedule.* The owner or operator shall comply with this section no later than the implementation date specified in § 65.1(f).

(b) *Compliance standard.* (1) Owners or operators of closed vent systems and nonflare control devices used to comply with provisions of this subpart shall design and operate the closed vent systems and nonflare control devices to reduce emissions of regulated material with an efficiency of 95 percent or greater, or to reduce emissions of regulated material to a concentration of 20 parts per million by volume or, for an enclosed combustion device, to provide a minimum residence time of 0.50 second at a minimum of 760 °C (1400 °F). Owners and operators of closed vent systems and nonflare control devices used to comply with this part shall comply with the provisions of § 65.142(d), except as provided in § 65.102(b). Note that this includes the startup, shutdown, and malfunction plan specified in § 65.6.

(2) Owners or operators of closed vent systems and flares used to comply with the provisions of this subpart shall design and operate the flare as specified in § 65.142(d), except as provided in § 65.102(b). Note that this includes the startup, shutdown, and malfunction plan specified in § 65.6.

(3) Owners or operators routing emissions from equipment leaks to a fuel gas system or process shall comply with the provisions of § 65.142(d), except as provided in § 65.102(b).

**§ 65.116 Quality improvement program for pumps.**

(a) *Criteria.* If, on a 6-month rolling average, at least the greater of either 10 percent of the pumps in a process unit (or plant site) or three pumps in a process unit (or plant site) leak, the owner or operator shall comply with the following requirements:

(1) Pumps that are in food/medical service or in polymerizing monomer

service shall comply with all requirements except for those specified in paragraph (d)(8) of this section.

(2) Pumps that are not in food/medical or polymerizing monomer service shall comply with all requirements of this section.

(b) *Exiting the QIP.* The owner or operator shall comply with the requirements of this section until the number of leaking pumps is less than the greater of either 10 percent of the pumps or three pumps calculated as a 6-month rolling average in the process unit (or plant site). Once the performance level is achieved, the owner or operator shall comply with the requirements in § 65.107.

(c) *Resumption of QIP.* If in a subsequent monitoring period, the process unit (or plant site) has the greater of either 10 percent of the pumps leaking or three pumps leaking (calculated as a 6-month rolling average), the owner or operator shall resume the quality improvement program starting at performance trials.

(d) *QIP requirements.* The quality improvement program shall meet the requirements specified in paragraphs (d)(1) through (8) of this section.

(1) The owner or operator shall comply with the requirements in § 65.107.

(2) *Data collection.* The owner or operator shall collect the data specified in paragraphs (d)(2)(i) through (v) of this section and maintain records for each pump in each process unit (or plant site) subject to the quality improvement program. The data may be collected and the records may be maintained on a process unit or plant site basis.

(i) Pump type (for example, piston, horizontal or vertical centrifugal, gear, bellows); pump manufacturer; seal type and manufacturer; pump design (for example, external shaft, flanged body); materials of construction; if applicable, barrier fluid or packing material; and year installed.

(ii) Service characteristics of the stream such as discharge pressure, temperature, flow rate, corrosivity, and annual operating hours.

(iii) The maximum instrument readings observed in each monitoring observation before repair, response factor for the stream if appropriate, instrument model number, and date of the observation.

(iv) If a leak is detected, the repair methods used and the instrument readings after repair.

(v) If the data will be analyzed as part of a larger analysis program involving data from other plants or other types of process units, a description of any maintenance or quality assurance programs used in the process unit that are intended to improve emission performance.

(3) The owner or operator shall continue to collect data on the pumps as long as the process unit (or plant site) remains in the quality improvement program.

(4) *Pump or pump seal inspection.* The owner or operator shall inspect all pumps or pump seals that exhibited frequent seal failures and were removed from the process unit due to leaks. The inspection shall determine the probable cause of the pump seal failure or of the pump leak and shall include recommendations, as appropriate, for design changes or changes in specifications to reduce leak potential.

(5) *Data analysis.* (i) The owner or operator shall analyze the data collected to comply with the requirements of paragraph (d)(2) of this section to determine the services, operating or maintenance practices, and pump or pump seal designs or technologies that have poorer than average emission performance and those that have better than average emission performance. The analysis shall determine if specific trouble areas can be identified on the basis of service, operating conditions or maintenance practices, equipment design, or other process-specific factors.

(ii) The analysis shall also be used to determine if there are superior performing pump or pump seal technologies that are applicable to the service(s), operating conditions, or pump or pump seal designs associated with poorer than average emission performance. A superior performing pump or pump seal technology is one with a leak frequency of less than 10 percent for specific applications in the process unit or plant site. A candidate superior performing pump or pump seal technology is one demonstrated or reported in the available literature or through a group study as having low emission performance and as being capable of achieving less than 10 percent leaking pumps in the process unit (or plant site).

(iii) The analysis shall include consideration of the following information:

(A) The data obtained from the inspections of pumps and pump seals removed from the process unit due to leaks;

(B) Information from the available literature and from the experience of other plant sites that will identify pump designs or technologies and operating conditions associated with low emission performance for specific services; and

(C) Information on limitations on the service conditions for the pump seal technology operating conditions as well as information on maintenance procedures to ensure continued low emission performance.

(iv) The data analysis may be conducted through an inter- or intracompany program (or through some combination of the two approaches) and may be for a single process unit, a plant site, a company, or a group of process units.

(v) The first analysis of the data shall be completed no later than 18 months after the start of the quality improvement program. The first analysis shall be performed using data collected for a minimum of 6 months. An analysis of the data shall be done each year the process unit is in the quality improvement program.

(6) *Trial evaluation program.* A trial evaluation program shall be conducted at each plant site for which the data analysis does not identify use of superior performing pump seal technology or pumps that can be applied to the areas identified as having poorer than average performance except as provided in paragraph (d)(6)(v) of this section. The trial program shall be used to evaluate the feasibility of using in the process unit (or plant site) the pump designs or seal technologies, and operating and maintenance practices that have been identified by others as having low emission performance.

(i) The trial evaluation program shall include on-line trials of pump seal technologies or pump designs and operating and maintenance practices that have been identified in the available literature or in analysis by others as having the ability to perform with leak rates below 10 percent in similar services, as having low probability of failure, or as having no external actuating mechanism in contact with the process fluid. If any of the candidate superior performing pump seal technologies or pumps is not included in the performance trials, the reasons for rejecting specific technologies from consideration shall be documented as required in paragraph (e)(3)(ii) of this section.

(ii) The number of pump seal technologies or pumps in the trial evaluation program shall be the lesser of 1 percent or two pumps for programs involving single process units, and the lesser of 1 percent or five pumps for programs involving a plant site or groups of process units. The minimum number of pumps or pump seal technologies in a trial program shall be one.

(iii) The trial evaluation program shall specify and include documentation of the following information:

(A) The candidate superior performing pump seal designs or technologies to be evaluated, the stages for evaluating the identified candidate pump designs or pump seal technologies, including the time period necessary to test the applicability;

(B) The frequency of monitoring or inspection of the equipment;

(C) The range of operating conditions over which the component will be evaluated; and

(D) Conclusions regarding the emission performance and the appropriate operating conditions and services for the trial pump seal technologies or pumps.

(iv) The performance trials shall initially be conducted at least for a 6-month period beginning not later than 18 months after the start of the quality improvement program. No later than 24 months after the start of the quality improvement program, the owner or operator shall have identified pump seal technologies or pump designs that, combined with appropriate process, operating, and maintenance practices, operate with low emission performance for specific applications in the process unit. The owner or operator shall continue to conduct performance trials as long as no superior performing design or technology has been identified, except as provided in paragraph (d)(6)(vi) of this section. The initial list of superior emission performance pump designs or pump seal technologies shall be amended in the future, as appropriate, as additional information and experience are obtained.

(v) Any plant site with fewer than 400 valves and owned by a corporation with fewer than 100 employees shall be exempt from trial evaluations of pump seals or pump designs. Plant sites exempt from the trial evaluations of pumps shall begin the pump seal or pump replacement program at the start of the fourth year of the quality improvement program.

(vi) An owner or operator who has conducted performance trials on all alternative superior emission performance technologies suitable for the required applications in the process unit may stop conducting performance trials provided that a superior performing design or technology has been demonstrated, or there are no technically feasible alternative superior technologies remaining. The owner or operator shall prepare an engineering evaluation documenting the physical, chemical, or engineering basis for the judgment that the superior emission performance technology is technically infeasible or demonstrating that it would not reduce emissions.

(7) *Quality assurance program.* Each owner or operator shall prepare and implement a pump quality assurance program that details purchasing specifications and maintenance procedures for all pumps and pump seals in the process unit. The quality assurance program may establish any number of categories, or classes, of pumps as needed to distinguish among operating conditions and services associated with poorer than average emission performance, as well as those associated with better than average emission performance. The quality assurance program shall be developed considering the findings of the data analysis required under paragraph (d)(5) of this section, if applicable; the findings of the trial evaluation required in paragraph (d)(6) of this section; and the operating conditions in the process unit. The quality assurance program shall be updated each year as long as the process unit has the greater of either 10 percent or more leaking pumps or has three leaking pumps.

(i) The quality assurance program shall meet the following requirements:

(A) Establish minimum design standards for each category of pumps or pump seal technology. The design standards shall specify known critical parameters such as tolerance, manufacturer, materials of construction, previous usage, or other applicable identified critical parameters;

(B) Require that all equipment orders specify the design standard (or minimum tolerances) for the pump or the pump seal;

(C) Provide for an audit procedure for quality control of purchased equipment to ensure conformance with purchase specifications. The audit program may be conducted by the owner or operator of the plant site or process unit or by a designated representative; and

(D) Detail off-line pump maintenance and repair procedures. These procedures shall include provisions to ensure that rebuilt or refurbished pumps and pump seals will meet the design specifications for the pump category and will operate so that emissions are minimized.

(ii) The quality assurance program shall be established no later than the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees, and no later than the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees.

(8) *Pump or pump seal replacement.* Beginning at the start of the third year of the quality improvement program for plant sites with 400 or more valves or 100 or more employees and at the start of the fourth year of the quality improvement program for plant sites with less than 400 valves and less than 100 employees, the owner or operator shall replace as described in paragraphs (d)(8)(i) and (ii) of this section the pumps or pump seals that are not superior emission performance technology with pumps or pump seals that have been identified as superior emission performance technology and that comply with the quality assurance standards for the pump category. Superior emission performance technology is that category or design of pumps or pump seals with emission performance that, when combined with appropriate process, operating, and maintenance practices, will result in less than 10 percent leaking pumps for specific applications in the process unit or plant site. Superior emission performance technology includes material or design changes to the existing pump, pump seal, seal support system, installation of multiple mechanical seals or equivalent, or pump replacement.

(i) Pumps or pump seals shall be replaced at the rate of 20 percent per year based on the total number of pumps in light liquid service. The calculated value shall be rounded to the nearest nonzero integer value. The minimum number of pumps or pump seals shall be one. Pump replacement shall continue until all pumps subject to the requirements of § 65.107 are pumps determined to be superior performance technology.

(ii) The owner or operator may delay replacement of pump seals or pumps with superior technology until the next planned process unit shutdown provided the number of pump seals and pumps replaced is equivalent to the 20 percent or greater annual replacement rate.

(iii) The pumps shall be maintained as specified in the quality assurance program.

(e) *QIP recordkeeping.* In addition to the records required by paragraph (d)(2) of this section, the owner or operator shall maintain records for the period of the quality improvement program for the process unit as specified in paragraphs (e)(1) through (6) of this section.

(1) When using a pump quality improvement program as specified in this section, record the following information:

(i) The rolling average percent leaking pumps.

(ii) Documentation of all inspections conducted under the requirements of

paragraph (d)(4) of this section and any recommendations for design or specification changes to reduce leak frequency.

(iii) The beginning and ending dates while meeting the requirements of paragraph (d) of this section.

(2) If a leak is not repaired within 15 calendar days after discovery of the leak, the reason for the delay and the expected date of successful repair.

(3) Records of all analyses required in paragraph (d) of this section. The records will include the following information:

(i) A list identifying areas associated with poorer than average performance and the associated service characteristics of the stream, the operating conditions, and the maintenance practices.

(ii) The reasons for rejecting specific candidate superior emission performing pump technology from performance trials.

(iii) The list of candidate superior emission performing valve or pump technologies and documentation of the performance trial program items required under paragraph (d)(6)(iii) of this section.

(iv) The beginning date and duration of performance trials of each candidate superior emission performing technology.

(4) All records documenting the quality assurance program for pumps as specified in paragraph (d)(7) of this section, including records indicating that all pumps replaced or modified during the period of the quality improvement program are in compliance with the quality assurance.

(5) Records documenting compliance with the 20 percent or greater annual replacement rate for pumps as specified in paragraph (d)(8) of this section.

(6) Information and data to show the corporation has fewer than 100 employees, including employees providing professional and technical contracted services.

**§ 65.117 Alternative means of emission limitation: Batch processes.**

(a) *General requirement.* As an alternative to complying with the requirements of §§ 65.106 through 65.114 and § 65.116, an owner or operator of a batch process that operates in regulated material service during the calendar year may comply with one of the standards specified in paragraphs (b) and (c) of this section, or the owner or operator may petition for approval of an alternative standard under the provisions of § 65.102(b). The alternative standards of this section provide the options of pressure testing or monitoring the equipment for leaks. The owner or operator may switch among the alternatives provided the change is documented as specified in paragraph (b)(7) of this section.

(b) *Pressure testing of the batch equipment.* The following requirements shall be met if an owner or operator elects to use pressure testing of batch product-process equipment to demonstrate compliance with this subpart:

(1) *Reconfiguration.* Each time equipment is reconfigured for production of a different product or intermediate, the batch product-process equipment train shall be pressure-tested for leaks before regulated material is first fed to the equipment and the equipment is placed in regulated material service.

(i) When the batch product-process equipment train is reconfigured to produce a different product, pressure testing is required only for the new or disturbed equipment.

(ii) Each batch product-process that operates in regulated material service during a calendar year shall be pressure-tested at least once during that calendar year.

(iii) Pressure testing is not required for routine seal breaks, such as changing hoses or filters, that are not part of the reconfiguration to produce a different product or intermediate.

(2) *Testing procedures.* The batch product-process equipment shall be tested either using the procedures specified in paragraph (b)(5) of this section for pressure vacuum loss or with a liquid using the procedures specified in paragraph (b)(6) of this section.

(3) *Leak detection.* (i) For pressure or vacuum tests using a gas, a leak is detected if the rate of change in pressure is greater than 6.9 kilopascals (1 pound per square inch gauge) in 1 hour or if there is visible, audible, or olfactory evidence of fluid loss.

(ii) For pressure tests using a liquid, a leak is detected if there are indications of liquids dripping or if there is other evidence of fluid loss.

(4) *Leak repair.* (i) If a leak is detected, it shall be repaired and the batch product-process equipment shall be retested before startup of the process.

(ii) If a batch product-process fails the retest (the second of two consecutive pressure tests), it shall be repaired as soon as practical but not later than 30 calendar days after the second pressure test, except as specified in paragraph (e) of this section.

(5) *Gas pressure test procedure for pressure or vacuum loss.* The following procedures shall be used to pressure test batch product-process equipment for pressure or vacuum loss to demonstrate compliance with the requirements of paragraph (b)(3)(i) of this section:

(i) The batch product-process equipment train shall be pressurized with a gas to a pressure less than the set pressure of any safety relief devices or valves or to a pressure slightly above the operating pressure of the equipment, or alternatively the equipment shall be placed under a vacuum.

(ii) Once the test pressure is obtained, the gas source or vacuum source shall be shut off.

(iii) The test shall continue for not less than 15 minutes unless it can be determined in a shorter period of time that the allowable rate of pressure drop or of pressure rise was exceeded. The pressure in the batch product-process equipment shall be measured after the gas or vacuum source is shut off and at the end of the test period. The rate of change in pressure in the batch product-process equipment shall be calculated using Equation 117–1 of this section:

$$\Delta(P/t) = \left(\left|P_f - P_i\right|\right) / \left(t_f - t_i\right) \qquad \text{(Eq. 117-1)}$$

Where:

$\Delta(P/t)$ = Change in pressure, pounds per square inch gauge/hr.

$P_f$ = Final pressure, pounds per square inch gauge.

$P_i$ = Initial pressure, pounds per square inch gauge.

$t_f - t_i$ = Elapsed time, hours.

(iv) The pressure shall be measured using a pressure measurement device (gauge, manometer, or equivalent) that has a precision of ±2.5 millimeters mercury (0.10 inch of mercury) in the range of test pressure and is capable of measuring pressures up to the relief set pressure of the pressure relief device. If such a pressure measurement device is not reasonably available, the owner or operator shall use a pressure measurement device with a precision of at least ±10 percent of the test pressure

of the equipment and shall extend the duration of the test for the time necessary to detect a pressure loss or rise that equals a rate of 1 pound per square inch gauge per hour (7 kilopascals per hour).

(v) An alternative procedure may be used for leak testing the equipment if the owner or operator demonstrates the alternative procedure is capable of detecting a pressure loss or rise.

(6) *Pressure test procedure using test liquid.* The following procedures shall be used to pressure test batch product-process equipment using a liquid to demonstrate compliance with the requirements of paragraph (b)(3)(ii) of this section:

(i) The batch product-process equipment train or section of the equipment train shall be filled with the test liquid (for example, water, alcohol) until normal operating pressure is obtained. Once the equipment is filled, the liquid source shall be shut off.

(ii) The test shall be conducted for a period of at least 60 minutes unless it can be determined in a shorter period of time that the test is a failure.

(iii) Each seal in the equipment being tested shall be inspected for indications of liquid dripping or other indications of fluid loss. If there are any indications of liquids dripping or of fluid loss, a leak is detected.

(iv) An alternative procedure may be used for leak testing the equipment if the owner or operator demonstrates the alternative procedure is capable of detecting losses of fluid.

(7) *Pressure testing recordkeeping.* The owner or operator of a batch product-process who elects to pressure test the batch product-process equipment train to demonstrate compliance with this subpart shall maintain records of the information specified in paragraphs (b)(7)(i) through (v) of this section.

(i) The identification of each product or product code produced during the calendar year. It is not necessary to identify individual items of equipment in a batch product-process equipment train.

(ii) Physical tagging of the equipment to identify that it is in regulated material service and subject to the provisions of this subpart is not required. Equipment in a batch product-process subject to the provisions of this subpart may be identified on a plant site plan, in log entries, or by other appropriate methods.

(iii) The dates of each pressure test required in paragraph (b) of this section, the test pressure, and the pressure drop observed during the test.

(iv) Records of any visible, audible, or olfactory evidence of fluid loss.

(v) When a batch product-process equipment train does not pass two consecutive pressure tests, as specified in paragraph (b)(4)(ii) of this section, the following information shall be recorded in a log and kept for 2 years:

(A) The date of each pressure test and the date of each leak repair attempt;

(B) Repair methods applied in each attempt to repair the leak;

(C) The reason for the delay of repair;

(D) The expected date for delivery of the replacement equipment and the actual date of delivery of the replacement equipment; and

(E) The date of successful repair.

(c) *Equipment monitoring.* The following requirements shall be met if an owner or operator elects to monitor the equipment in a batch process to detect leaks by the method specified in § 65.104(b) and (c) to demonstrate compliance with this subpart:

(1) The owner or operator shall comply with the requirements of §§ 65.106 through 65.116 as modified by paragraphs (c)(2) through (4) of this section.

(2) The equipment shall be monitored for leaks by the method specified in § 65.104(b) and (c) when the equipment is in regulated material service or is in use with any other detectable material.

(3) The equipment shall be monitored for leaks as specified in the following:

(i) Each time the equipment is reconfigured for the production of a new product, the reconfigured equipment shall be monitored for leaks within 30 days of startup of the process. This initial monitoring of reconfigured equipment shall not be included in determining percent leaking equipment in the process unit.

(ii) Connectors shall be monitored in accordance with the requirements in § 65.108.

(iii) Equipment other than connectors shall be monitored at the frequencies specified in table 1 to this subpart. The operating time shall be determined as the proportion of the year the batch product-process that is subject to the provisions of this subpart is operating.

(iv) The monitoring frequencies specified in paragraph (c)(3)(iii) of this section are not requirements for monitoring at specific intervals and can be adjusted to accommodate process operations. An owner or operator may monitor anytime during the specified monitoring period (for example, month, quarter, year), provided the monitoring is conducted at a reasonable interval after completion of the last monitoring campaign. For example, if the equipment is not operating during the scheduled monitoring period, the monitoring can be done during the next period when the process is operating.

(4) If a leak is detected, it shall be repaired as soon as practical but not later than 15 calendar days after it is detected except as provided in paragraph (e) of this section.

(d) *Added equipment recordkeeping.* (1) For batch product-process units that the owner or operator elects to monitor as provided under paragraph (c) of this section, the owner or operator shall prepare a list of equipment added to batch product-process units since the last monitoring period required in paragraphs (c)(3)(ii) and (iii) of this section.

(2) Maintain records demonstrating the proportion of the time during the calendar year the equipment is in use in a batch process that is subject to the provisions of this subpart. Examples of suitable documentation are records of time in use for individual pieces of equipment or average time in use for the process unit. These records are not required if the owner or operator does not adjust monitoring frequency by the time in use, as provided in paragraph (c)(3)(iii) of this section.

(3) Record and keep pursuant to § 65.4 the date and results of the monitoring required in paragraph (c)(3)(i) of this section for equipment added to a batch product-process unit since the last monitoring period required in paragraphs (c)(3)(ii) and (iii) of this section. If no leaking equipment is found during this monitoring, the owner or operator shall record that the inspection was performed. Records of the actual monitoring results are not required.

(e) *Delay of repair.* Delay of repair of equipment for which leaks have been detected is allowed if the replacement equipment is not available provided the following conditions are met:

(1) Equipment supplies have been depleted and supplies had been sufficiently stocked before the supplies were depleted.

(2) The repair is made no later than 10 calendar days after delivery of the replacement equipment.

(f) *Periodic report contents.* For owners or operators electing to meet the requirements of paragraph (b) of this section, the following periodic report to be filed pursuant to § 65.120(b) shall include the following information for each process unit:

(1) Batch product-process equipment train identification;

(2) The number of pressure tests conducted;

(3) The number of pressure tests where the equipment train failed the pressure test; and

(4) The facts that explain any delay of repairs.

**§ 65.118 Alternative means of emission limitation: Enclosed-vented process units.**

(a) *Use of closed vent system and control device.* Process units that are enclosed in such a manner that all emissions from equipment leaks are routed to a process or fuel gas system or collected and vented through a closed vent system to a control device meeting the requirements of § 65.115 are exempt from the requirements of §§ 65.106 through 65.114 and § 65.116. The enclosure shall be maintained under a negative pressure at all times while the process unit is in operation to ensure that all emissions are routed to a control device.

(b) *Recordkeeping.* Owners and operators choosing to comply with the requirements of this section shall maintain the following records:

(1) Identification of the process unit(s) and the regulated materials they handle.

(2) A schematic of the process unit, enclosure, and closed vent system.

(3) A description of the system used to create a negative pressure in the enclosure to ensure that all emissions are routed to the control device.

**§ 65.119 Recordkeeping provisions.**

(a) *Recordkeeping system.* An owner or operator of more than one regulated source subject to the provisions of this subpart may comply with the recordkeeping requirements for these regulated sources in one recordkeeping system. The recordkeeping system shall identify each record by regulated source and the type of program being implemented (for example, quarterly monitoring, quality improvement) for each type of equipment. The records required by this subpart are summarized in paragraphs (b) and (c) of this section.

(b) *General equipment leak records.* (1) As specified in § 65.103(a) through (c), the owner or operator shall keep general and specific equipment identification if the equipment is not physically tagged and the owner or operator is electing to identify the equipment subject to subpart F of this part through written documentation such as a log or other designation.

(2) The owner or operator shall keep a written plan as specified in § 65.103(c)(4) for any equipment that is designated as unsafe- or difficult-to-monitor.

(3) The owner or operator shall maintain a record of the identity and an explanation as specified in § 65.103(d)(2) for any equipment that is designated as unsafe to repair.

(4) As specified in § 65.103(e), the owner or operator shall maintain a record of the identity of compressors operating with an instrument reading of less than 500 parts per million.

(5) The owner or operator shall keep records associated with the determination that equipment is in heavy liquid service as specified in § 65.103(f).

(6) The owner or operator shall keep records for leaking equipment as specified in § 65.104(e)(2).

(7) The owner or operator shall keep records for leak repair as specified in § 65.105(f) and records for delay of repair as specified in § 65.105(d).

(8) For instrument response factor criteria determinations performed pursuant to § 65.104(b)(2)(i), the owner or operator shall maintain a record of an engineering assessment that identifies the representative composition of the process fluid. The assessment shall be based on knowledge of the compounds present in the process, similarity of response factors for the materials present, the range of compositions encountered during monitoring, or other information available to the owner or operator.

(9) The owner or operator shall keep records of the detection limit calibration as specified in § 65.104(b)(3).

(c) *Specific equipment leak records.* (1) For valves, the owner or operator shall maintain the following records:

(i) The monitoring schedule for each process unit as specified in § 65.106(b)(3)(v).

(ii) The valve subgrouping records specified in § 65.106(b)(4)(iv), if applicable.

(2) For pumps, the owner or operator shall maintain the following records:

(i) Documentation of pump visual inspections as specified in § 65.107(b)(4).

(ii) Documentation of dual mechanical seal pump visual inspections as specified in § 65.107(e)(1)(v).

(iii) For the criteria as to the presence and frequency of drips for dual mechanical seal pumps, records of the design criteria and explanations and any changes and the reason for the changes, as specified in § 65.107(e)(1)(i).

(3) For connectors, the owner or operator shall maintain the records specified in § 65.108(b)(3)(v) which identify a monitoring schedule for each process unit.

(4) For agitators, the owner or operator shall maintain the following records:

(i) Documentation of agitator seal visual inspections as specified in § 65.109(b)(3).

(ii) For agitators equipped with a dual mechanical seal system that includes barrier fluid system, the owner or operator shall keep records as specified in § 65.109(e)(1)(vi)(B).

(iii) Documentation of the dual mechanical seal agitator seal visual inspections as specified in § 65.109(e)(1)(iv).

(5) For pressure relief devices in gas/vapor or light liquid service, the owner or operator shall keep records of the dates and results of monitoring following a pressure release, as specified in § 65.111(c)(3), or the date the rupture disk is replaced as specified in § 65.111(e).

(6) For compressors, the owner or operator shall maintain the following records:

(i) For criteria as to failure of the seal system and/or the barrier fluid system, record the design criteria and explanations and any changes and the reason for the changes, as specified in § 65.112(d)(2).

(ii) For compressors operating under the alternative compressor standard, record the dates and results of each compliance test as specified in § 65.112(f)(2).

(7) For a pump QIP program, the owner or operator shall maintain the following records:

(i) Individual pump records as specified in § 65.116(d)(2).

(ii) Trial evaluation program documentation as specified in § 65.116(d)(6)(iii).

(iii) Engineering evaluation documenting the basis for judgement that superior emission performance technology is not applicable as specified in § 65.116(d)(6)(vi).

(iv) Quality assurance program documentation as specified in § 65.116(d)(7).

(v) QIP records as specified in § 65.116(e).

(8) For process units complying with the batch process unit alternative, the owner or operator shall maintain the following records:

(i) Pressure test records as specified in § 65.117(b)(7).

(ii) Records for equipment added to the process unit as specified in § 65.117(d).

(9) For process units complying with the enclosed-vented process unit alternative, the owner or operator shall maintain the records for enclosed-vented process units as specified in § 65.118(b).

**§ 65.120 Reporting provisions.**

(a) *Initial Compliance Status Report.* Unless the information specified in paragraphs (a)(1) through (3) of this section has previously been submitted under the referencing subpart, each owner or operator shall submit an Initial Compliance Status Report according to the procedures in § 65.5(d). The notification shall include the information listed in paragraphs (a)(1) through (3) of this section, as applicable.

(1) The notification shall provide the following information for each process unit subject to the requirements of this subpart:

(i) Process unit identification;

(ii) Number of each equipment type (for example, valves, pumps) excluding equipment in vacuum service; and

(iii) Method of compliance with the standard (for example, ''monthly leak detection and repair'' or ''equipped with dual mechanical seals'').

(2) The notification shall provide the following information for each process unit subject to the requirements of § 65.117(b):

(i) Batch products or product codes subject to the provisions of this subpart; and

(ii) Planned schedule for pressure testing when equipment is configured for production of products subject to the provisions of this subpart.

(3) The notification shall provide the following information for each process unit subject to the requirements in § 65.118:

(i) Process unit identification;

(ii) A description of the system used to create a negative pressure in the enclosure, and the control device used to comply with the requirements of subpart G of this part.

(b) *Periodic reports.* The owner or operator shall report the information specified in paragraphs (b)(1) through (9) of this section, as applicable, in the periodic report specified in § 65.5(e).

(1) For the equipment specified in paragraphs (b)(1)(i) through (v) of this section, report in a summary format by equipment type the number of components for which leaks were detected, and for valves, pumps, and connectors show the percent leakers and the total number of components monitored. Also include the number of leaking components that were not repaired as required by § 65.105(a), and for valves identify the number of components that are determined by § 65.106(c)(3) to be nonrepairable.

(i) Valves in gas/vapor service and in light liquid service pursuant to § 65.106(b) and (c).

(ii) Pumps in light liquid service pursuant to § 65.107(b) and (c).

(iii) Connectors in gas/vapor service and in light liquid service pursuant to § 65.108(b) and (c).

(iv) Agitators in gas/vapor service and in light liquid service pursuant to § 65.109(b).

(v) Compressors pursuant to § 65.112(d).

(2) Where any delay of repair is utilized pursuant to § 65.105(d), report that delay of repair has occurred and report the number of instances of delay of repair.

(3) If applicable, report the valve subgrouping information specified in § 65.106(b)(4)(iv).

(4) For pressure relief devices in gas/vapor service pursuant to § 65.111(b) and for compressors pursuant to § 65.112(f) that are to be operated at a leak detection instrument reading of less than 500 parts per million, report the results of all monitoring to show compliance conducted within the semiannual reporting period.

(5) Report, if applicable, the initiation of a monthly monitoring program for valves pursuant to § 65.106(b)(3)(i).

(6) Report, if applicable, the initiation of a quality improvement program for pumps pursuant to § 65.116.

(7) [Reserved]

(8) Where the alternative means of emissions limitation for batch processes is utilized, report the information listed in § 65.117(f).

(9) Report the information listed in paragraph (a) of this section for the Initial Compliance Status Report for process units with later compliance dates. Report any revisions to items reported in an earlier Initial Compliance Status Report if the method of compliance has changed since the last report.

**§§ 65.121—65.139 [Reserved]**

TABLE 1 TO SUBPART F OF PART 65.—BATCH PROCESSES MONITORING FREQUENCY FOR EQUIPMENT OTHER THAN CONNECTORS

| Operating time (percent of year) | Equivalent continuous process monitoring frequency time in use | | |
|---|---|---|---|
| | Monthly | Quarterly | Semiannually |
| 0 to <25 | Quarterly | Annually | Annually. |
| 25 to <50 | Quarterly | Semiannually | Annually. |
| 50 to <75 | Bimonthly | Three times | Semiannually. |
| 75 to 100 | Monthly | Quarterly | Semiannually. |

## Subpart G—Closed Vent Systems, Control Devices, and Routing to a Fuel Gas System or a Process

**§ 65.140 Applicability.**

The provisions of this subpart and of subpart A of this part (including the startup, shutdown, and malfunction provisions in § 65.6) apply to routing emissions to processes, fuel gas systems, closed vent systems, control devices, and recovery devices where another subpart expressly references the use of this subpart.

**§ 65.141 Definitions.**

All terms used in this subpart shall have the meaning given them in the Act and in subpart A of this part. If a term is defined in both subpart A of this part and in other subparts that reference the use of this subpart, the term shall have the meaning given in subpart A of this part for purposes of this subpart.

**§ 65.142 Standards.**

(a) *Storage vessel requirements.* The owner or operator expressly referenced to this subpart from subpart C of this part shall comply with the following requirements, as applicable:

(1) *Closed vent system and flare.* Owners or operators subject to § 65.42(b)(4) who route storage vessel emissions through a closed vent system to a flare shall meet the requirements in § 65.143 for closed vent systems; § 65.147 for flares; and § 65.157(a), (b), and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to storage vessel emissions routed through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device.* Owners or operators subject to § 65.42(b)(5) who route storage vessel emissions through a closed vent system to a nonflare control device shall meet the requirements in § 65.143 for closed vent systems and § 65.145 for nonflare control devices and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to storage vessel emissions routed through a closed vent system to a nonflare control device unless specifically required in the monitoring plan submitted under § 65.145(c).

(3) *Route to a fuel gas system or process.* Owners or operators subject to § 65.42(b)(6) who route storage vessel emissions to a fuel gas system or to a process shall meet the requirements in § 65.144 and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to storage vessel emissions being routed to a fuel gas system or to a process.

(b) *Process vent requirements.* The owner or operator expressly referenced to this subpart from subpart D of this part or 40 CFR part 60, subpart DDD, shall comply with the following requirements, as applicable:

(1) *Flare.* Owners or operators subject to § 65.63(a)(1) or 40 CFR 60.562–1(a)(1)(i)(C) who route process vent emissions to a flare shall meet the applicable requirements in § 65.143 for closed vent systems; § 65.147 for flares; and § 65.157(a), (b), and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to process vent emissions routed through a closed vent system to a flare.

(2) *Nonflare control device.* Owners or operators subject to § 65.63(a)(2) or 40 CFR 60.562–1(a)(1)(i)(A) or (B) who route process vent emissions to a nonflare control device shall meet the applicable requirements in § 65.143 for closed vent systems; the requirements applicable to the control devices being used in §§ 65.148 through 65.152 or § 65.155; the applicable general monitoring requirements of § 65.156; the applicable performance test requirements and procedures of §§ 65.157 and 65.158; and the monitoring, recordkeeping, and reporting requirements referenced therein. Owners or operators subject to the halogen reduction device requirements of § 65.63(b)(1) must also comply with § 65.154 and the monitoring, recordkeeping, and reporting requirements referenced therein. The requirements of §§ 65.144 through 65.146 do not apply to process vents. No other provisions of this subpart apply to process vent emissions routed through a closed vent system to a nonflare control device.

(3) *Final recovery devices.* Owners or operators subject to § 65.63(a)(3) who use a final recovery device to maintain the TRE index value of a Group 2A process vent above 1.0 shall meet the requirements in § 65.153, and the monitoring, recordkeeping, and reporting requirements referenced therein applicable to the recovery device being used and the applicable monitoring requirements in § 65.156, and the recordkeeping and reporting requirements referenced therein, except for § 65.156(c)(2)(ii). No other provisions of this subpart apply to Group 2A process vents.

(c) *Transfer rack requirements.* The owner or operator expressly referenced to this subpart from subpart E of this part shall comply with the following requirements, as applicable:

(1) *Closed vent system and flare.* Owners or operators subject to § 65.83(a)(2) who route transfer rack emissions through a closed vent system to a flare shall meet the applicable requirements in § 65.143 for closed vent systems; § 65.147 for flares; and § 65.157(a), (b), and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to transfer rack emissions routed through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device for low-throughput transfer racks.* Owners or operators of low-throughput transfer racks subject to § 65.83(a)(1) who route low-throughput transfer rack emissions through a closed vent system to a nonflare control device shall meet the applicable requirements in § 65.143 for closed vent systems and § 65.145 for nonflare control devices and the monitoring, recordkeeping, and reporting requirements referenced therein. Owners or operators subject to the halogen reduction requirements of § 65.83(b)(1) must also comply with the recordkeeping requirement of § 65.160(d) and the reporting requirement of § 65.165(d). No other provisions of this subpart apply to low-throughput transfer rack emissions routed through a closed vent system to a nonflare control device unless specifically required in the monitoring plan submitted under § 65.145(c).

(3) *Closed vent system and nonflare control devices for high-throughput transfer racks.* Owners or operators of high-throughput transfer racks subject to § 65.83(a)(1) who route high-throughput transfer rack emissions through a closed vent system to a nonflare control device shall meet the applicable requirements in § 65.143 for closed vent systems; the requirements applicable to the control device being used in §§ 65.148 through 65.152 or § 65.155; the applicable general monitoring of § 65.156; the applicable performance test requirements and procedures of §§ 65.157 and 65.158; and the monitoring, recordkeeping, and reporting requirements referenced therein. Owners or operators subject to the halogen reduction device requirements of § 65.83(b)(1) must also comply with § 65.154 and the monitoring, recordkeeping, and reporting requirements referenced therein. The requirements of §§ 65.144 through 65.146 do not apply to high-throughput transfer rack emissions routed through a closed vent system to a nonflare control device. No other provisions of this subpart apply to high-throughput transfer rack emissions routed through a closed vent system to a nonflare control device.

(4) *Route to a fuel gas system or to a process.* Owners or operators subject to § 65.83(a)(4) of this part who route transfer rack emissions to a fuel gas system or to a process shall meet the applicable requirements in § 65.144 and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to transfer rack emissions being routed to a fuel gas system or to a process.

(d) *Equipment leak requirements.* The owner or operator expressly referenced to this subpart from subpart F of this part shall comply with the following requirements, as applicable:

(1) *Closed vent system and flare.* Owners or operators subject to § 65.115(b) who route equipment leak emissions through a closed vent system to a flare shall meet the requirements in § 65.143 for closed vent systems; § 65.147 for flares; and § 65.157(a), (b), and (c) for provisions regarding flare compliance determinations; and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions routed through a closed vent system to a flare.

(2) *Closed vent system and nonflare control device.* Owners or operators subject to § 65.115(b) who route equipment leak emissions through a closed vent system to a nonflare control device shall meet the requirements in

§ 65.143 for closed vent systems, § 65.146 for nonflare control devices used for equipment leak emissions, and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions routed through a closed vent system to a nonflare control device.

(3) *Route to a fuel gas system or to a process.* Owners or operators subject to § 65.115(b) who route equipment leak emissions to a fuel gas system or to a process shall meet the requirements in § 65.144 and the monitoring, recordkeeping, and reporting requirements referenced therein. No other provisions of this subpart apply to equipment leak emissions being routed to a fuel gas system or to a process.

(e) *Combined emissions.* When emissions of different kinds (for example, emissions from process vents, transfer racks, and/or storage vessels) are combined, the owner or operator shall comply with the requirements of either paragraph (e)(1) or (2) of this section:

(1) Comply with the applicable requirements of this subpart for each kind of emissions in the stream (for example, the requirements of § 65.142(b) for process vents, and the requirements of § 65.142(c) for transfer racks); or

(2) Comply with the first set of requirements identified in paragraphs (e)(2)(i) through (iii) of this section which applies to any individual emission stream that is included in the combined stream. Compliance with the first applicable set of requirements identified in paragraphs (e)(2)(i) through (iii) of this section constitutes compliance with all other requirements in paragraphs (e)(2)(i) through (iii) of this section applicable to other types of emissions in the combined stream. The hierarchy is as follows:

(i) The requirements of § 65.142(b) for Group 1 process vents, including applicable monitoring, recordkeeping, and reporting;

(ii) The requirements of § 65.142(c) for high-throughput transfer racks, including applicable monitoring, recordkeeping, and reporting;

(iii) The requirements of § 65.142(a) for control of emissions from storage vessels or low-throughput transfer racks, including monitoring, recordkeeping, and reporting.

**§ 65.143 Closed vent systems.**

(a) *Closed vent system equipment and operating requirements.* The provisions of paragraph (a) of this section apply to closed vent systems collecting regulated material from a storage vessel, process vent, transfer rack, or equipment leaks.

(1) *Collection of emissions.* Each closed vent system shall be designed and operated to collect the regulated material vapors from the emission point and to route the collected vapors to a control device.

(2) *Period of operation.* Closed vent systems used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(3) *Bypass monitoring.* Except for pressure relief devices needed for safety purposes, low leg drains, high point bleeds, analyzer vents, and open-ended valves or lines, the owner or operator shall comply with either of the following provisions for each closed vent system that contains bypass lines that could divert a vent stream to the atmosphere:

(i) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. Records shall be generated as specified in § 65.163(a)(1)(i). The flow indicator shall be installed at the entrance to any bypass line.

(ii) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure the valve is maintained in the non-diverting position and the vent stream is not diverted through the bypass line. Records shall be generated as specified in § 65.163(a)(1)(ii).

(4) *Loading arms at transfer racks.* Each closed vent system collecting regulated material from a transfer rack shall be designed and operated so that regulated material vapors collected at one loading arm will not pass through another loading arm in the rack to the atmosphere.

(5) *Pressure relief devices in a transfer rack's closed vent system.* The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the transfer rack's closed vent system shall open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to paragraph (a)(5) of this section.

(b) *Closed vent system inspection requirements.* The provisions of paragraph (b) of this section apply to closed vent systems collecting regulated material from a storage vessel, transfer rack or equipment leaks. Inspection records shall be generated as specified in § 65.163(a)(3) and (4).

(1) Except for closed vent systems operated and maintained under negative pressure and as provided in paragraphs (b)(2) and (3) of this section, each closed vent system shall be inspected as specified in paragraph (b)(1)(i) or (ii) of this section.

(i) If the closed vent system is constructed of hard-piping, the owner or operator shall comply with the following requirements:

(A) Conduct an initial inspection according to the procedures in paragraph (c) of this section; and

(B) Conduct annual visual inspections for visible, audible, or olfactory indications of leaks.

(ii) If the closed vent system is constructed of ductwork, the owner or operator shall conduct an initial and annual inspection according to the procedures in paragraph (c) of this section.

(2) Any parts of the closed vent system that are designated as described in § 65.163(a)(2) as unsafe to inspect are exempt from the inspection requirements of paragraph (b)(1) of this section if the following conditions are met:

(i) The owner or operator determines that the equipment is unsafe to inspect because inspecting personnel would be exposed to an imminent or potential danger as a consequence of complying with paragraph (b)(1) of this section; and

(ii) The owner or operator has a written plan that requires inspection of the equipment as frequently as practical during safe-to-inspect times. Inspection is not required more than once annually.

(3) Any parts of the closed vent system that are designated, as described in § 65.163(a)(2), as difficult-to-inspect are exempt from the inspection requirements of paragraph (b)(1) of this section if the following provisions apply:

(i) The owner or operator determines that the equipment cannot be inspected without elevating the inspecting personnel more than 2 meters (7 feet) above a support surface; and

(ii) The owner or operator has a written plan that requires inspection of the equipment at least once every 5 years.

(c) *Closed vent system inspection procedures.* The provisions of paragraph (c) of this section apply to closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leaks.

(1) Each closed vent system subject to paragraph (c) of this section shall be inspected according to the procedures specified in paragraphs (c)(1)(i) through (vii) of this section.

(i) Inspections shall be conducted in accordance with Method 21 of appendix

A of 40 CFR part 60 except as specified in this section.

(ii) Except as provided in paragraph (c)(1)(iii) of this section, the detection instrument shall meet the performance criteria of Method 21 of appendix A of 40 CFR part 60, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the representative composition of the process fluid not each individual organic compound in the stream. For process streams that contain nitrogen, air, water, or other inerts that are not organic hazardous air pollutants or volatile organic compounds, the response factor shall be determined on an inert-free basis. The response factor may be determined at any concentration for which the monitoring for leaks will be conducted. Maintain the record specified by § 65.163(a)(5).

(iii) If no instrument is available at the plant site that will meet the performance criteria specified in paragraph (c)(1)(ii) of this section, the instrument readings may be adjusted by multiplying by the representative response factor of the process fluid calculated on an inert-free basis as described in paragraph (c)(1)(ii) of this section.

(iv) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of appendix A of 40 CFR part 60.

(v) Calibration gases shall be as specified in the following:

(A) Zero air (less than 10 parts per million hydrocarbon in air).

(B) Mixtures of methane in air at a concentration less than 10,000 parts per million. A calibration gas other than methane in air may be used if the instrument does not respond to methane or if the instrument does not meet the performance criteria specified in paragraph (c)(1)(ii) of this section. In such cases, the calibration gas may be a mixture of one or more of the compounds to be measured in air.

(C) If the detection instrument's design allows for multiple calibration scales, then the lower scale shall be calibrated with a calibration gas that is no higher than 2,500 parts per million.

(vi) An owner or operator may elect to adjust or not adjust instrument readings for background. If an owner or operator elects not to adjust readings for background, all such instrument readings shall be compared directly to 500 parts per million to determine whether there is a leak. If an owner or operator elects to adjust instrument readings for background, the owner or operator shall measure background concentration using the procedures in this section. The owner or operator shall subtract the background reading from the maximum concentration indicated by the instrument.

(vii) If the owner or operator elects to adjust for background, the arithmetic difference between the maximum concentration indicated by the instrument and the background level shall be compared with 500 parts per million for determining whether there is a leak.

(2) The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Method 21 of appendix A of 40 CFR part 60.

(3) Except as provided in paragraph (c)(4) of this section, inspections shall be performed when the equipment is in regulated material service or in use with any other detectable gas or vapor.

(4) Inspections of the closed vent system collecting regulated material from a transfer rack shall be performed only while a tank truck or railcar is being loaded or is otherwise pressurized to normal operating conditions with regulated material or any other detectable gas or vapor.

(d) *Closed vent system leak repair provisions.* The provisions of paragraph (d) of this section apply to closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leak.

(1) If there are visible, audible, or olfactory indications of leaks at the time of the annual visual inspections required by paragraph (b)(1)(i)(B) of this section, the owner or operator shall follow either of the following procedures:

(i) The owner or operator shall eliminate the indications of the leak.

(ii) The owner or operator shall monitor the equipment according to the procedures in paragraph (c) of this section.

(2) Leaks as indicated by an instrument reading greater than 500 parts per million by volume above background shall be repaired as soon as practical except as provided in paragraph (d)(3) of this section. Records shall be generated as specified in § 65.163(a)(3) when a leak is detected.

(i) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(ii) Except as provided in paragraph (d)(3) of this section, repairs shall be completed no later than 15 calendar days after the leak is detected or at the beginning of the next introduction of vapors to the system, whichever is later.

(3) Delay of repair of a closed vent system for which leaks have been detected is allowed if repair within 15 days after a leak is detected is technically infeasible without a closed vent system shutdown, as defined in § 65.2, or if the owner or operator determines that emissions resulting from immediate repair would be greater than the emissions likely to result from delay of repair. Repair of such equipment shall be completed as soon as practical, but not later than the end of the next closed vent system shutdown.

**§ 65.144 Fuel gas systems and processes to which storage vessel, transfer rack, or equipment leak regulated material emissions are routed.**

(a) *Equipment and operating requirements for fuel gas systems and processes.* (1) Except during periods of startup, shutdown, and malfunction as specified in § 65.3(a), the fuel gas system or process shall be operating at all times when regulated material emissions are routed to it.

(2) The owner or operator of a transfer rack subject to the provisions of this subpart shall ensure that no pressure relief device in the transfer rack's system returning vapors to a fuel gas system or process shall open to the atmosphere during loading. Pressure relief devices needed for safety purposes are not subject to this paragraph (a)(2).

(3) Each process piping system collecting regulated material from a transfer rack shall be designed and operated so that regulated material vapors collected at one loading arm will not pass through another loading arm in the rack to the atmosphere.

(b) *Fuel gas system and process compliance determination.* (1) If emissions are routed to a fuel gas system, there is no requirement to conduct a performance test or design evaluation.

(2) For storage vessels and transfer racks, and if emissions are routed to a process, the regulated material in the emissions shall predominantly meet one of, or a combination of, the following conditions, and the compliance demonstration requirements in paragraph (b)(3) of this section, if applicable:

(i) Recycled and/or consumed in the same manner as a material that fulfills the same function in that process;

(ii) Transformed by chemical reaction into materials that are not regulated materials;

(iii) Incorporated into a product; and/or

(iv) Recovered.

(3) To demonstrate compliance with paragraph (b)(2) of this section for a storage vessel, the owner or operator shall prepare a design evaluation (or

engineering assessment) that demonstrates the extent to which one or more of the conditions specified in paragraphs (b)(2)(i) through (iv) of this section are being met. The owner or operator shall submit the design evaluation as specified in § 65.165(a)(1).

(c) *Statement of connection to fuel gas system.* For storage vessels and transfer racks, the owner or operator shall submit the statement of connection reports for fuel gas systems specified in § 65.165(a)(2) and/or (a)(3), as appropriate.

**§ 65.145 Nonflare control devices used to control emissions from storage vessels or low-throughput transfer racks.**

(a) *Nonflare control device equipment and operating requirements.* The owner or operator shall operate and maintain the nonflare control device, including a halogen reduction device for a low-throughput transfer rack, so that the monitored parameters defined as required in paragraph (c) of this section remain within the ranges specified in the Initial Compliance Status Report whenever emissions of regulated material are routed to the control device and halogen reduction device, except during periods of startup, shutdown, and malfunction as specified in § 65.3(a).

(b) *Nonflare control device design evaluation or performance test requirements.* When using a control device other than a flare, the owner or operator shall comply with the requirements in paragraph (b)(1)(i), (ii), or (iii) of this section except as provided in paragraph (b)(2) of this section. Owners or operators of halogenated low-throughput transfer rack vent streams routed to a combustion device and then to a halogen reduction device to meet the specifications of § 65.83(b)(1), must also meet the requirements of paragraph (b)(3) of this section.

(1) Unless a design evaluation or performance test as required in the referencing subpart was previously conducted and submitted for the storage vessel or low-throughput transfer rack, the owner or operator shall either prepare and submit with the Initial Compliance Status Report, as specified in § 65.165(b), a design evaluation that includes the information specified in paragraph (b)(1)(i) of this section, or the results of the performance test as described in paragraph (b)(1)(ii) or (iii) of this section.

(i) *Design evaluation.* The design evaluation shall include documentation demonstrating that the control device being used achieves the required control efficiency during the reasonably expected maximum storage vessel filling or transfer loading rate. This documentation is to include a description of the gas stream that enters the control device, including flow and regulated material content; and additionally for storage vessels, the effects of varying liquid level conditions; and the information specified in paragraphs (b)(1)(i)(A) through (E) of this section, as applicable. This documentation shall be submitted with the Initial Compliance Status Report as specified in § 65.165(b).

(A) The efficiency determination is to include consideration of all vapors, gases, and liquids, other than fuels, received by the control device.

(B) If an enclosed combustion device with a minimum residence time of 0.5 seconds and a minimum temperature of 760 °C is used to meet the emission reduction requirement specified in § 65.42(b)(5) for storage vessels, or § 65.83(a)(1) for transfer racks, documentation that those conditions exist is sufficient to meet the requirements of paragraph (b)(1)(i) of this section.

(C) Except as provided in paragraph (b)(1)(i)(B) of this section for enclosed combustion devices, the design evaluation shall include the estimated autoignition temperature of the stream being combusted, the flow rate of the stream, the combustion temperature, and the residence time at the combustion temperature.

(D) For carbon adsorbers, the design evaluation shall include the estimated affinity of the regulated pollutant vapors for carbon, the amount of carbon in each bed, the number of beds, the humidity, the temperature, the flow rate of the inlet stream and, if applicable, the desorption schedule, the regeneration stream pressure or temperature, and the flow rate of the regeneration stream. For vacuum desorption, pressure drop shall be included.

(E) For condensers, the design evaluation shall include the final temperature of the stream vapors, the type of condenser, and the design flow rate of the emission stream.

(ii) *Performance test.* A performance test is acceptable to demonstrate compliance with § 65.42(b)(5) for storage vessels, and § 65.83(a)(1) for low-throughput transfer racks. The owner or operator is not required to prepare a design evaluation for the control device as described in paragraph (b)(1)(i) of this section if a performance test will be performed that meets the following criteria:

(A) The performance test demonstrates that the control device achieves greater than or equal to the required control efficiency specified in § 65.42(b)(5) for storage vessels, or § 65.83(a)(1) for transfer racks; and

(B) The performance test meets the applicable performance test requirements of §§ 65.157 and 65.158, and the results are submitted as part of the Initial Compliance Status Report as specified in § 65.165(b).

(iii) If the control device used to comply with § 65.42(b)(5) for storage vessels, or with § 65.83(a)(1) for low-throughput transfer racks, as applicable, is also used to comply with § 65.63(a)(2) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, a performance test required by §§ 65.148(b), 65.149(b), 65.150(b), 65.151(b), 65.152(b), or 65.155(b) is acceptable to demonstrate compliance with § 65.42(b)(5) for storage vessels, or § 65.83(a)(1) for low-throughput transfer racks, as applicable. The owner or operator is not required to prepare a design evaluation for the control device as described in paragraph (b)(1)(i) of this section, if a performance test will be performed which meets the following criteria:

(A) The performance test demonstrates that the control device achieves greater than or equal to the required control efficiency specified in § 65.42(b)(5) for storage vessels, or § 65.83(a)(1) for transfer racks; and

(B) The performance test is submitted as part of the Initial Compliance Status Report as specified in § 65.165(b).

(2) A design evaluation or performance test is not required if the owner or operator uses a combustion device meeting the criteria in paragraph (b)(2)(i), (ii), (iii), or (iv) of this section and reports as specified in § 65.165(f).

(i) A boiler or process heater with a design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater.

(ii) A boiler or process heater burning hazardous waste for which the owner or operator meets either of the following requirements:

(A) The boiler or process heater has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(B) The boiler or process heater has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(iii) A hazardous waste incinerator for which the owner or operator meets either of the following requirements:

(A) The incinerator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O; or

(B) The incinerator has certified compliance with the interim status

requirements of 40 CFR part 265, subpart O.

(iv) A boiler or process heater into which the vent stream is introduced with the primary fuel.

(3) *Halogen reduction devices used for transfer racks.* Unless a design evaluation or performance test as required in the referencing subpart was previously conducted and submitted for a halogen reduction device following a combustion device for a low-throughput transfer rack, the owner or operator shall either prepare and submit with the Initial Compliance Status Report, as specified in § 65.165(b), a design evaluation that includes the information specified in paragraph (b)(3)(i) of this section, or the results of the performance test as described in paragraph (b)(3)(ii) or (iii) of this section. The provisions of this paragraph (b)(3) apply to owners or operators using a halogen reduction device following a combustion device to comply with § 65.83(b)(1).

(i) *Design evaluation.* The design evaluation shall include documentation demonstrating that the halogen reduction device being used achieves the required control efficiency during the reasonably expected maximum transfer loading rate. This documentation is to include a description of the gas stream that enters the halogen reduction device, including flow and regulated material content. The efficiency determination is to include consideration of all vapors, gases, and liquids, other than fuels, received by the halogen reduction device. This documentation shall be submitted with the Initial Compliance Status Report as specified in § 65.165(b).

(ii) *Performance test.* A performance test is acceptable to demonstrate compliance with § 65.83(b)(1) for low-throughput transfer racks. The owner or operator is not required to prepare a design evaluation for the halogen reduction device as described in paragraph (b)(3)(i) of this section if a performance test will be performed that meets the following criteria:

(A) The performance test demonstrates that the halogen reduction device achieves greater than or equal to the required control efficiency specified in § 65.83(b)(1) for transfer racks; and

(B) The performance test meets the applicable performance test requirements of §§ 65.157 and 65.158, and the results are submitted as part of the Initial Compliance Status Report as specified in § 65.165(b).

(iii) If the halogen reduction device used to comply with § 65.83(b)(1) for low-throughput transfer racks, is also used to comply with § 65.63(b)(1) for process vents, or § 65.83(b)(1) for high-throughput transfer racks, a performance test required by § 65.154(b) is acceptable to demonstrate compliance with § 65.83(b)(1) for low-throughput transfer racks. The owner or operator is not required to prepare a design evaluation for the halogen reduction device as described in paragraph (b)(3)(i) of this section, if a performance test will be performed which meets the following criteria:

(A) The performance test demonstrates that the halogen reduction device achieves greater than or equal to the required control efficiency specified in § 65.83(b)(1) for transfer racks; and

(B) The performance test is submitted as part of the Initial Compliance Status Report as specified in § 65.165(b).

(c) *Nonflare control device monitoring requirements.* (1) Unless previously established under an applicable standard prior to the implementation date of this part as specified in § 65.1(f), the owner or operator shall submit with the Initial Compliance Status Report a monitoring plan containing the information specified in § 65.165(b) to identify the parameters that will be monitored to assure proper operation of the control device. The owner or operator of a halogenated low-throughput transfer rack vent stream routed to a combustion device and then to a halogen reduction device to meet the specifications of § 65.83(b)(1) shall submit with the Initial Compliance Status Report a monitoring plan containing the information specified in § 65.165(b) to identify the parameters that will be monitored to assure proper operation of the halogen reduction device.

(2) The owner or operator shall monitor the parameters specified in the Initial Compliance Status Report or in the operating permit. Records shall be generated as specified in § 65.163(b)(1).

**§ 65.146 Nonflare control devices used for equipment leaks only.**

(a) *Equipment and operating requirements.* (1) Owners or operators using a nonflare control device to meet the applicable requirements in § 65.115(b) shall meet the requirements of this section.

(2) Control devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Performance test requirements.* A performance test is not required for any nonflare control device used only to control emissions from equipment leaks.

(c) *Monitoring requirements.* Owners or operators of control devices that are used only to comply with the provisions of § 65.115(b) shall monitor these control devices to ensure that they are operated and maintained in conformance with their design. The owner or operator shall maintain the records as specified in § 65.163(d).

**§ 65.147 Flares.**

(a) *Flare equipment and operating requirements.* Flares subject to this subpart shall meet the performance requirements of paragraphs (a)(1) through (7) of this section.

(1) Flares shall be operated at all times when emissions are vented to them.

(2) Flares shall be designed for and operated with no visible emissions as determined by the methods specified in paragraph (b)(3)(i) of this section, except for periods not to exceed a total of 5 minutes during any 2 consecutive hours.

(3) Flares shall be operated with a flare flame or at least one pilot flame present at all times, as determined by the methods specified in paragraph (c) of this section.

(4) An owner/operator has the choice of adhering to either the heat content specifications in paragraph (a)(4)(ii) of this section and the maximum tip velocity specifications in paragraph (a)(6) of this section, or adhering to the requirements in paragraph (a)(4)(i) of this section.

(i)(A) Flares shall be used that have a diameter of 3 inches or greater, are nonassisted, have a hydrogen content of 8.0 percent (by volume), or greater, and are designed for and operated with an exit velocity less than 37.2 m/sec (122 ft/sec) and less than the velocity, $V_{max}$, as determined by Equation 147–1 of this section:

$$V_{max} = \left(X_{H2} - K_1\right) * K_2 \qquad \text{(Eq. 147-1)}$$

Where:

$V_{max}$ = Maximum permitted velocity, m/sec.

$K_1$ = Constant, 6.0 volume-percent hydrogen.

$K_2$ = Constant, 3.9 (m/sec)/volume-percent hydrogen.

$X_{H2}$ = The volume-percent of hydrogen, on a wet basis, as calculated by using the American Society for Testing and Materials (ASTM) Method D1946–77 (incorporated by reference as specified in § 65.13).

(B) The actual exit velocity of a flare shall be determined by the method specified in paragraph (b)(3)(iii) of this section.

(ii) Flares shall be used only when the net heating value of the gas being combusted is 11.2 megajoules per standard cubic meter (300 British

thermal units per standard cubic foot) or greater if the flare is steam-assisted or air-assisted, or when the net heating value of the gas being combusted is 7.45 megajoules per standard cubic meter (200 British thermal units per standard cubic foot) or greater if the flare is nonassisted. The net heating value of the gas being combusted shall be determined by the methods specified in paragraph (b)(3)(ii) of this section.

(5) Flares used to comply with this section shall be steam-assisted, air-assisted, or nonassisted.

(6) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section, less than 18.3 meters per second (60 feet per sec) except as provided in the following two paragraphs, as applicable:

(i) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section, equal to or less than 122 meters per second (400 feet per second) if the net heating value of the gas being combusted is greater than 37.3 megajoules per standard cubic meter (1,000 British thermal units per standard cubic foot).

(ii) Steam-assisted and nonassisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section, less than the velocity, V max , and less than 122 meters per second (400 feet per sec), where the maximum permitted velocity, $V_{max}$, is determined by Equation 147–2 of this section:

$$\text{Log10}\left(V_{max}\right) = \left(H_T + 28.8\right)/31.7 \qquad \text{(Eq. 147-2)}$$

Where:

$V_{max}$ = Maximum permitted velocity, meters per second.

28.8 = Constant.

31.7 = Constant.

$H_T$ = The net heating value as determined in paragraph (b)(3)(ii) of this section.

(7) Air-assisted flares shall be designed for and operated with an exit velocity as determined by the methods specified in paragraph (b)(3)(iii) of this section, less than the velocity, $V_{max}$, where the maximum permitted velocity, $V_{max}$, is determined by Equation 147–3 of this section:

$$V_{max} = 8.706 + 0.7084\left(H_T\right) \qquad \text{(Eq. 147-3)}$$

Where:

$V_{max}$ = Maximum permitted velocity, meters per second.

8.706 = Constant.

0.7084 = Constant.

$H_T$ = The net heating value as determined in paragraph (b)(3)(ii) of this section.

(b) *Flare compliance determination.* (1) Unless an initial flare compliance determination of the flare was previously conducted and submitted under the referencing subpart, the owner or operator shall conduct an initial flare compliance determination of any flare used to comply with the provisions of this subpart. Flare compliance determination records shall be kept as specified in § 65.159(a) and (b) and a flare compliance determination report shall be submitted as specified in § 65.164. An owner or operator is not required to conduct a performance test to determine percent emission reduction or outlet regulated material or TOC concentration when a flare is used.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a flare to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a). Upon implementing the change, a flare compliance determination shall be performed using the methods specified in paragraph (b)(3) of this section within 180 days. The compliance determination report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 65.164(b)(2). If an owner or operator elects to use a flare to replace an existing final recovery device that is used on a Group 2A process vent, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) and submit the notification specified in § 65.167(a).

(3) Flare compliance determinations shall meet the requirements specified in paragraphs (b)(3)(i) through (iv) of this section.

(i) Method 22 of appendix A of part 60 shall be used to determine the compliance of flares with the visible emission provisions of this subpart. The observation period is 2 hours, except for transfer racks as provided in either one of the following:

(A) For transfer racks, if the loading cycle is less than 2 hours, then the observation period for that run shall be for the entire loading cycle.

(B) For transfer racks, if additional loading cycles are initiated within the 2-hour period, then visible emissions observations shall be conducted for the additional cycles.

(ii) The net heating value of the gas being combusted in a flare shall be calculated using Equation 147–4 of this section:

$$H_T = K_1 \sum_{j=1}^{n} D_j H_j \qquad \text{(Eq. 147-4)}$$

Where:

$H_T$ = Net heating value of the sample, megajoules per standard cubic meter; where the net enthalpy per mole of offgas is based on combustion at 25 °C and 760 millimeters of mercury (30 inches of mercury), but the standard temperature for determining the volume corresponding to 1 mole is 20 °C;

$K_1$ = $1.740 \times 10^{-7}$ (parts per million by volume)$^{-1}$ (gram-mole per standard cubic meter) (megajoules per kilocalories), where the standard temperature for gram mole per standard cubic meter is 20 °C;

$D_j$ = Concentration of sample component j, in parts per million by volume on a wet basis, as measured for organics by Method 18 of appendix A of 40 CFR part 60 and measured for hydrogen and carbon monoxide by American Society for Testing and Materials (ASTM) D1946–77 (incorporated by reference as specified in § 65.13); and

$H_j$ = Net heat of combustion of sample component j, kilocalories per gram-mole at 25 °C and 760 millimeters of mercury (30 inches of mercury). The heats of combustion of stream components may be determined using ASTM D2382–76 (incorporated by reference as specified in § 65.13) if published values are not available or cannot be calculated.

(iii) The actual exit velocity of a flare shall be determined by dividing the volumetric flow rate (in units of standard temperature and pressure), as determined by Method 2, 2A, 2C, or 2D of appendix A of 40 CFR part 60 as appropriate, by the unobstructed (free) cross-sectional area of the flare tip.

(iv) Flare flame or pilot monitors, as applicable, shall be operated during any flare compliance determination.

(c) *Flare monitoring requirements.* Where a flare is used, a device (including but not limited to a thermocouple, ultraviolet beam sensor, or infrared sensor) capable of continuously detecting that at least one pilot flame or the flare flame is present is required. Flame monitoring and compliance records shall be kept as specified in § 65.159(c) and (d).

**§ 65.148 Incinerators.**

(a) *Incinerator equipment and operating requirements.* (1) Owners or operators using incinerators to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirement as specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(A) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) Incinerators used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Incinerator performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b) and paragraph (b)(2) of this section, the owner or operator shall conduct an initial performance test of any incinerator used to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required for equipment leaks.

(2) An owner or operator is not required to conduct a performance test for a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O. The owner or operator shall report as specified in § 65.165(f).

(3) Unless already permitted by the applicable title V permit, if an owner or operator elects to use an incinerator to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, an incinerator performance test shall be performed using the methods specified in § 65.157 and within 180 days if required by paragraph (b)(1) of this section. The performance test report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 65.164(b)(2). If an owner or operator elects to use an incinerator to replace an existing recovery device that is used on a Group 2A process vent, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) and submit the notification specified in § 65.167(a).

(c) *Incinerator monitoring requirements.* (1) Where an incinerator is used, a temperature monitoring device capable of providing a continuous record that meets the provisions specified in paragraph (c)(1)(i) or (ii) of this section is required. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(i) Where an incinerator other than a catalytic incinerator is used, a temperature monitoring device shall be installed in the fire box or in the ductwork immediately downstream of the fire box in a position before any substantial heat exchange occurs.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the incinerator. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

**§ 65.149 Boilers and process heaters.**

(a) *Boiler and process heater equipment and operating requirements.* (1) Owners or operators using boilers and process heaters to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirement as specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(B) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) The vent stream shall be introduced into the flame zone of the boiler or process heater.

(3) Boilers and process heaters used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Boiler and process heater performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart, and except as specified in § 65.157(b) and paragraph (b)(2) of this section, the owner or operator shall conduct an initial performance test of any boiler or process heater used to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) An owner or operator is not required to conduct a performance test when any of the control devices specified in paragraphs (b)(2)(i) through (iii) of this section are used. The owner or operator shall report as specified in § 65.165(f).

(i) A boiler or process heater with a design heat input capacity of 44 megawatts (150 million British thermal units per hour) or greater.

(ii) A boiler or process heater into which the vent stream is introduced

with the primary fuel or is used as the primary fuel.

(iii) A boiler or process heater burning hazardous waste for which the owner or operator meets either of the following requirements:

(A) The boiler or process heater has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(B) The boiler or process heater has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(3) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a boiler or process heater to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, a boiler or process heater performance test shall be performed using the methods specified in §§ 65.157 and 65.158 within 180 days if required by paragraph (b)(1) of this section. The performance test report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 65.164(b)(2). If an owner or operator elects to use a boiler or process heater to replace an existing recovery device that is used on a Group 2A process vent, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) and submit the notification specified in § 65.167(a).

(c) *Boiler and process heater monitoring requirements.* (1) Where a boiler or process heater of less than 44 megawatts (150 million British thermal units per hour) design heat input capacity is used and the regulated vent stream is not introduced as or with the primary fuel, a temperature monitoring device in the fire box capable of providing a continuous record is required. Any boiler or process heater in which all vent streams are introduced with primary fuel or are used as the primary fuel is exempt from monitoring. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) Where monitoring is required, the owner or operator shall establish a range for monitored parameters that indicates proper operation of the boiler or process heater. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

**§ 65.150 Absorbers used as control devices.**

(a) *Absorber equipment and operating requirements.* (1) Owners or operators using absorbers to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements as specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(A) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) Absorbers used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Absorber performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b), the owner or operator shall conduct an initial performance test of any absorber used as a control device to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use an absorber to replace an existing recovery or control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, either of the following provisions, as applicable, shall be followed:

(i) *Replace final recovery device.* If an owner or operator elects to replace the final recovery device on a process vent with an absorber used as a control device, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b).

(ii) *Replace control device.* If an owner or operator elects to replace a control device on a Group 1 process vent or a high-throughput transfer rack with an absorber used as a control device, the owner or operator shall perform a performance test using the methods specified in §§ 65.157 and 65.158 within 180 days. The performance test report shall be submitted to the Administrator within 60 days of completing the test as provided in § 65.164(b)(2).

(c) *Absorber monitoring requirements.* (1) Where an absorber is used as a control device, either an organic monitoring device capable of providing a continuous record or a scrubbing liquid temperature monitoring device and a specific gravity monitoring device, each capable of providing a continuous record, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the absorber. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications of § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

**§ 65.151 Condensers used as control devices.**

(a) *Condenser equipment and operating requirements.* (1) Owners or operators using condensers to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements as specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(A) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) Condensers used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Condenser performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b), the owner or operator shall conduct an initial performance test of any condenser used as a control device to comply with the provisions of this subpart according to

the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a condenser to replace an existing recovery or control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, either of the following provisions, as applicable, shall be followed:

(i) *Replace final recovery device.* If an owner or operator elects to replace the final recovery device on a process vent with a condenser used as a control device, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b).

(ii) *Replace control device.* If an owner or operator elects to replace a control device on a Group 1 process vent or a high-throughput transfer rack with a condenser used as a control device, the owner or operator shall perform a performance test using the methods specified in §§ 65.157 and 65.158 within 180 days. The performance test report shall be submitted to the Administrator within 60 days of completing the test as provided in § 65.164(b)(2).

(c) *Condenser monitoring requirements.* (1) Where a condenser is used as a control device, an organic monitoring device capable of providing a continuous record or a condenser exit (product side) temperature monitoring device capable of providing a continuous record shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the condenser. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

**§ 65.152 Carbon adsorbers used as control devices.**

(a) *Carbon adsorber equipment and operating requirements.* (1) Owners or operators using carbon adsorbers to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements as specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(A) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) Carbon adsorbers used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Carbon adsorber performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart and except as specified in § 65.157(b), the owner or operator shall conduct an initial performance test of any carbon absorber used as a control device to comply with the provisions of this subpart according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164. As provided in § 65.145(b)(1), a performance test may be used as an alternative to the design evaluation for storage vessels and low-throughput transfer rack controls. As provided in § 65.146(b), no performance test is required to demonstrate compliance for equipment leaks.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use a carbon adsorber to replace an existing recovery or control device at a later date, the owner or operator shall notify the Administrator either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, either of the following provisions, as applicable, shall be followed:

(i) *Replace final recovery device.* If an owner or operator elects to replace the final recovery device on a process vent with a carbon adsorber used as a control device, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b).

(ii) *Replace control device.* If an owner or operator elects to replace a control device on a Group 1 process vent or high-throughput transfer rack with a carbon adsorber used as a control device, the owner or operator shall perform a performance test using the methods specified in §§ 65.157 and 65.158 within 180 days. The performance test report shall be submitted to the Administrator within 60 days of completing the test as provided in § 65.164(b)(2).

(c) *Carbon adsorber monitoring requirements.* (1) Where a carbon adsorber is used as a control device, an organic monitoring device capable of providing a continuous record, or an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle, and a carbon-bed temperature monitoring device capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the carbon adsorber. Where the regeneration stream flow and carbon-bed temperature are monitored, the range shall be in terms of the total regeneration stream flow per regeneration cycle and the temperature of the carbon-bed determined within 15 minutes of the completion of the regeneration cooling cycle. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

**§ 65.153 Absorbers, condensers, carbon adsorbers, and other recovery devices used as final recovery devices.**

(a) *Final recovery device equipment and operating requirements.* (1) Owners or operators using a recovery device to meet the requirement to operate and maintain a TRE above 1.0 as specified in § 65.63(a)(3) for process vents shall meet the requirements of this section.

(2) Recovery devices used to comply with the provisions of this subpart shall

be operated at all times when emissions are vented to them.

(b) *Recovery device performance test requirements.* (1) There are no performance test requirements for recovery devices. Records of TRE index value determination shall be generated as specified in § 65.160(c).

(2) *Replace a final recovery device or control device.* Unless already permitted by the applicable title V permit, if an owner or operator elects to use a recovery device to replace an existing final recovery or control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b).

(c) *Recovery device monitoring requirements.* (1) Where an absorber is the final recovery device in the recovery system and the TRE index value is between 1.0 and 4.0, either an organic monitoring device capable of providing a continuous record, or a scrubbing liquid temperature monitoring device and a specific gravity monitoring device, each capable of providing a continuous record, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(2) Where a condenser is the final recovery device in the recovery system and the TRE index value is between 1.0 and 4.0, an organic monitoring device capable of providing a continuous record, or a condenser exit (product side) temperature monitoring device capable of providing a continuous record, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(3) Where a carbon adsorber is the final recovery device in the recovery system and the TRE index value is between 1.0 and 4.0, an organic monitoring device capable of providing a continuous record, or an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent or better capable of recording the total regeneration stream mass or volumetric flow for each regeneration cycle, and a carbon-bed temperature monitoring device capable of recording the carbon-bed temperature after each regeneration and within 15 minutes of completing any cooling cycle, shall be used. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(4) Unless previously approved by the Administrator under an applicable standard prior to the implementation date of this part, as specified in § 65.1(f), if an owner or operator uses a recovery device other than those listed in this subpart, the owner or operator shall submit a description of planned monitoring, reporting and recordkeeping procedures as required under § 65.162(e). The Administrator will approve or deny the proposed monitoring, reporting and recordkeeping requirements as part of the review of the submission or permit application or by other appropriate means.

(5) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the recovery device. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart. Where the regeneration stream flow and carbon-bed temperature are monitored, the range shall be in terms of the total regeneration stream flow per regeneration cycle, and the temperature of the carbon-bed determined within 15 minutes of the completion of the regeneration cooling cycle.

**§ 65.154 Halogen scrubbers and other halogen reduction devices.**

(a) *Halogen scrubber and other halogen reduction device equipment and operating requirements.* (1) An owner or operator of halogen scrubbers and other halogen reduction devices subject to this subpart shall reduce the overall emissions of hydrogen halides and halogens by 99 percent, or reduce the outlet mass of total hydrogen halides and halogens to less than 0.45 kilograms per hour (0.99 pound per hour) as specified in § 65.63(b) for process vents, or § 65.83(b) for transfer racks, as applicable, and shall meet the requirements of this section.

(2) Halogen scrubbers and other halogen reduction devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Halogen scrubber and other halogen reduction device performance test requirements.* Unless an initial performance test was previously conducted and submitted under the referencing subpart, an owner or operator of a combustion device followed by a halogen scrubber or other halogen reduction device to control halogenated vent streams in accordance with § 65.63(b)(1) for process vents, or § 65.83(b)(1) for transfer racks shall conduct an initial performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164.

(c) *Halogen scrubber and other halogen reduction device monitoring requirements.* (1) Where a halogen scrubber is used, the monitoring equipment specified in paragraphs (c)(1)(i) and (ii) of this section is required for the scrubber. Monitoring results shall be recorded as specified in § 65.161. General requirements for monitoring and continuous parameter monitoring systems are contained in § 65.156.

(i) A pH monitoring device capable of providing a continuous record shall be installed to monitor the pH of the scrubber effluent.

(ii) A flow meter capable of providing a continuous record shall be located at the scrubber influent for liquid flow. Gas stream flow shall be determined using one of the following procedures:

(A) The owner or operator may determine gas stream flow using the design blower capacity, with appropriate adjustments for pressure drop.

(B) If the scrubber is subject to regulations in 40 CFR parts 264 through 266 that have required a determination of the liquid to gas (L/G) ratio prior to the applicable compliance date for the chemical manufacturing process unit of which it is part, as specified in 40 CFR 63.100(k) (if the referencing subpart is 40 CFR part 63, subpart F), or prior to the implementation date as specified in § 65.1(f) (for all other referencing subparts), the owner or operator may determine gas stream flow by the method that had been utilized to comply with those regulations. A determination that was conducted prior to that compliance date may be utilized to comply with this subpart if it is still representative.

(C) The owner or operator may prepare and implement a gas stream flow determination plan that documents an appropriate method that will be used

to determine the gas stream flow. The plan shall require determination of gas stream flow by a method that will at least provide a value for either a representative or the highest gas stream flow anticipated in the scrubber during representative operating conditions other than startups, shutdowns, or malfunctions. The plan shall include a description of the methodology to be followed and an explanation of how the selected methodology will reliably determine the gas stream flow and a description of the records that will be maintained to document the determination of gas stream flow. The owner or operator shall maintain the plan as specified in § 65.5.

(2) Where a halogen reduction device other than a scrubber is used, the procedures in § 65.162(e) shall be followed to establish monitoring parameters.

(3) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the scrubber or other halogen reduction device. In order to establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1), or upon existing ranges or limits established under a referencing subpart.

**§ 65.155 Other control devices.**

(a) *Other control device equipment and operating requirements.* (1) Owners or operators using a control device other than one listed in §§ 65.147 through 65.152 to meet the 98 weight-percent emission reduction or 20 parts per million by volume outlet concentration requirements specified in § 65.63(a)(2), or 40 CFR 60.562–1(a)(1)(i)(A) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, as applicable, shall meet the requirements of this section.

(2) Other control devices used to comply with the provisions of this subpart shall be operated at all times when emissions are vented to them.

(b) *Other control device performance test requirements.* (1) Unless an initial performance test was previously conducted and submitted under the referencing subpart, an owner or operator of a control device other than those specified in §§ 65.147 through 65.152, to comply with § 65.63(a)(2) for process vents, or § 65.83(a)(1) for high-throughput transfer racks, shall perform an initial performance test according to the procedures in §§ 65.157 and 65.158. Performance test records shall be kept as specified in § 65.160(a) and (b), and a performance test report shall be submitted as specified in § 65.164.

(2) Unless already permitted by the applicable title V permit, if an owner or operator elects to use another control device to replace an existing control device at a later date, the owner or operator shall notify the Administrator, either by amendment of the regulated source's title V permit or, if title V is not applicable, by submission of the notice specified in § 65.167(a) before implementing the change. Upon implementing the change, another control device performance test shall be performed using the methods specified in §§ 65.157 and 65.158 within 180 days if required by paragraph (b)(1) of this section. The performance test report shall be submitted to the Administrator within 60 days of completing the determination as provided in § 65.164(b)(2). If an owner or operator elects to use a control device to replace an existing recovery device that is used on a Group 2A process vent, the owner or operator shall comply with the applicable provisions of §§ 65.63(e) and 65.67(b) and submit the notification specified in § 65.167(a).

(c) *Other control device monitoring requirements.* (1) Unless previously submitted and approved under the referencing subpart, if an owner or operator uses a control device other than those listed in this subpart, the owner or operator shall submit a description of planned monitoring, reporting, and recordkeeping procedures as required under § 65.162(e). The Administrator will approve, deny, or modify based on the reasonableness of the proposed monitoring, reporting, and recordkeeping requirements as part of the review of the submission or permit application or by other appropriate means.

(2) The owner or operator shall establish a range for monitored parameters that indicates proper operation of the control device. To establish the range, the information required in § 65.165(c) shall be submitted in the Initial Compliance Status Report or the operating permit application or amendment. The range may be based upon a prior performance test meeting the specifications in § 65.157(b)(1) or upon existing ranges or limits established under a referencing subpart.

**§ 65.156 General monitoring requirements for control and recovery devices.**

(a) *General monitoring requirement applicability.* (1) This section applies to the owner or operator of a regulated source required to monitor under this subpart.

(2) Flares subject to § 65.147(c) are not subject to the requirements of this section.

(3) Flow indicators are not subject to the requirements of this section.

(b) *Conduct of monitoring.* (1) Monitoring shall be conducted as set forth in this section and in the relevant sections of this subpart unless either of the following provisions applies:

(i) The Administrator specifies or approves the use of minor or intermediate changes in the specified monitoring requirements or procedures as provided in § 65.7(b), (c), and (d); or

(ii) The Administrator specifies or approves the use of major changes in the specified monitoring requirements or procedures as provided in § 65.7(b), (c), and (d).

(2) When one CPMS is used as a backup to another CPMS, the owner or operator shall report the results from the CPMS used to meet the monitoring requirements of this subpart. If both such CPMS are used during a particular reporting period to meet the monitoring requirements of this part, then the owner or operator shall report the results from each CPMS for the relevant compliance period.

(c) *Operation and maintenance of continuous parameter monitoring systems.* (1) All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturers specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(2) The owner or operator of a regulated source shall maintain and operate each CPMS as specified in this section or in a relevant subpart and in a manner consistent with good air pollution control practices.

(i) The owner or operator of a regulated source shall ensure the immediate repair or replacement of CPMS parts to correct ''routine'' or otherwise predictable CPMS malfunctions. The necessary parts for routine repairs of the affected equipment shall be readily available.

(ii) Except for Group 2A process vents, if the startup, shutdown, and malfunction plan is followed during a CPMS startup, shutdown, or malfunction and the CPMS is repaired immediately, this action shall be reported in the semiannual startup, shutdown, and malfunction report required under § 65.6(c).

(iii) The Administrator's determination of whether acceptable

operation and maintenance procedures are being used for the CPMS will be based on information that may include, but is not limited to, review of operation and maintenance procedures, operation and maintenance records, manufacturer's recommendations and specifications, and inspection of the CPMS.

(3) All CPMS shall be installed and operational, and the data verified as specified in this subpart either prior to or in conjunction with conducting performance tests. Verification of operational status shall, at a minimum, include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately.

(4) All CPMS shall be installed such that representative measurements of parameters from the regulated source are obtained.

(5) In accordance with § 65.3(a)(3), except for system breakdowns, repairs, maintenance periods, instrument adjustments or checks to maintain precision and accuracy, calibration checks, and zero and span adjustments, all CPMS shall be in continuous operation when emissions are being routed to the monitored device.

(d) Except for Group 2A process vents, the parameter monitoring data shall be used to determine compliance with the required operating conditions for the monitored control devices. For each excursion, except for excused excursions and the excursions described in paragraph (d)(3) of this section, the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating conditions.

(1) An excursion means any of the three cases listed in paragraphs (d)(1)(i) through (iii) of this section. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraph (d)(1)(i), (ii), or (iii) of this section, this is considered a single excursion for the day for the control device.

(i) When the daily average value of one or more monitored parameters is outside the permitted range.

(ii) When the period of control or recovery device operation is 4 hours or greater in an operating day, and monitoring data are insufficient to constitute a valid hour of data for at least 75 percent of the operating hours.

(iii) When the period of control or recovery device operation is less than 4 hours in an operating day, and more than 1 hour during the period of operation does not constitute a valid hour of data due to insufficient monitoring data.

(iv) Monitoring data are insufficient to constitute a valid hour of data as used in paragraphs (d)(1)(ii) and (iii) of this section, if measured values are unavailable for any of the 15-minute periods within the hour. For data compression systems approved under § 65.162(d)(4), monitoring data are insufficient to calculate a valid hour of data if there are less than four data values recorded during the hour.

(2) One excused excursion for each control device or recovery device for each semiannual period is allowed.

(3) The following excursions are not violations and do not count as excused excursions:

(i) Excursions which occur during periods of startup, shutdown, and malfunction, when the source is being operated during such periods in accordance with its startup, shutdown, and malfunction plan as required by § 65.6.

(ii) Excursions which occur due to failure to collect a valid hour of data during periods of startup, shutdown, and malfunction, when the source is being operated during such periods in accordance with its startup, shutdown, and malfunction plan as required by § 65.6.

(iii) Excursions which occur during periods of nonoperation of the regulated source or portion thereof, resulting in cessation of the emissions to which monitoring applies.

(4) Nothing in paragraph (d) of this section shall be construed to allow or excuse a monitoring parameter excursion caused by any activity that violates other applicable provisions of this part.

(5) Paragraph (d) of this section applies to emission points and control devices for which continuous monitoring is required by this subpart, and to alternatives to continuous monitoring systems such as provided in § 65.162(d)(3) and (d)(4). Paragraph (d)(3) of this section also applies to emission points and control devices which are not subject to continuous monitoring requirements, such as inspections of the closed vent system.

(e) *Alternative monitoring parameter.* An owner or operator may request approval to monitor control, recovery, halogen scrubber, or halogen reduction device operating parameters other than those specified in this subpart by following the procedures specified in § 65.162(e).

**§ 65.157 Performance test and flare compliance determination requirements.**

(a) *Performance tests and flare compliance determinations.* Where §§ 65.145 through 65.155 require, or the owner or operator elects to conduct, a performance test of a nonflare control device or a halogen reduction device, or a compliance determination for a flare, the requirements of paragraphs (b) through (d) of this section apply.

(b) *Prior test results and waivers.* Initial performance tests and initial flare compliance determinations are required only as specified in this subpart.

(1) Unless requested by the Administrator, an owner or operator is not required to conduct a performance test or flare compliance determination under this subpart if a prior performance test or compliance determination was conducted using the same methods specified in § 65.158, and either no process changes have been made since the test or the owner or operator can demonstrate to the Administrator's satisfaction that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

(2) Individual performance tests and flare compliance determinations may be waived upon written application to the Administrator per § 65.164(b)(3) if, in the Administrator's judgment, the source is meeting the relevant standard(s) on a continuous basis, or the source is being operated under an extension of compliance under 40 CFR part 63, or a waiver of compliance under 40 CFR part 61, or the owner or operator has requested an extension of compliance under 40 CFR part 63, or a waiver of compliance under 40 CFR part 61, and the Administrator is still considering that request.

(3) Approval of any waiver granted under this section shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later canceling the waiver. The cancellation will be made only after notification is given to the owner or operator of the source.

(c) *Performance tests and flare compliance determinations schedule.* (1) Unless a waiver of performance testing or flare compliance determination is obtained under this section or the conditions of another subpart of this part, the owner or operator shall perform such tests specified in the following:

(i) Within 180 days after the effective date of a relevant standard for a new source that has an initial startup date before the effective date of that standard; or

(ii) Within 180 days after initial startup for a new source that has an initial startup date after the effective date of a relevant standard; or

(iii) Within 180 days after the compliance date specified in a referencing subpart for an existing source or within 180 days after startup of an existing source if the source begins operation after the effective date of the relevant 40 CFR part 63 emission standard; or

(iv) Within 180 days after the compliance date for an existing source subject to an emission standard established pursuant to section 112(f) of the Act; or

(v) Within 180 days after the termination date of the source's extension of compliance or a waiver of compliance for an existing source that obtains an extension of compliance under 40 CFR 63.6(i) or a waiver of compliance under 40 CFR 61.11; or

(vi) Within 180 days after the compliance date for a new source, subject to an emission standard established pursuant to section 112(f) of the Act, for which construction or reconstruction is commenced after the proposal date of a relevant standard established pursuant to section 112(d) of the Act but before the proposal date of the relevant standard established pursuant to section 112(f) of the Act (see 40 CFR 63.6(b)(4)); or

(vii) When a promulgated emission standard under 40 CFR part 63 is more stringent than the standard that was proposed (see 40 CFR 63.6(b)(3)), the owner or operator of a new or reconstructed source subject to that standard for which construction or reconstruction is commenced between the proposal and promulgation dates of the standard shall comply with performance testing requirements within 180 days after the standard's effective date or within 180 days after startup of the source, whichever is later. If the promulgated standard is more stringent than the proposed standard, the owner or operator may choose to demonstrate compliance initially with either the proposed or the promulgated standard. If the owner or operator chooses to comply with the proposed standard initially, the owner or operator shall conduct a second performance test within 3 years and 180 days after the effective date of the standard, or after startup of the source, whichever is later, to demonstrate compliance with the promulgated standard.

(2) The Administrator may require an owner or operator to conduct performance tests and compliance determinations at the regulated source at any time when the action is authorized by section 114 of the Act.

(d) *Performance testing facilities.* If required to do performance testing, the owner or operator of each new regulated source and, at the request of the Administrator, the owner or operator of each existing regulated source, shall provide performance testing facilities as specified in the following:

(1) Sampling ports adequate for test methods applicable to such source. This includes, as applicable, the following requirements:

(i) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures; and

(ii) Providing a stack or duct free of cyclonic flow during performance tests as demonstrated by applicable test methods and procedures;

(2) Safe sampling platform(s);

(3) Safe access to sampling platform(s);

(4) Utilities for sampling and testing equipment; and

(5) Any other facilities that the Administrator deems necessary for safe and adequate testing of a source.

**§ 65.158 Performance test procedures for control devices.**

(a) *General procedures.* Where §§ 65.145 through 65.155 require, or the owner or operator elects to conduct, a performance test of a control device or a halogen reduction device, an owner or operator shall comply with the requirements of (a)(1) through (3) of this section, as applicable.

(1) Performance tests shall be conducted at maximum representative operating conditions for the process unless the Administrator specifies or approves alternate operating conditions. During the performance test, an owner or operator may operate the control or halogen reduction device at maximum or minimum representative operating conditions for monitored control or halogen reduction device parameters, whichever results in lower emission reduction. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions for the purpose of a performance test.

(2) Performance tests shall be conducted and data shall be reduced in accordance with the test methods and procedures set forth in this subpart, in each relevant standard, and, if required, in applicable appendices of 40 CFR parts 51, 60, 61, and 63 unless the Administrator allows revisions to the test methods as specified in one or more of the following five paragraphs:

(i) The Administrator specifies or approves, in specific cases, the use of a test method with minor or intermediate changes in methodology; or

(ii) The Administrator approves the use of a major change to a test method, the results of which the Administrator has determined to be adequate for indicating whether a specific regulated source is in compliance; or

(iii) Intermediate and major changes to a test method shall be validated using the applicable procedures of Method 301 of appendix A of 40 CFR part 63; or

(iv) The Administrator waives the requirement for the performance test as provided in § 65.157(b)(2) because the owner or operator of a regulated source has demonstrated by other means to the Administrator's satisfaction that the regulated source is in compliance with the relevant standard; or

(v) The Administrator approves the use of an equivalent method.

(3) Each performance test shall consist of three separate runs using the applicable test method. Except as provided in paragraphs (a)(3)(i) and (ii) of this section, each run shall be conducted for at least 1 hour and under the conditions specified in this section. For the purpose of determining compliance with an applicable standard, the arithmetic mean of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Administrator's approval, be determined using the arithmetic mean of the results of the two other runs.

(i) For control devices that are used to control emissions from high-throughput transfer racks, and that are capable of continuous vapor processing but do not handle continuous emissions or emissions from high-throughput transfer racks that load simultaneously from multiple loading arms, each run shall represent at least one complete tank truck or tank car loading period during which regulated materials are loaded, and samples shall be collected using integrated sampling or grab samples taken at least four times per hour at approximately equal intervals of time, such as 15-minute intervals.

(ii) For intermittent vapor processing systems used for controlling high-throughput transfer rack emissions that

do not handle continuous emissions or multiple loading arms of a high-throughput transfer rack that load simultaneously, each run shall represent at least one complete control device cycle, and samples shall be collected using integrated sampling or grab samples taken at least four times per hour at approximately equal intervals of time, such as 15-minute intervals.

(b) *Test methods.* Where §§ 65.145 through 65.155 require, or the owner or operator elects to conduct, a performance test of a control device or a halogen reduction device, an owner or operator shall conduct that performance test using the procedures in paragraphs (b)(1) through (4) of this section, as applicable. The regulated material concentration and percent reduction may be measured as either total regulated material or as TOC (minus methane and ethane) according to the procedures specified.

(1) Method 1 or 1A of appendix A of 40 CFR part 60 as appropriate, shall be used for selection of the sampling sites.

(i) For determination of compliance with a percent reduction requirement of total regulated material or TOC, sampling sites shall be located at the inlet of the control device as specified in the following and at the outlet of the control device:

(A) For process vents, the control device inlet sampling site shall be located after the final product recovery device.

(B) If a vent stream is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts (150 million British thermal units per hour), selection of the location of the inlet sampling sites shall ensure the measurement of total regulated material or TOC (minus methane and ethane) concentrations, as applicable, in all vent streams and primary and secondary fuels introduced into the boiler or process heater.

(ii) For determination of compliance with the 20 parts per million by volume total regulated material or TOC limit in § 65.63(a)(2), § 65.83(a)(1), and 40 CFR 60.562–1(a)(1)(i)(A), the sampling site shall be located at the outlet of the control device.

(2) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D of appendix A of 40 CFR part 60, as appropriate.

(3) To determine compliance with the 20 parts per million by volume total regulated material or TOC (minus methane and ethane) limit, the owner or operator shall use Method 18 of appendix A of 40 CFR part 60 to measure either TOC minus methane and ethane or total regulated material, as applicable. Alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63 may be used. Method 25A may be used for transfer racks as detailed in paragraph (b)(3)(iv) of this section. The procedures specified in paragraphs (b)(3)(i) through (iv) of this section shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen.

(i) Except as provided in paragraphs (a)(3)(i) and (ii) of this section, the minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(ii) The concentration of either TOC (minus methane or ethane) or total regulated material shall be calculated according to the following two paragraphs, as appropriate:

(A) The TOC concentration ($C_{TOC}$) is the sum of the concentrations of the individual components and shall be computed for each run using Equation 158–1 of this section:

$$C_{REG,\ or}\ C_{TOC} = \sum_{i-1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad \text{(Eq. 158-1)}$$

Where:

$C_{REG,}$ or $C_{TOC}$= Concentration of total regulated material or concentration of TOC (minus methane and ethane), dry basis, parts per million by volume.

x = Number of samples in the sample run.

n = Number of components in the sample.

$C_{ji}$ = Concentration of sample components j of sample i, dry basis, parts per million by volume.

(B) The total regulated material ($C_{REG}$) shall be computed according to equation 158–1 of this section except that only the regulated species shall be summed. Where the regulated material is organic HAP's, the list of organic HAP's provided in table 2 of 40 CFR part 63, subpart F, shall be used.

(iii) The concentration of TOC or total regulated material, as applicable, shall be corrected to 3 percent oxygen if a combustion device is the control device.

(A) The emission rate correction factor (or excess air) integrated sampling and analysis procedures of Method 3B of appendix A of 40 CFR part 60 shall be used to determine the oxygen concentration. The sampling site shall be the same as that of the regulated material or organic compound samples, and the samples shall be taken during the same time that the regulated material or organic compound samples are taken.

(B) The concentration corrected to 3 percent oxygen ($C_c$) shall be computed using Equation 158–2 of this section:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O2_d}\right) \qquad \text{(Eq. 158-2)}$$

Where:

$C_c$ = Concentration of TOC or regulated material corrected to 3 percent oxygen, dry basis, parts per million by volume.

$C_m$ = Concentration of TOC (minus methane and ethane) or regulated material, dry basis, parts per million by volume.

$\%O2_d$ = Concentration of oxygen, dry basis, percentage by volume.

(iv) Method 25A of appendix A of 40 CFR part 60 may be used for the purpose of determining compliance with the 20 parts per million by volume limit specified in § 65.83(a)(1) for transfer racks. If Method 25A of appendix A of 40 CFR part 60 is used, the following procedures shall be used to calculate the concentration of organic compounds ($C_{TOC}$):

(A) The principal organic HAP in the vent stream shall be used as the calibration gas.

(B) The span value for Method 25A of appendix A of 40 CFR part 60 shall be between 1.5 and 2.5 times the concentration being measured.

(C) Use of Method 25A of appendix A of 40 CFR part 60 is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero

calibration gas when the instrument is zeroed on the most sensitive scale.

(D) The concentration of TOC shall be corrected to 3 percent oxygen using the procedures and equation in paragraph (b)(3)(iii) of this section.

(4) To determine compliance with a percent reduction requirement, the owner or operator shall use Method 18 of appendix A of 40 CFR part 60; alternatively, any other method or data that have been validated according to the applicable procedures in Method 301 of appendix A of 40 CFR part 63 may be used. Method 25A of appendix A of 40 CFR part 60 may be used for transfer racks as detailed in paragraph (b)(4)(v) of this section. Procedures specified in paragraphs (b)(4)(i) through (v) of this section shall be used to calculate percent reduction efficiency.

(i) Except as provided in paragraphs (a)(3)(i) and (ii) of this section, the minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(ii) The mass rate of either TOC (minus methane and ethane) or total regulated material ($E_i$, $E_o$) shall be computed as applicable.

(A) Equations 158–3 and 158–4 of this section shall be used:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i \qquad \text{(Eq. 158-3)}$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o \qquad \text{(Eq. 158-4)}$$

Where:

$E_i$, $E_o$ = Emission rate of TOC (minus methane and ethane) ($E_{TOC}$) or emission rate of total organic HAP ($E_{HAP}$) in the sample at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

$K_2$ = Constant, 2.494 x $10^{-6}$(parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram per gram) (minute per hour), where standard temperature (gram-mole per standard cubic meter) is 20 °C.

n = Number of components in the sample.

$C_{ij}$, $C_{oj}$ = Concentration on a dry basis of organic compound j in parts per million by volume of the gas stream at the inlet and outlet of the control device, respectively. If the TOC emission rate is being calculated, $C_{ij}$ and $C_{oj}$ include all organic compounds measured minus methane and ethane; if the total organic HAP emissions rate is being calculated, only organic HAP are included.

$M_{ij}$, $M_{oj}$ = Molecular weight of organic compound j, gram per gram-mole, of the gas stream at the inlet and outlet of the control device, respectively.

$Q_i$, $Q_o$ = Process vent flow rate, dry standard cubic meter per minute, at a temperature of 20 °C, at the inlet and outlet of the control device, respectively.

(B) Where the mass rate of TOC is being calculated, all organic compounds (minus methane and ethane) measured by Method 18 of appendix A of 40 CFR part 60 are summed using equations 158–3 and 158–4 of this section.

(C) Where the mass rate of total regulated material is being calculated, only the species comprising the regulated material shall be summed using equations 158–3 and 158–4 of this section. Where the regulated material is organic HAP's, the list of organic HAP's provided in table 2 of 40 CFR part 63, subpart F, shall be used.

(iii) The percent reduction in TOC (minus methane and ethane) or total regulated material shall be calculated using Equation 158–5 of this section:

$$R = \frac{E_i - E_o}{E_i}(100) \qquad \text{(Eq. 158-5)}$$

Where:

R = Control efficiency of control device, percent.

$E_i$ = Mass rate of TOC (minus methane and ethane) or total regulated material at the inlet to the control device as calculated under paragraph (b)(4)(ii) of this section, kilograms TOC per hour or kilograms regulated material per hour.

$E_o$ = Mass rate of TOC (minus methane and ethane) or total regulated material at the outlet of the control device, as calculated under paragraph (b)(4)(ii) of this section, kilograms TOC per hour or kilograms total regulated material per hour.

(iv) If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts (150 million British thermal units) is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total regulated material or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total regulated material in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total regulated material exiting the combustion device, respectively.

(v) Method 25A of appendix A of 40 CFR part 60 may also be used for the purpose of determining compliance with the percent reduction requirement for transfer racks.

(A) If Method 25A of appendix A of 40 CFR part 60 is used to measure the concentration of organic compounds ($C_{TOC}$), the principal regulated material in the vent stream shall be used as the calibration gas.

(B) An emission testing interval shall consist of each 15-minute period during the performance test. For each interval, a reading from each measurement shall be recorded.

(C) The average organic compound concentration and the volume measurement shall correspond to the same emissions testing interval.

(D) The mass at the inlet and outlet of the control device during each testing interval shall be calculated using Equation 158–6 of this section:

$$M_j = F\,K\,V_s C_t \qquad \text{(Eq. 158-6)}$$

Where:

$M_j$ = Mass of organic compounds emitted during testing interval j, kilograms.

F = $10^{-6}$ = Conversion factor, (cubic meters regulated material per cubic meters air) * (parts per million by volume) $^{-1}$.

K = Density, kilograms per standard cubic meter regulated material. You may use 659 kilograms per standard cubic meter regulated material. (Note: The density term cancels out when the percent reduction is calculated. Therefore, the density used has no effect. The density of hexane is given so that it can be used to maintain the units of $M_j$.)

$V_s$ = Volume of air-vapor mixture exhausted at standard conditions, 20 °C and 760 millimeters of mercury (30 inches of mercury), standard cubic meters.

$C_t$ = Total concentration of organic compounds (as measured) at the exhaust vent, parts per million by volume, dry basis.

(E) The organic compound mass emission rates at the inlet and outlet of the control device shall be calculated as follows:

$$E_i = \frac{\sum_{j=1}^{n} M_{ij}}{T} \quad \text{(Eq. 158-7)}$$

$$E_o = \frac{\sum_{j=1}^{n} M_{oj}}{T} \quad \text{(Eq. 158-8)}$$

Where:

$E_i$, $E_o$ = Mass flow rate of organic compounds at the inlet (i) and outlet (o) of the control device, kilograms per hour.

n = Number of testing intervals.

$M_{ij}$, $M_{oj}$ = Mass of organic compounds at the inlet (i) or outlet (o) during testing interval j, kilograms.

T = Total time of all testing intervals, hours.

(c) *Halogen test method.* An owner or operator using a halogen scrubber or other halogen reduction device to control halogenated vent streams in compliance with § 65.63(b)(1) for process vents, or § 65.83(b)(1) for transfer racks, who is required to conduct a performance test to determine compliance with the control efficiency or emission limits for hydrogen halides and halogens, as specified in § 65.154(b), shall comply with the following procedures:

(1) For an owner or operator determining compliance with the percent reduction of total hydrogen halides and halogens, sampling sites shall be located at the inlet and outlet of the scrubber or other halogen reduction device used to reduce halogen emissions. For an owner or operator determining compliance with the less than 0.45 kilogram per hour (0.99 pounds per hour) outlet emission limit for total hydrogen halides and halogens, the sampling site shall be located at the outlet of the scrubber or other halogen reduction device and prior to any releases to the atmosphere.

(2) Except as provided in paragraph (a)(2) of this section, Method 26 or Method 26A of appendix A of 40 CFR part 60 shall be used to determine the concentration, in milligrams per dry standard cubic meter, of total hydrogen halides and halogens that may be present in the vent stream. The mass emissions of each hydrogen halide and halogen compound shall be calculated from the measured concentrations and the gas stream flow rate.

(3) To determine compliance with the percent removal efficiency, the mass emissions for any hydrogen halides and halogens present at the inlet of the halogen reduction device shall be summed together. The mass emissions of the compounds present at the outlet of the scrubber or other halogen reduction device shall be summed together. Percent reduction shall be determined by comparison of the summed inlet and outlet measurements.

(4) To demonstrate compliance with the less than 0.45 kilogram per hour (0.99 pound per hour) outlet emission limit, the test results must show that the mass emission rate of total hydrogen halides and halogens measured at the outlet of the scrubber or other halogen reduction device is below 0.45 kilogram per hour (0.99 pound per hour).

**§ 65.159 Flare compliance determination and monitoring records.**

(a) *Conditions of flare compliance determination records.* Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of flare compliance determinations performed pursuant to § 65.147(b).

(b) *Flare compliance determination records.* When using a flare to comply with this subpart, record the following information for each flare compliance determination performed pursuant to § 65.147(b):

(1) Flare design (*i.e.,* steam-assisted, air-assisted, or nonassisted);

(2) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the flare compliance determination; and

(3) All periods during the flare compliance determination when all pilot flames are absent or, if only the flare flame is monitored, all periods when the flare flame is absent.

(c) *Monitoring records.* Each owner or operator shall keep up to date and readily accessible hourly records of whether the flare flame or pilot flame monitors are continuously operating during the hour and whether the flare flame or at least one pilot flame is continuously present during the hour. For transfer racks, hourly records are required only while the transfer vent stream is being vented.

(d) *Compliance records.* (1) Each owner or operator shall keep records of the times and duration of all periods during which the flare flame and all the pilot flames are absent. This record shall be submitted in the periodic reports as specified in § 65.166(c).

(2) Each owner or operator shall keep records of the times and durations of all periods during which the flare flame or pilot flame monitors are not operating.

**§ 65.160 Performance test and TRE index value determination records.**

(a) *Availability of performance tests records.* Upon request, the owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests performed pursuant to §§ 65.148(b), 65.149(b), 65.150(b), 65.151(b), 65.152(b), 65.154(b), or 65.155(b).

(b) *Nonflare control device and halogen reduction device performance test records.* Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of the data specified in paragraphs (b)(1) through (3) of this section, as applicable, measured during each performance test performed pursuant to §§ 65.148(b), 65.149(b), 65.150(b), 65.151(b), 65.152(b), 65.154(b), or 65.155(b), and also include that data in the Initial Compliance Status Report as specified in § 65.164(a). The same data specified in paragraphs (b)(1) through (3) of this section, as applicable, shall be submitted in the reports of all subsequently required performance tests where either the emission control efficiency of a nonflare control device or the outlet concentration of TOC or regulated material is determined.

(1) *Nonflare combustion device.* Where an owner or operator subject to the provisions of paragraph (b) of this section seeks to demonstrate compliance with a percent reduction requirement or a parts per million by volume requirement using a nonflare combustion device, the following information shall be recorded:

(i) For thermal incinerators, record the fire box temperature measured at least every 15 minutes and averaged over the full period of the performance test.

(ii) For catalytic incinerators, record the upstream and downstream temperatures and the temperature difference across the catalyst bed measured at least every 15 minutes and averaged over the full period of the performance test.

(iii) For an incinerator, record the percent reduction of regulated material or TOC achieved by the incinerator determined as specified in § 65.158(b)(4), as applicable, or the concentration of regulated material or TOC (parts per million by volume, by compound) determined as specified in § 65.158(b)(3) at the outlet of the incinerator.

(iv) For a boiler or process heater, record a description of the location at which the vent stream is introduced into the boiler or process heater.

(v) For boilers or process heaters with a design heat input capacity less than 44 megawatts (150 British thermal units per hour) and where the vent stream is not introduced with or as the primary fuel, record the fire box temperature measured at least every 15 minutes and averaged over the full period of the performance test.

(vi) For a boiler or process heater with a design heat input capacity of less than 44 megawatts (150 British thermal units per hour) and where the vent stream is not introduced with or as the primary fuel, record the percent reduction of regulated material or TOC, or the concentration of regulated material or TOC (parts per million by volume, by compound) determined as specified in § 65.158(b)(3) at the outlet of the combustion device.

(2) *Other nonflare control devices.* Where an owner or operator seeks to use an absorber, condenser, or carbon adsorber as a control device, the following information shall be recorded, as applicable:

(i) Where an absorber is used as the control device, the exit specific gravity and average exit temperature of the absorbing liquid measured at least every 15 minutes and averaged over the same time period as the performance test (both measured while the vent stream is normally routed and constituted); or

(ii) Where a condenser is used as the control device, the average exit (product side) temperature measured at least every 15 minutes and averaged over the same time period as the performance test while the vent stream is routed and constituted normally; or

(iii) Where a carbon adsorber is used as the control device, the total regeneration stream mass flow during each carbon-bed regeneration cycle during the period of the performance test measured at least every 15 minutes and averaged over the same time period as the performance test (full carbon-bed cycle), and temperature of the carbon-bed after each regeneration during the period of the performance test (and within 15 minutes of completion of any cooling cycle or cycles); or

(iv) As an alternative to paragraph (b)(2)(i), (ii), or (iii) of this section, the concentration level or reading indicated by the organics monitoring device at the outlet of the absorber, condenser, or carbon adsorber measured at least every 15 minutes and averaged over the same time period as the performance test while the vent stream is normally routed and constituted; and

(v) For an absorber, condenser, or carbon adsorber used as a control device, the percent reduction of regulated material or TOC achieved by the control device determined as specified in § 65.158(b)(4), or the concentration of regulated material or TOC (parts per million by volume, by compound) determined as specified in § 65.158(b)(3) at the outlet of the control device.

(3) *Halogen reduction devices.* When using a scrubber following a combustion device to control a halogenated vent stream, record the following information:

(i) The percent reduction or scrubber outlet mass emission rate of total hydrogen halides and halogens as specified in § 65.158(c);

(ii) The pH of the scrubber effluent averaged over the time period of the performance test; and

(iii) The scrubber liquid-to-gas ratio averaged over the time period of the performance test.

(c) *Recovery device monitoring records during the TRE index value determination.* For Group 2A process vents, the following records, as applicable, shall be maintained and reported as specified in § 65.164(a)(3):

(1) Where an absorber is the final recovery device in the recovery system, the exit specific gravity and average exit temperature of the absorbing liquid measured at least every 15 minutes and averaged over the same time period as the TRE index value determination (both measured while the vent stream is normally routed and constituted); or

(2) Where a condenser is the final recovery device in the recovery system, the average exit (product side) temperature measured at least every 15 minutes and averaged over the same time period as the TRE index value determination while the vent stream is routed and constituted normally; or

(3) Where a carbon adsorber is the final recovery device in the recovery system, the total regeneration stream mass flow measured at least every 15 minutes and averaged over the same time during each carbon-bed regeneration cycle during the period of the TRE index value determination, and temperature of the carbon-bed after each regeneration during the period of the TRE index value determination (and within 15 minutes of completion of any cooling cycle or cycles); or

(4) As an alternative to paragraph (c)(1), (2), or (3) of this section, the concentration level or reading indicated by an organics monitoring device at the outlet of the absorber, condenser, or carbon adsorber measured at least every 15 minutes and averaged over the same time period as the TRE index value determination while the vent stream is normally routed and constituted; and

(5) All measurements and calculations performed to determine the TRE index value of the vent stream as specified in § 65.64(h).

(d) *Halogen concentration records.* Record the halogen concentration in the vent stream determined according to the procedures as specified in § 65.63(b) or § 65.83(b). Submit this record in the Initial Compliance Status Report, as specified in § 65.165(d). If the owner or operator designates the vent stream as halogenated, then this shall be recorded and reported in the Initial Compliance Status Report.

**§ 65.161 Continuous records and monitoring system data handling.**

(a) *Continuous records.* Where this subpart requires a monitoring device capable of providing a continuous record, the owner or operator shall maintain the record specified in paragraph (a)(1), (2), (3), or (4) of this section, as applicable (The provisions of this section apply to owners and operators of storage vessels and low-throughput transfer racks only if specified by the applicable monitoring plan established under § 65.165(c)(1) and (2)):

(1) A record of values measured at least once every 15 minutes or each measured value for systems that measure more frequently than once every 15 minutes; or

(2) A record of block average values for 15-minute or shorter periods calculated from all measured data values during each period or from at least one measured data value per minute if measured more frequently than once per minute; or

(3) For data collected from an automated continuous parameter monitoring system, a record of block hourly average values calculated from each 15-minute block average period or from at least one measured value per minute if measured more frequently than once per minute, and a record of the most recent 3 valid hours of continuous (15-minute or shorter) records meeting the requirements of paragraph (a)(1) or (2) of this section. Records meeting the requirements of paragraph (a)(1) or (2) of this section shall also be kept for all periods that include CPMS breakdown or malfunction. During these periods, it is not necessary to calculate hourly averages; or

(4) A record as required by an alternative approved under § 65.162(d).

(b) *Excluded data.* Monitoring data recorded during the following periods shall not be included in any average computed to determine compliance under this subpart:

(1) Monitoring system breakdowns, repairs, preventive maintenance, calibration checks, and zero (low-level) and high-level adjustments;

(2) Periods of non-operation of the process unit (or portion thereof), resulting in cessation of the emissions to which the monitoring applies; and

(3) Startups, shutdowns, and malfunctions.

(c) *Records of daily averages.* In addition to the records specified in paragraph (a) of this section, owners or operators shall also keep records as specified in paragraphs (c)(1) and (2) of this section unless an alternative monitoring or recordkeeping system has been requested and approved under § 65.162(d).

(1) Except as specified in paragraph (c)(2) of this section, daily average values of each continuously monitored parameter shall be calculated for each operating day. Data meeting the specifications of paragraph (b) of this section shall not be included in the average. The data shall be reported in the periodic report as specified in § 65.166(f), if applicable.

(i) The daily average shall be calculated as the average of all values for a monitored parameter recorded during the operating day as specified in paragraph (a)(1), (2), or (3) of this section. The average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous (for example, for high-throughput transfer racks, the average shall cover periods of loading). If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the daily average instead of all measured values.

(ii) The operating day shall be the period defined in the operating permit or the Initial Compliance Status Report. It may be from midnight to midnight or another daily period.

(2) If all monitored parameter values recorded under paragraph (a)(1), (2), or (3) of this section, during an operating day are within the range established in the Initial Compliance Status Report or in the operating permit, the owner or operator does not have to calculate a daily average value for the operating day and may record that all values were within the range. The owner or operator must continue to retain the raw data, 15-minute averages, or the hourly averages required under paragraph (a)(1), (2), or (3) of this section.

(d) *Valid data.* Unless determined to be excluded data according to paragraph (b) of this section, the data collected pursuant to paragraphs (a) through (c) of this section shall be considered valid.

(e) *Alternative recordkeeping.* For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements in paragraph (e)(1) or (2) of this section as alternatives to the continuous parameter monitoring and recordkeeping provisions listed in paragraphs (a) through (c) of this section. The owner or operator shall retain each record required by paragraph (e)(1) or (2) of this section as provided in § 65.4.

(1) The owner or operator may retain only the daily average value and is not required to retain more frequently monitored operating parameter values for a monitored parameter with respect to an item of equipment if the requirements of paragraphs (e)(1)(i) through (vi) of this section are met. The owner or operator shall notify the Administrator of implementation of paragraph (e)(1) of this section in the Initial Compliance Status Report as required in § 65.165(e) or, if the Initial Compliance Status Report has already been submitted, in the periodic report as required in § 65.166(f)(4) immediately preceding implementation of the requirements of paragraph (e)(1) of this section.

(i) The monitoring system can detect unrealistic or impossible data during periods of operation other than startups, shutdowns, or malfunctions (for example, a temperature reading of −200 °C on a boiler) and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(ii) The monitoring system shall generate a running average of the monitoring values, updated at least hourly throughout each operating day, that have been obtained during that operating day, and the capability to observe this average is readily available to the Administrator on-site during the operating day. All instances in an operating day constitute a single occurrence. The owner or operator shall record the occurrence of any period meeting the following criteria:

(A) The running average is above the maximum or below the minimum established limits;

(B) The running average is based on at least six 1-hour average values;

(C) The running average reflects a period of operation other than a startup, shutdown, or malfunction.

(iii) The monitoring system shall be capable of detecting unchanging data during periods of operation other than startups, shutdowns, or malfunctions except in circumstances where the presence of unchanging data is the expected operating condition based on past experience (for example, pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(iv) The monitoring system shall alert the owner or operator by an alarm if the running average parameter value calculated under paragraph (e)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

(v) The owner or operator shall verify and document the proper functioning of the monitoring system, including its ability to comply with the requirements of paragraph (e)(1) of this section, at the following times:

(A) Upon initial installation;

(B) Annually after initial installation; and

(C) After any change to the programming or equipment constituting the monitoring system, that might reasonably be expected to alter the monitoring system's ability to comply with the requirements of this section.

(vi) The owner or operator shall retain the following records:

(A) Identification of each parameter for each item of equipment for which the owner or operator has elected to comply with the requirements of § 65.162(e).

(B) A description of the applicable monitoring system(s) and of how compliance will be achieved with each requirement of paragraphs (e)(1)(i) through (v) of this section. The description shall identify the location and format (for example, on-line storage; log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent outdated description.

(C) A description and the date of any change to the monitoring system that would reasonably be expected to affect its ability to comply with the requirements of paragraph (e)(1) of this section.

(D) Owners and operators shall retain the current description of the monitoring system as long as the description is current, but not less than 5 years from the date of its creation. The current description shall be retained on-site at all times or be accessible from a central location by computer or other means that provide access within 2 hours after a request. The owner or

operator shall retain the most recent outdated description at least until 5 years from the date of its creation. The outdated description shall be retained on-site (or accessible from a central location by computer that provides access within 2 hours after a request) at least 6 months after being outdated. Thereafter, the outdated description may be stored off-site.

(2) If an owner or operator has elected to implement the requirements of paragraph (e)(1) of this section and a period of 6 consecutive months has passed without an excursion as defined in paragraph (e)(2)(iv) of this section, the owner or operator is no longer required to record the daily average value for that parameter for that unit of equipment for any operating day when the daily average value is less than the maximum or greater than the minimum established limit. With approval by the Administrator, monitoring data generated prior to the compliance date of this subpart shall be credited toward the period of 6 consecutive months if the parameter limit and the monitoring were required and/or approved by the Administrator.

(i) If the owner or operator elects not to retain the daily average values, the owner or operator shall notify the Administrator in the next periodic report. The notification shall identify the parameter and unit of equipment.

(ii) If there is an excursion as defined in paragraph (e)(2)(iv) of this section on any operating day after the owner or operator has ceased recording daily averages as provided in paragraph (e)(2) of this section, the owner or operator shall immediately resume retaining the daily average value for each day and shall notify the Administrator in the next periodic report. The owner or operator shall continue to retain each daily average value until another period of 6 consecutive months has passed without an excursion.

(iii) The owner or operator shall retain the records specified in paragraphs (e)(1)(i) through (vi) of this section for the duration specified in § 65.4. For any calendar week, if compliance with paragraphs (e)(1)(i) through (iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a startup, shutdown, or malfunction.

(iv) For purposes of paragraph (e) of this section, an excursion means that the daily average value of monitoring data for a parameter is greater than the maximum or less than the minimum established value except as provided in the following:

(A) The daily average value during any startup, shutdown, or malfunction shall not be considered an excursion for purposes of this paragraph (e) if the owner or operator follows the applicable provisions of the startup, shutdown, and malfunction plan required by § 65.6.

(B) Excused excursions described in § 65.156(d)(2) and excursions described in § 65.156(d)(3) do not count toward the number of excursions for purposes of this paragraph (e).

**§ 65.162 Nonflare control and recovery device monitoring records.**

(a) *Monitoring system records.* For process vents and high-throughput transfer racks, the owner or operator subject to this subpart shall keep the records specified in paragraph (a) of this section as well as records specified elsewhere in this part.

(1) For CPMS used to comply with this part, a record of the procedure used for calibrating the CPMS.

(2) For CPMS used to comply with this subpart, records of the following information, as applicable:

(i) The date and time of completion of calibration and preventive maintenance of the CPMS;

(ii) The ''as found'' and ''as left'' CPMS readings whenever an adjustment is made that affects the CPMS reading and a ''no adjustment'' statement otherwise;

(iii) The start time and duration or start and stop time of any periods when the CPMS is inoperative or malfunctioning;

(iv) Records of the occurrence and duration of each startup, shutdown, and malfunction of CPMS used to comply with this part during which excess emissions (as defined in § 65.3(a)(4)) occur; and

(v) For each startup, shutdown, and malfunction during which excess emissions as defined in § 65.3(a)(4) of this part occur, records whether the procedures specified in the source's startup, shutdown, and malfunction plan were followed and documentation of actions taken that are not consistent with the plan. These records may take the form of a checklist, or other form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for the event.

(3) Records of startup, shutdown, and malfunction and CPMS calibration and maintenance are not required if they pertain solely to Group 2A process vents.

(b) *Combustion control and halogen reduction device monitoring records.* (1) Each owner or operator using a combustion control or halogen reduction device to comply with this subpart shall keep, as applicable, up-to-date and readily accessible continuous records, as specified in § 65.161(a); and records of the equipment operating parameters specified to be monitored under § 65.148(c) (incinerator monitoring); § 65.149(c) (boiler and process heater monitoring); § 65.154(c) (halogen reduction device monitoring); § 65.155(c) (other control device monitoring); or specified by the Administrator in accordance with paragraph (e) of this section.

(2) Each owner or operator shall keep records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 65.161(c)(1). For catalytic incinerators, record the daily average of the temperature upstream of the catalyst bed and the daily average of the temperature differential across the bed. For halogen scrubbers, record the daily average pH and the liquid-to-gas ratio.

(3) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of periods of operation during which the parameter boundaries are exceeded and report these exceedances as specified in § 65.166(f)(1). The parameter boundaries are established pursuant to § 65.148(c)(2) (incinerator monitoring), § 65.149(c)(2) (boiler and process heater monitoring), § 65.154(c)(2) (halogen reduction device monitoring), or § 65.155(c)(2) (other control device monitoring), as applicable.

(c) *Monitoring records for recovery devices on Group 2A process vents and for absorbers, condensers, carbon adsorbers, or other noncombustion systems used as control devices.* (1) Each owner or operator using a recovery device to achieve and maintain a TRE index value greater than 1.0 but less than 4.0 or using an absorber, condenser, carbon adsorber, or other noncombustion system as a control device shall keep readily accessible, continuous records, as specified in § 65.161(a), of the equipment operating parameters specified to be monitored under § 65.150(c) (absorber monitoring), § 65.151(c) (condenser monitoring), § 65.152(c) (carbon adsorber monitoring), § 65.153(c) (recovery device monitoring) or § 65.155(c) (other control device monitoring), or specified by the Administrator in accordance with paragraph (e) of this section. For transfer racks, continuous records are required while the transfer vent stream is being vented.

(2) Each owner or operator shall keep records of the daily average value of each continuously monitored parameter for each operating day determined according to the procedures specified in § 65.161(c)(1). If carbon adsorber regeneration stream flow and carbon bed regeneration temperature are monitored, the following records shall be kept instead of the daily averages, and the records shall be reported as specified in § 65.166(f)(2):

(i) Records of total regeneration stream mass or volumetric flow for each carbon-bed regeneration cycle; and

(ii) Records of the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle.

(3) Each owner or operator subject to the provisions of this subpart shall keep up-to-date, readily accessible records of periods of operation during which the parameter boundaries are exceeded and report these exceedances as specified in § 65.166(f)(1). The parameter boundaries are established pursuant to § 65.150(c)(2) (absorber monitoring), § 65.151(c)(2) (condenser monitoring), § 65.152(c)(2) (carbon adsorber monitoring), or § 65.155(c)(2) (other control device monitoring), as applicable.

(d) *Alternatives to the continuous operating parameter monitoring and recordkeeping provisions.* An owner or operator may request approval to use alternatives to the continuous operating parameter monitoring and recordkeeping provisions listed in §§ 65.148(c), 65.149(c), 65.150(c), 65.151(c), 65.152(c), 65.153(c), 65.154(c), 65.160, and paragraphs (b) and (c) of this section.

(1) Requests shall be included in the operating permit application or as otherwise specified by the permitting authority and shall contain the information specified in paragraphs (d)(3) through (5) of this section, as applicable.

(2) The provisions in § 65.7(c) shall govern the review and approval of requests.

(3) An owner or operator of a source that does not have an automated monitoring and recording system capable of measuring parameter values at least once every 15 minutes and generating continuous records may request approval to use a nonautomated system with less frequent monitoring.

(i) The requested system shall include manual reading and recording of the value of the relevant operating parameter no less frequently than once per hour. Daily average values shall be calculated from these hourly values and recorded.

(ii) The request shall contain the following information:

(A) A description of the planned monitoring and recordkeeping system;

(B) Documentation that the source does not have an automated monitoring and recording system capable of meeting the specified requirements;

(C) Justification for requesting an alternative monitoring and recordkeeping system; and

(D) Demonstration to the Administrator's satisfaction that the proposed monitoring frequency is sufficient to represent control device operating conditions considering typical variability of the specific process and control device operating parameter being monitored.

(4) An owner or operator may request approval to use an automated data compression recording system that does not record monitored operating parameter values at a set frequency (for example, once every 15 minutes) but records all values that meet set criteria for variation from previously recorded values.

(i) The requested system shall be designed to perform the following functions:

(A) Measure the operating parameter value at least once every 15 minutes;

(B) Record at least four values each hour during periods of operation;

(C) Record the date and time when monitors are turned off or on;

(D) Recognize unchanging data that may indicate the monitor is not functioning properly, alert the operator, and record the incident; and

(E) Compute daily average values of the monitored operating parameter based on recorded data. If the daily average is not an excursion as defined in § 65.161(e)(2)(iv), the data for that operating day may be converted to hourly average values, and the four or more individual records for each hour in the operating day may be discarded.

(ii) The request shall contain a description of the monitoring system and data compression recording system, including the criteria used to determine which monitored values are recorded and retained, the method for calculating averages, and a demonstration that the system meets all criteria in paragraph (d)(4)(i) of this section.

(5) An owner or operator may request approval to use other alternative monitoring and recordkeeping systems as specified in § 65.7(b). The application shall contain a description of the proposed alternative system. In addition, the application shall include information justifying the owner or operator's request for an alternative monitoring method, such as the technical or economic infeasibility, or the impracticality, of the regulated source using the required method.

(e) *Monitoring a different parameter than those listed.* The owner or operator who has been directed by § 65.154(c)(2) or § 65.155(c)(1) to set monitoring parameters, or who requests as allowed by § 65.156(e) approval to monitor a different parameter than those listed in §§ 65.148(c), 65.149(c), 65.150(c), 65.151(c), 65.152(c), 65.153(c), 65.154(c), 65.160, or paragraph (b) or (c) of this section, shall submit the following information with the operating permit application or as otherwise specified by the permitting authority:

(1) A description of the parameter(s) to be monitored to ensure the process, control technology, or pollution prevention measure is operated in conformance with its design and achieves the specified emission limit, percent reduction, or nominal efficiency, and an explanation of the criteria used to select the parameter(s).

(2) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the control device, the schedule for this demonstration, and a statement that the owner or operator will establish a range for the monitored parameter as part of the Initial Compliance Status Report required in § 65.5(d) unless this information has already been included in the operating permit application or previously established under a referencing subpart.

(3) The frequency and content of monitoring, recording, and reporting if monitoring and recording is not continuous, or if reports of daily average values when the monitored parameter value is outside the range established in the operating permit or Initial Compliance Status Report will not be included in Periodic Reports as specified in § 65.166(e). The rationale for the proposed monitoring, recording, and reporting system shall be included.

**§ 65.163 Other records.**

(a) *Closed vent system records.* For closed vent systems, the owner or operator shall record the following information, as applicable:

(1) For each closed vent system that contains bypass lines that could divert a vent stream away from the control device and to the atmosphere, the owner or operator shall keep a record of the information specified in either paragraph (a)(1)(i) or (ii) of this section, as applicable. The information shall be reported as specified in § 65.166(b).

(i) Hourly records of whether the flow indicator specified under § 65.143(a)(3)(i) was operating and whether a diversion was detected at any time during the hour, as well as records of the times of all periods when the vent stream is diverted from the control device or the flow indicator is not operating.

(ii) Where a seal mechanism is used to comply with § 65.143(a)(3)(ii), hourly records of flow are not required. In such cases, the owner or operator shall record that the monthly visual inspection of the seals or closure mechanisms has been done and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type lock has been checked out, and records of any car-seal that has been broken.

(2) For closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leak, the owner or operator shall record the identification of all parts of the closed vent system that are designated as unsafe or difficult-to-inspect pursuant to § 65.143(b)(2) or (3), an explanation of why the equipment is unsafe or difficult-to-inspect, and the plan for inspecting the equipment as required by § 65.143(b)(2)(ii) or (b)(3)(ii).

(3) For a closed vent system collecting regulated material from a storage vessel, transfer rack, or equipment leaks, when a leak is detected as specified in § 65.143(d)(1), the information specified in paragraphs (a)(3)(i) through (vi) of this section shall be recorded. The data shall be reported as specified in § 65.166(b)(1).

(i) The instrument and the equipment identification number and the operator name, initials, or identification number.

(ii) The date the leak was detected and the date of the first attempt to repair the leak.

(iii) The date of successful repair of the leak.

(iv) The maximum instrument reading measured by the procedures in § 65.143(c) after the leak is successfully repaired or determined to be nonrepairable.

(v) ''Repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak. The owner or operator may develop a written procedure that identifies the conditions that justify a delay of repair. In such cases, reasons for delay of repair may be documented by citing the relevant sections of the written procedure.

(vi) Copies of the periodic reports if records are not maintained on a computerized database capable of generating summary reports from the records.

(4) For each instrumental or visual inspection conducted in accordance with § 65.143(b)(1) for closed vent systems collecting regulated material from a storage vessel, transfer rack, or equipment leaks during which no leaks are detected, the owner or operator shall record that the inspection was performed, the date of the inspection, and a statement that no leaks were detected.

(5) For instrument response factor criteria determinations performed pursuant to § 65.143(c)(1)(ii), the owner or operator shall maintain a record of an engineering assessment that identifies the representative composition of the process fluid. This assessment shall be based on knowledge of the compounds present in the process, similarity of response factors for the materials present, the range of compositions encountered during monitoring, or other information available to the owner or operator.

(b) *Storage vessel and transfer rack records.* For storage vessels, an owner or operator shall keep readily accessible records of the information specified in paragraphs (b)(1) through (3) of this section, as applicable. For low-throughput transfer racks, an owner or operator shall keep readily accessible records of the information specified in paragraph (b)(1) of this section.

(1) A record of the measured values of the parameters monitored in accordance with § 65.145(c)(2) and report in the periodic report as specified in § 65.166(e), if applicable.

(2) A record of the planned routine maintenance performed on the control system during which the control system does not meet the applicable specifications of §§ 65.143(a), 65.145(a), or 65.147(a), as applicable, due to the planned routine maintenance. Such a record shall include the information specified in paragraphs (b)(2)(i) through (iii) of this section. This information shall be submitted in the periodic reports as specified in § 65.166(d)(1).

(i) The first time of day and date the requirements of §§ 65.143(a), 65.145(a), or 65.147(a), as applicable, were not met at the beginning of the planned routine maintenance.

(ii) The first time of day and date the requirements of §§ 65.143(a), 65.145(a), or 65.147(a), as applicable, were met at the conclusion of the planned routine maintenance.

(iii) A description of the type of maintenance performed.

(3) *Bypass records for storage vessel emissions routed to a process or fuel gas system.* An owner or operator who uses the bypass provisions of § 65.144(a)(2) shall keep in a readily accessible location the following records:

(i) The reason it was necessary to bypass the process equipment or fuel gas system;

(ii) The duration of the period when the process equipment or fuel gas system was bypassed;

(iii) Documentation or certification of compliance with the applicable provisions of § 65.42(b)(6).

(c) *Regulated source and control equipment startup, shutdown and malfunction records.* (1) Records of the occurrence and duration of each startup, shutdown, and malfunction of process equipment or of air pollution control equipment used to comply with this part during which excess emissions (as defined in § 65.3(a)(4)) occur.

(2) For each startup, shutdown, and malfunction during which excess emissions occur, records whether the procedures specified in the source's startup, shutdown, and malfunction plan were followed, and documentation of actions taken that are not consistent with the plan. For example, if a startup, shutdown, and malfunction plan includes procedures for routing control device emissions to a backup control device (for example, the incinerator for a halogenated stream could be routed to a flare during periods when the primary control device is out of service), records must be kept of whether the plan was followed. These records may take the form of a checklist or other form of recordkeeping that confirms conformance with the startup, shutdown, and malfunction plan for the event.

(3) Records of startup, shutdown, and malfunction and continuous monitoring system calibration and maintenance are not required if they pertain solely to Group 2A process vents.

(d) *Equipment leak records.* The owner or operator shall maintain records of the information specified in paragraphs (d)(1) and (2) of this section for closed vent systems and control devices subject to the provisions of subpart F of this part. The owner or operator shall meet the record retention requirements of § 65.4, except the records specified in paragraph (d)(1) of this section shall be kept as long as the equipment is in operation.

(1) The following design specifications and performance demonstrations:

(i) Detailed schematics, design specifications of the control device, and piping and instrumentation diagrams.

(ii) The dates and descriptions of any changes in the design specifications.

(iii) A description of the parameter or parameters monitored as required in § 65.146(c) to ensure that control devices are operated and maintained in conformance with their design, and an explanation of why that parameter (or parameters) was selected for the monitoring.

(2) The following records of operation of closed vent systems and control devices:

(i) Dates and durations when the closed vent systems and control devices required in § 65.115(b) are not operated as designed as indicated by the monitored parameters, including periods when a flare flame or at least one pilot flame is not present.

(ii) Dates and durations during which the monitoring system or monitoring device is inoperative.

(iii) Dates and durations of startups and shutdowns of control devices required in § 65.115(b).

(e) *Records of monitored parameters outside of range.* The owner or operator shall record the occurrences and the cause of periods when the monitored parameters are outside of the parameter ranges documented in the Initial Compliance Status Report in accordance with § 65.165(b). This information shall be reported in the periodic report as specified in § 65.166(e).

**§ 65.164 Performance test and flare compliance determination notifications and reports.**

(a) *Performance test and flare compliance determination reports.* Performance test reports and flare compliance determination reports shall be submitted as specified in paragraphs (a)(1) through (3) of this section.

(1) For performance tests or flare compliance determinations, the Initial Compliance Status Report or report required by paragraph (b)(2) of this section shall include one complete test report as specified in paragraph (a)(2) of this section for each test method used for a particular kind of emission point, and other applicable information specified in paragraph (a)(3) of this section. For additional tests performed for the same kind of emission point using the same method, the results and any other information required in applicable sections of this subpart or in other subparts of this part shall be submitted, but a complete test report is not required.

(2) A complete test report shall include a brief process description, sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(3) The performance test or flare compliance determination report shall also include the following information, as applicable:

(i) For flare compliance determinations, the owner or operator shall submit the records specified in § 65.159(b).

(ii) For nonflare combustion device and halogen reduction device performance tests as required under §§ 65.148(b), 65.149(b), 65.150(b), 65.151(b), 65.152(b), 65.154(b), or 65.155(b), the owner or operator shall submit the applicable records specified in § 65.160(b).

(iii) For Group 2A process vents, the owner or operator shall submit the records specified in § 65.160(c), as applicable.

(b) *Other notifications and reports.* (1) The owner or operator shall notify the Administrator of the intention to conduct a performance test at least 30 calendar days before the performance test is scheduled to allow the Administrator the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, the owner or operator of an affected facility shall notify the Administrator as soon as possible of any delay in the original test date. The owner or operator shall provide at least 7 days prior notice of the rescheduled date of the performance test or arrange a rescheduled date with the Administrator by mutual agreement.

(2) Unless specified differently in this subpart or another subpart of this part, performance test and flare compliance determination reports not submitted as part of an Initial Compliance Status Report shall be submitted to the Administrator within 60 days of completing the test or determination.

(3) Any application for a waiver of an initial performance test or flare compliance determination as allowed by § 65.157(b)(2), shall be submitted no later than 90 calendar days before the performance test or flare compliance determination is required. The application for a waiver shall include information justifying the owner or operator's request for a waiver, such as the technical or economic infeasibility, or the impracticality, of the source performing the test.

**§ 65.165 Initial Compliance Status Reports.**

(a) An owner or operator who elects to comply with § 65.144 by routing emissions from a storage vessel or transfer rack to a process or to a fuel gas system shall submit as part of the Initial Compliance Status Report the following information, as applicable:

(1) If storage vessel emissions are routed to a process, the owner or operator shall submit the information specified in § 65.144(b)(3).

(2) As specified in § 65.144(c), if storage vessel emissions are routed to a fuel gas system, the owner or operator shall submit a statement that the emission stream is connected to a fuel gas system.

(3) As specified in § 65.144(c), report that the transfer rack emission stream is being routed to a fuel gas system or process when complying with the requirements of § 65.83(a)(4).

(b) An owner or operator who elects to comply with § 65.145 by routing emissions from a storage vessel or low-throughput transfer rack to a nonflare control device or halogen reduction device shall submit with the Initial Compliance Status Report required by § 65.5(d) the applicable information specified in paragraphs (b)(1) through (6) of this section. Owners and operators who elect to comply with § 65.145(b)(1)(i) or (b)(3)(i) by submitting a design evaluation shall submit the information specified in paragraphs (b)(1) through (4) of this section. Owners and operators who elect to comply with § 65.145(b)(1)(ii) or (b)(3)(ii) by submitting performance test results shall submit the information specified in paragraphs (b)(1), (2), (4), and (5) of this section. Owners and operators who elect to comply with § 65.145(b)(1)(iii) or (b)(3)(iii) by submitting performance test results for a shared control device or halogen reduction device shall submit the information specified in paragraph (b)(6) of this section.

(1) A description of the parameter or parameters to be monitored to ensure that the control device or halogen reduction device is being properly operated and maintained, an explanation of the criteria used for selection of that parameter (or parameters), and the frequency with which monitoring will be performed (for example, when the liquid level in the storage vessel is being raised). If continuous records are specified, indicate whether the provisions of § 65.166(f) apply.

(2) The operating range for each monitoring parameter identified in the monitoring plan required by § 65.145(c)(1). The specified operating

range shall represent the conditions for which the control device or halogen reduction device is being properly operated and maintained.

(3) The documentation specified in § 65.145(b)(1)(i), if the owner or operator elects to prepare a design evaluation; and the documentation specified in § 65.145(b)(3)(i), if the owner or operator elects to prepare a design evaluation for a halogen reduction device.

(4) The provisions of § 65.166(f) do not apply to any low-throughput transfer rack for which the owner or operator has elected to comply with § 65.145 or to any storage vessel for which the owner or operator is not required to keep continuous records, as specified by the applicable monitoring plan established under § 65.145(c)(1) and (2). If continuous records are required, the owner or operator shall specify in the monitoring plan whether the provisions of § 65.166(f) apply.

(5) A summary of the results of the performance test described in § 65.145(b)(1)(ii), (1)(iii), (3)(ii), and/or (3)(iii), as applicable. If a performance test is conducted as provided in § 65.145(b)(1)(ii) and/or (b)(3)(ii), submit the results of the performance test, including the information specified in § 65.164(a)(1) and (2).

(6) Identification of the storage vessel or low-throughput transfer rack and control device and/or halogen reduction device for which the performance test will be submitted, and identification of the emission point(s), if any, that share the control device and/or halogen reduction device with the storage vessel or low-throughput transfer rack and for which the performance test will be conducted.

(c) The owner or operator shall submit as part of the Initial Compliance Status Report the operating range for each monitoring parameter identified for each control, recovery, or halogen reduction device as determined in §§ 65.148(c)(2), 65.149(c)(2), 65.150(c)(2), 65.151(c)(2), 65.152(c)(2), 65.153(c)(5), 65.154(c)(3), and 65.155(c)(2). The specified operating range shall represent the conditions for which the control, recovery, or halogen reduction device is being properly operated and maintained. This report shall include the information in paragraphs (c)(1) through (3) of this section, as applicable, unless the range and the operating day definition have been established in the operating permit:

(1) The specific range of the monitored parameter(s) for each emission point.

(2) The rationale for the specific range for each parameter for each emission point, including any data and calculations used to develop the range and a description of why the range indicates proper operation of the control, recovery, or halogen reduction device, as specified in the following, as applicable:

(i) If a performance test or TRE index value determination is required by this subpart or another subpart of this part for a control, recovery or halogen removal device, the range shall be based on the parameter values measured during the TRE index value determination or performance test and may be supplemented by engineering assessments and/or manufacturer's recommendations. The TRE index value determinations and performance testing is not required to be conducted over the entire range of permitted parameter values.

(ii) If a performance test or TRE index value determination is not required by this subpart or other subparts of this part for a control, recovery, or halogen reduction device, the range may be based solely on engineering assessments and/or manufacturer's recommendations.

(iii) The range may be based on ranges or limits previously established under a referencing subpart.

(3) A definition of the source's operating day for purposes of determining daily average values of monitored parameters. The definition shall specify the times at which an operating day begins and ends.

(d) *Halogen reduction device.* The owner or operator shall submit as part of the Initial Compliance Status Report the information recorded pursuant to § 65.160(d).

(e) *Alternative recordkeeping.* The owner or operator shall notify the Administrator in the Initial Compliance Status Report if the alternative recordkeeping provisions of § 65.161(e)(1) are being implemented. If the Initial Compliance Status Report has been submitted, the notification must be in the periodic report submitted immediately preceding implementation of the alternative, as provided in § 65.166(f)(4).

(f) *Exemptions from performance tests and design evaluation.* The owner or operator shall identify in the Initial Compliance Status Report whether an exemption from performance testing or conducting a design evaluation, as provided in §§ 65.145(b)(2), 65.148(b)(2), or 65.149(b)(2), is being invoked, and which of the provisions of §§ 65.145(b)(2), 65.148(b)(2), or 65.149(b)(2) apply.

**§ 65.166 Periodic reports.**

(a) Periodic reports shall include the reporting period dates, the total source operating time for the reporting period, and, as applicable, all information specified in this section and in other subparts of this part, including reports of periods when monitored parameters are outside their established ranges.

(b) For closed vent systems subject to the requirements of § 65.143, the owner or operator shall submit as part of the periodic report the following information, as applicable:

(1) The information recorded in § 65.163(a)(3)(ii) through (v);

(2) Reports of the times of all periods recorded under § 65.163(a)(1)(i) when the vent stream is diverted from the control device through a bypass line; and

(3) Reports of all times recorded under § 65.163(a)(1)(ii) when maintenance is performed on car-sealed valves, when the seal is broken, when the bypass line valve position is changed, or the key for a lock-and-key type configuration has been checked out.

(c) For flares subject to this subpart, report all periods when all pilot flames were absent or the flare flame was absent as recorded in § 65.159(d)(1).

(d) For storage vessels, the owner or operator shall include in each periodic report required the following information:

(1) For the 6-month period covered by the periodic report, the information recorded in § 65.163(b)(2)(i) through (iii).

(2) For the time period covered by the periodic report and the previous periodic report, the total number of hours that the control system did not meet the requirements of §§ 65.143(a), 65.145(a), or 65.147(a) due to planned routine maintenance.

(3) A description of the planned routine maintenance that is anticipated to be performed for the control system during the next 6-month periodic reporting period when the control system is not expected to meet the required control efficiency. This description shall include the type of maintenance necessary, planned frequency of maintenance, and expected lengths of maintenance periods.

(e) If a nonflare control device, including a halogen reduction device for a low-throughput transfer rack, is used to control emissions from storage vessels or low-throughput transfer racks, the periodic report shall identify and state the cause for each occurrence when the monitored parameters were outside of the parameter ranges documented in the Initial Compliance

Status Report in accordance with § 65.165(b).

(f) For process vents and high-throughput transfer racks, periodic reports shall include the following information:

(1) Periodic reports shall include the daily average values of monitored parameters, calculated as specified in § 65.161(c)(1) for any days when the daily average value is outside the bounds as specified in § 65.162(b)(3) or (c)(3), or the data availability requirements defined in § 65.156(d)(1) are not met, whether these excursions are excused or unexcused excursions. For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be specified.

(2) Report all carbon-bed regeneration cycles during which the parameters recorded under § 65.162(c)(2) were outside the ranges established in the Initial Compliance Status Report or in the operating permit.

(3) The provisions of paragraphs (f)(1) and (2) of this section do not apply to any low-throughput transfer rack for which the owner or operator has elected to comply with § 65.145, or to any storage vessel for which the owner or operator is not required by the applicable monitoring plan established under § 65.165(c)(1) and (2) to keep continuous records. If continuous records are required, the owner or operator shall specify in the monitoring plan whether the provisions of paragraphs (f)(1) and (2) of this section apply.

(4) If the owner or operator has chosen to use the alternative recordkeeping provisions of § 65.161(e)(1) and has not notified the Administrator in the Initial Compliance Status Report that the alternative recordkeeping provisions are being implemented as provided in § 65.165(e), the owner or operator shall notify the Administrator in the periodic report submitted immediately before implementation of the alternative.

**§ 65.167 Other reports.**

(a) *Replacing an existing control or recovery device.* As specified in §§ 65.147(b)(2), 65.148(b)(3), 65.149(b)(3), 65.150(b)(2), 65.151(b)(2), 65.152(b)(2), or 65.153(b)(2), if an owner or operator at a facility not required to obtain a title V permit elects at a later date to use a different control or recovery device, then the Administrator shall be notified by the owner or operator before implementing the change. This notification may be included in the facility's periodic reporting and shall include a description of any changes made to the closed vent system.

(b) *Startup, shutdown, and malfunction periodic reports.* Startup, shutdown, and malfunction periodic reports shall be submitted as required in § 65.6(c).

**§§ 65.168–65.169 [Reserved]**

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December 14, 2000

# Part III

# Department of the Interior

## Bureau of Land Management

## 43 CFR Parts 6300 and 8560
## Wilderness Management; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Parts 6300 and 8560**

**[WO–250–1220–PA–24 1A]**

**RIN: 1004–AB69**

## Wilderness Management

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Bureau of Land Management (BLM) revises and updates the regulations for management of designated wilderness areas. In February of 1985, BLM issued the existing regulations. Since the original issuance of the regulations, BLM has developed new policies, Congress has required new procedures, and technologies have changed. The final rule meets the need for updated regulations by adding new requirements based on changes in legislation or agency objectives, clarifying what uses BLM allows and authorizes in wilderness areas, what acts BLM prohibits, and explaining special uses the Wilderness Act explicitly allows, and how BLM allows access to non-Federal lands located within BLM wilderness areas.

**EFFECTIVE DATE:** January 16, 2001.

**ADDRESSES:** You should send any inquiries or suggestions to:

Department of the Interior, Bureau of Land Management, Mail Stop WO–172, 1849 C St., NW., Attention: Jeff Jarvis, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Jeff Jarvis, Wilderness, Rivers and National Trails Group, (202) 452–5189. Persons who use a telecommunications device for the deaf (TDD) may contact him by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

I. Background
II. Responses to Comments
III. Final Rule as Adopted
IV. Procedural Matters

## I. Background

The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701–1785) and the Wilderness Act (16 U.S.C. 1131–1136) direct BLM to manage wilderness areas for the public's use and enjoyment in a manner that will leave these areas unimpaired for future use and enjoyment as wilderness by providing for:

- Protection of these areas,
- Preservation of their wilderness character, and
- The gathering and disseminating of information about their use and enjoyment as wilderness.

Unless Congress specifies otherwise, BLM must ensure the preservation of wilderness character in managing all activities conducted within wilderness areas.

The proposed rule on Wilderness Management was published in the **Federal Register** on December 19, 1996 (61 FR 66968). The proposed rule covered the management of BLM wilderness areas outside Alaska. The rule explained—

- What wilderness areas are,
- How BLM manages them, and
- How you can use them.

The proposed rule also explained what activities BLM would not allow in wilderness areas, the penalties for doing prohibited acts, and the special provisions for some uses and access. When BLM has management responsibility for wilderness areas in Alaska, we will develop regulations for their management, if necessary.

The proposed rule, while it revised and redesignated the entire part in the CFR, focused on the following five areas: (1) definitions, (2) use of wilderness areas, (3) prohibited acts, (4) special use provisions, and (5) access.

The period for public comment on the proposed rule originally expired on February 18, 1997. In response to public requests, BLM extended the comment period until April 21, 1997. BLM received nearly 1,600 public comment letters or other communications during this four-month comment period.

## II. Responses to Comments

### *A. General Comments*

A number of comments addressed the proposed rule in general terms, without addressing any specific provision or section. Some opposed or supported the rule, others asked for general clarification, still others questioned underlying authorities. We will address these general comments in this section of the Supplementary Information.

One respondent asked BLM to clarify its authority over activities on non-BLM lands adjacent to BLM wilderness areas. BLM has authority to protect Federal lands and resources under its jurisdiction by virtue of section 302(b) of FLPMA (43 U.S.C.1732(b)). This includes the authority to regulate activities on adjacent private or State lands to protect public lands, including BLM wilderness areas. The final rule does not expand BLM's authority to manage wilderness areas in a way that will affect activities on adjacent non-BLM lands.

Several respondents criticized the proposed rule for not covering extensively enough the responsibility of BLM wilderness managers to monitor and otherwise manage activities and land uses affecting wilderness. Management of activities within wilderness are thoroughly covered in BLM Manuals or handbooks and other internal guidance, which are available to the public in any field office that manages wilderness. The regulations need not explain these internal procedures to BLM managers. The principal purpose of regulations is to provide guidance and direction to the public and other regulated parties.

One comment asked for clarification of how the rule applies to wilderness study areas. The regulations in this rule apply only to congressionally-designated wilderness areas, not to wilderness study areas.

One comment asked what regulations apply when specific provisions in this rule refer to applicable management plans as allowing, limiting, or prohibiting an activity, but BLM has not completed its management plans for a particular area. The regulations in this final rule apply regardless of the status of plans. The plans referred to in these regulations include not just Resource Management Plans or Plan Amendments covering large areas of public lands, but also local BLM field office plans and other decision documents.

Some comments asserted that the proposed regulations were too permissive or conflict with law, including the Wilderness Act, saying they would diminish wildness, reduce challenge and risk, and increase mechanization. The comments said that the language in the proposed rule is ambiguous, allows for inconsistent interpretation and too much discretion on the part of BLM managers. One respondent concluded that the ''special provisions'' in the proposed rule provided loopholes for uses incompatible with the preservation of wilderness character.

BLM believes that the proposed rule and the final rule are fully consistent with the requirements of the Wilderness Act and other laws. The Wilderness Act specifically provides for limited commercial use and resource development in wilderness areas in the ''special provisions'' of the Act (16 U.S.C. 1133). A certain amount of discretion on the part of local BLM managers is necessary because circumstances and conditions vary from area to area, and no national regulation could cover every situation. BLM has made every effort to see that these regulations will ensure preservation of

the wilderness character of the subject lands while recognizing the specific statutory protections for valid existing rights and the specified uses.

Other comments stated, by contrast, that the regulations are too restrictive, oppressive, or heavy-handed, that they have an adverse effect on the rights of the general public, or that they are unconstitutional. The comments stated that they would reduce the level of enjoyment of wilderness, eliminate or restrict traditionally acceptable uses, generate too much paperwork, and be overly complex or unresponsive to public needs. One comment asserted that the proposed rule gives BLM too much flexibility and reduces individual rights.

BLM does not agree with these assessments of the proposed rule. The regulations are no more restrictive than necessary to carry out the requirements in the Wilderness Act and FLPMA, including—

- Managing wilderness so as to leave it unimpaired for future use and enjoyment as wilderness;
- Providing for its protection and the preservation of wilderness character; and
- Providing for the gathering and dissemination of information regarding wilderness use and enjoyment.

One comment stated that the proposed rule did not consider the special provisions of the California Desert Protection Act of 1994 (16 U.S.C. 410aaa *et seq.*). The special provisions of that Act apply only to those BLM-managed areas designated as wilderness in the California Desert Protection Act. It would be inappropriate for a regulation with nationwide effect to implement these special provisions. These special provisions in the Act stand alone, and do not need regulations to make them effective. If any aspect of these regulations were inconsistent with the special provisions of the California Desert Protection Act, that Act would prevail over these regulations to the extent of the inconsistency.

Some comments urged that National Environmental Policy Act of 1969 (NEPA) analysis of the proposed regulations be done. BLM prepared an environmental assessment (EA) and found that the regulations cause no significant impact (FONSI). Notwithstanding the statement in the preamble of the proposed rule that the EA was still in draft form, BLM approved the EA and FONSI on September 13, 1996. Also, BLM has updated these documents in new versions approved June 19, 2000. These documents are available for review in the administrative record of this rule.

One comment stated that BLM has no authority to enact these regulations and that Federal laws must conform to State and local laws. BLM has ample authority to issue these regulations (see sections 310 and 302(b) of FLPMA, 43 U.S.C. 1740 and 1732(b), for examples). Federal law prevails over inconsistent State laws. The Constitution of the United States provides at Article VI that the Constitution and the laws enacted under it are the supreme law of the land.

Some comments maintained that the proposed rule unnecessarily restricts wildlife management and public enjoyment of wildlife. Others stated that the rule does not address fish and wildlife management activities or hunting, or recognize State management authority for fish and wildlife resources that is contained in Section 4(d) of the Wilderness Act (16 U.S.C. 1133) and Section 302(b) of FLPMA. In this rule, BLM does not alter the existing roles of Federal and State governments in managing wildlife on any public lands, including wilderness. As section 4(d)(8) of the Wilderness Act provides, ''Nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the several States with respect to wildlife and fish * * *.'' States will continue to have jurisdiction over fish and wildlife management.

Comments stated that BLM's present and proposed regulations deny aboriginal, traditional land rights, and urged that the rule should require BLM to work with Native Americans for management of motorized vehicle use, wood cutting, water, and archaeological sites. As stated earlier, the regulations are no more restrictive of traditional practices than necessary to carry out the requirements of law. There is no authority in the Wilderness Act for public use of motor vehicles, for example, or for cutting trees in wilderness areas. BLM does cooperate with Native Americans and others in the management of archaeological sites under other laws and regulations.

A number of comments expressed general support for the proposed rule, saying that the regulations are necessary to protect the character of wilderness for the long term, and that they are balanced, reasonable, well-crafted, and faithfully implement Congressional wilderness goals.

Several comments addressed the style of the proposed rule, either opposing or supporting the question-and-answer format. We did not change the basic format in the final rule because the style follows current Federal Government policy. The final rule somewhat reorders and reorganizes the regulations. We explain this in detail in the section of this preamble discussing the final rule.

*B. Specific Comments*

In this discussion, section names and numbers refer to those in the proposed rule. Where appropriate, we have inserted the new section numbers in parentheses at the beginning of each section discussion. In the final rule, many numbers have been changed both to improve the organization of the regulations and to respond to public comments. We will explain this reorganization and renumbering in Section III of this preamble. If this portion of the Supplementary Information does not discuss a particular section or paragraph, it means that no public comments addressed the provision, and there is no other need to amend it in the final rule.

Preamble of the Proposed Rule

Regarding the discussion of livestock grazing, one comment questioned the reference to an appendix of a Report of the Committee of Interior and Insular Affairs (H.Rept. 101–405, Appendix A) regarding grazing in wilderness and urged that the Report be published in the **Federal Register**. The proposed rule used the principles and findings in the Report as the basis for the text of the livestock grazing section of the rule. The Report itself is in the administrative record for the rule and is published in the BLM wilderness management manual.

One comment suggested that either the preamble or the regulatory text should refer to the International Association of Fish and Wildlife Agencies document, ''Policies and Guidelines for Fish and Wildlife Management in National Forest and Bureau of Land Management Wildernesses.'' Such a reference is unnecessary because—

(1) neither the proposed nor the final rule alters the fish or wildlife management roles of State and Federal Government, and

(2) guidance for BLM field managers for cooperating with State wildlife management officers, including a reference to the document in question, is in the BLM Manual.

Subpart 6301—Introduction

*Section 6301.30 What is a BLM wilderness area?* (Section 6301.3 in the final rule)

One comment objected to this section as a subjective definition of wilderness. BLM intends this section to be an objective, simple, factual, and

unobjectionable statement that wilderness is what Congress says it is, with a reference added to the Wilderness Act itself for a detailed definition.

*Section 6301.50 What are the definitions of terms used in this part?* (Section 6301.5)

A few comments addressed the proposed definitions as a group. One suggested that they were vague and overly broad and could lead to inconsistent decisions. BLM's position is that our definitions are similar to those of the other Federal wilderness managing agencies, and that they are broad enough to illuminate terms in a set of regulations with a nationwide effect. Nevertheless, in some instances we have changed the definitions to make them clearer in light of specific comments.

Other comments suggested that we define additional terms, including: Primeval, natural condition, untrammeled, solitude, wilderness character, commercial use, American Indian, religious ceremony, emergency, unimpaired, motorized vehicles, permanent improvement, and all non-pedestrian traffic. We have not added definitions for any of these terms. Some of them do not appear at all in the regulations. Others appear once, but with sufficient explanation in their context to make a definition unnecessary. Others are familiar enough that their dictionary definitions provide adequate description of their meaning.

*Access*

Several comments criticized the definition of ''access,'' stating that it did not make clear what constitutes adequate access. Others stated that access should include R.S. 2477 rights-of-way, guarantee landowners logical and appropriate methods of travel, or allow legal access under Section 501 of FLPMA.

Section 501(a) of FLPMA expressly excludes designated wilderness from land across which BLM may grant a right-of-way. Therefore, BLM is forbidden by law to grant new rights-of-way across wilderness. BLM recognizes valid R.S. 2477 rights-of-way in wilderness areas, as it does all valid existing rights.

Finally, the regulatory provisions on access in the final rule (subpart 6305) are designed to provide inholders with logical and appropriate access within the limitations of the Wilderness Act. Definitions themselves are not intended to have regulatory content.

*Inholding*

A few comments addressed the definition of ''inholding,'' stating that the definition is too narrow to include non-Federal lands surrounded by other lands along with BLM wilderness. The additional lands bounding the inholding might, for example, be national forest lands or wilderness study areas. Some comments asked for clarification of what constitutes an interest in land under the ''inholding'' definition. Others stated that this definition, as well as the definitions of ''valid occupancy'' and ''mining operations,'' improperly limited access rights of owners.

The definition of ''inholding'' in the proposed rule is consistent with definitions used by other Federal wilderness land managing agencies. However, the concept of ''interest in land'' has been removed from the definition in the final rule as unnecessary. We address the effects of different degrees of ownership—fee simple ownership, surface ownership only, mining claims, and so forth—in the access provisions of the final rule, not in the definitions.

*Mechanical Transport*

A number of comments addressed the definition of ''mechanical transport,'' particularly as it affects the use of game carriers. A majority of these comments said that the definition should not include game carriers, or only include motorized ones. They said that a prohibition of game carriers in wilderness would be an unnecessary hardship for hunters and would increase environmental impacts—due to dragging big game—from hunting, would discriminate against the elderly, and would limit the ability to retrieve downed game. They said that animal carriers are traditional, compatible, and legitimate in wilderness and could be considered the minimum tool, especially in desert situations, and that prohibition may discourage legal hunting of big game, limiting management efforts by State government agencies.

A few comments urged that the definition of ''mechanical transport'' should not include wheelbarrows because they are necessary for trail construction and maintenance work.

BLM's position is that we must include wheeled game carriers or wheelbarrows in the definition of mechanical transport, or it will conflict with the letter and spirit of the Wilderness Act. This position is also consistent with Forest Service policy. Trail work is an administrative function that is adequately addressed in section 4(c) of the Wilderness Act. This section allows BLM to use the minimum tools necessary for such administrative work.

A large number of comments stated that the definition of ''mechanical transport'' should not include horses and other pack livestock like mules and llamas. BLM never intended to ban horses from wilderness areas, and we have amended the definition specifically to make it clear that horses and other pack stock are allowed in wilderness. Horses are not mechanical transport, and neither are their saddles and bridles and other tack.

A small number of comments raised other concerns about the definition of ''mechanical transport.'' One asked for clarification of the word ''contrivance'' as used in the definition. BLM used this term to emphasize the human-origin aspect of the means of transportation by relying on a dictionary definition of ''contrivance'' as ''a mechanical device.'' We have expanded the definition by adding the words ''device or vehicle'' to improve its clarity. Another comment stated that the definition could be misinterpreted to include a number of devices such as fishing and hunting equipment, and even persons such as land users and administrative and law enforcement personnel. The intent of the final rule is that mechanical transport refers to man-made devices with moving parts and an internal or external power source (even if the power source is environmentally benign, such as solar cells), that are commonly used to carry people or cargo. It would be impractical, and potentially misleading, to include an exhaustive list of inclusions and exclusions, because questions may be raised as to items omitted from the list.

Some comments urged that the definition of ''mechanical transport'' should not include horse-drawn wagons and carts. Another urged that the definition should include canoes, rafts, bicycles, and travois, and that unless the enabling legislation specifies otherwise, BLM must prohibit all assisted transportation. Wagons, carts, and bicycles clearly fall within the definition of mechanical transport and are excluded from wilderness. Canoes, rafts, and travois, on the other hand, are not included in the definition—they lack moving parts. There is no authority in the Wilderness Act to disallow all assisted transport.

One comment maintained that the definition of ''mechanical transport'' violates the Americans with Disabilities Act (ADA). The proposed rule excluded wheelchairs from the definition, but with the qualification that a wheelchair

is allowed only as necessary medical equipment. BLM has amended the definition in the final rule to remove this qualification. The final rule specifically allows wheelchairs to be used in wilderness areas. The definition of ''wheelchair'' in the proposed rule has also been changed in the final rule to repeat the definition in the ADA.

One comment asserted that the definition of ''mechanical transport,'' by including the reference to living power sources, is more restrictive than the Arizona Desert Wilderness Act of 1990 and is inconsistent with the Wilderness Act, and alleged that the definition significantly affects recreation. The reference to a living power source was designed to encompass bicycles and horse-carts and similar mechanical means of transportation, and not backpackers and horse packers, which, though they may employ living power sources, do not use mechanical contrivances for transport. However, since the power source itself is not a critical element in defining ''mechanical transport,'' we removed the reference to ''living power source'' in the final rule.

One comment urged that the rule should restrict the use of wheeled devices to only those specifically permitted in the Wilderness Act. The Wilderness Act makes no mention of wheeled vehicles or devices as such, and it is unnecessary to amend the definition.

A couple of comments addressed a definition not in the proposed rule, ''mechanized equipment,'' apparently confusing it with ''mechanical transport'' or ''motorized equipment.'' One asked whether rock climbing hardware is mechanized equipment, and another urged that rifles be considered mechanized equipment. Power drills for installing bolts in support of climbing would be considered motorized equipment and are banned from BLM wilderness areas, as are chainsaws and other large power tools. Rifles and shotguns are not motorized, and are not mechanical means of transportation. Therefore, they are not affected by the restrictions on motorized equipment or mechanical transport in section 6302.20(d) of the final rule.

*Mining Operations and Valid Occupancy*

A few comments stated that the proposed definitions of these terms infringe on the access rights of owners. BLM has changed the definition of ''mining operations'' to make it a cross reference to the definition in the use and occupancy regulations in 43 CFR subpart 3715. Also, BLM has added to the definition of ''valid occupancy'' a cross-reference to the use and occupancy regulations in subpart 3715 of this title. These definitions rely entirely on existing BLM regulatory definitions, and therefore do not affect the rights of land owners or mining claimants.

*Motorized Equipment*

A small number of comments addressed this definition, most of them listing devices that they thought should or should not be considered motorized equipment and accordingly banned from or allowed in wilderness. One comment urged that chain saws be allowed. Chain saws are always motorized and therefore are banned specifically by the Wilderness Act. One comment stated that the definition could be interpreted to include battery-powered devices such as shavers, watches, and the others specifically excluded in the definition. We do not believe this to be a reasonable interpretation, and have not changed the definition in the final rule.

A few comments asked for a more expansive definition of ''motorized equipment,'' one that would include propane heaters, stoves, Global Positioning Systems, Geiger counters, cellular telephones, metal detectors, or radios. They maintained that such devices should have no place in primitive or unconfined use of wilderness, that wilderness is a place for primitive travel skills. The comment suggested that technological advances represented by some of these devices would lead to further mechanization of wilderness, and concluded that exemptions should be limited to flashlights, wristwatches, cameras, and gas stoves. While this view of wilderness may be shared by some, the impacts of the devices proposed for inclusion in the definition by the respondent do not warrant their prohibition in wilderness. We have made no change in the final rule in response to this comment.

**Wheelchair**

A small number of comments criticized this definition as being too restrictive, and urged that the term be defined as other agencies do. In the final rule, we have amended the definition slightly to conform it exactly to the definition found in Section 507 of the Americans with Disabilities Act, 42 U.S.C. 12207(c)(2).

**Temporary Structure**

One comment suggested adding a definition for this term and offered language: '' 'Temporary structure' means any structure that can be readily and completely dismantled and removed from the site between periods of actual use, and must be removed at the end of each season of use.'' We have not adopted this comment in the final rule. BLM generally cannot allow permanent or temporary structures in wilderness, so there is no need for a definition of this term. However, we have added a cross reference to the use and occupancy regulations for mining operations in 43 CFR part 3715, because you may erect structures under certain circumstances on mining claims in wilderness areas. We have also added language making it clear that you may use tents and other such equipment for overnight camping.

Subpart 6302—Use of Wilderness Areas, Prohibited Acts, and Penalties

*Section 6302.10 May I use wilderness areas?* (Section 6302.11)

A small number of comments addressed this general section on use of wilderness, most suggesting uses that should be specifically listed, such as: education, conservation, scenic and historic appreciation, ecology, philosophy, photography, art, spirituality, hunting, fishing, trapping. Most of these uses are expressly mentioned or at least implied in the Wilderness Act, and need not be recited in the regulations. To avoid any appearance of excluding such recognized wilderness uses by naming some uses and omitting others, we removed the list of examples of allowable uses from this section in the final rule. As for hunting, fishing, and trapping, these are managed by State government, and BLM does not seek to change this management role in these regulations.

One comment suggested that this section should emphasize that wilderness is for non-motorized, non-mechanized use. This need not be stated explicitly here; the regulations make this clear in other sections.

*Section 6302.20 Do I need and where do I obtain an authorization to use a wilderness area?* (Sections 6302.12 and 6302.13)

Several comments addressed this section. One objected to the requirement for authorization if the BLM management plan for the wilderness area involved requires it, arguing that BLM has no authority to prepare management plans in the existing BLM wilderness regulations or the regulations in 36 CFR 283.1. It continued that BLM therefore cannot promulgate or enforce plans, or include

them in our budget. BLM's general land use planning authority may be found in Section 202 of FLPMA (43 U.S.C. 1712). We have made no change in the final rule in response to this comment.

One comment stated that the proposed rule contained no provision for timely and efficient response to requests for authorizations. Another comment asserted that the permitting process could be used to restrict use unreasonably. A third comment requested clarification as to the type(s) of authorization needed and who issues them, and clarification that BLM requires a permit for any activity that is not consistent with wilderness management.

This rule makes possession of an authorization a prerequisite for certain activities, but does not itself provide for the issuance of authorizations. If this rule requires you to have a permit or other authorization, you must obtain it under the specific BLM regulation for your use or activity. The authorization may be a general use permit under 43 CFR part 2920, a notification of practices and procedures for geophysical exploration under an existing fluid mineral lease under 43 CFR 3151.1, or a special recreation permit under subpart 8372, for example. We have not changed the final rule.

One comment noted that designations of individual wilderness areas by Congress may contain statutory provisions that supersede the Wilderness Act or FLPMA. This is true, and in such a case the statutory provision would also supersede these regulations. It is not our intent to account for every such exception to the general requirements of the Wilderness Act.

The comment went on to state that lands must be managed as provided in the Multiple Use and Sustained Yield Act of 1960. The Wilderness Act provides that its purposes are within and supplemental to the purposes for which national forests and other units of Federal lands are managed. Therefore, the Wilderness Act and these regulations are consistent with the purposes of the Multiple Use and Sustained Yield Act.

One comment urged that fees BLM charges for permits should be used to pay for law enforcement rather than restoring user-caused damage. It went on to say that users should pay for such restoration. There is no need to change the regulation as a result of this comment, because it neither provides for specific fees nor directs where specific fees are to go. Other regulations provide for fees and their administration.

*Section 6302.30 When and how does BLM close or restrict use of wilderness areas?* (Section 6302.19)

A few comments addressed this section of the proposed rule. One noted that only Congress can alter the use of wilderness areas, and stated that temporary closures should be for no more than one year. Another urged that the regulation should clearly state that the law permits BLM to restrict areas within wilderness without issuing an order. We have amended this provision in the final rule to make it clear that closures will affect the minimum area for the minimum amount of time necessary, likely in most cases to be less than three months. (A typical reason for such restrictions will be wildlife protection.)

Another comment stated that closure or restrictions on use of public lands for mining, grazing, logging, recreation, and so forth, would cause a significant economic impact on small communities if wilderness guidelines are not carefully administered. BLM's intent is that we will carefully administer the regulations, guidelines, and handbooks relating to wilderness management.

*Section 6302.40 May I gather information, do research, or collect things such as rocks, animals, plants, or other types of natural or cultural resources in wilderness areas?* (Sections 6302.15 and 6302.16)

A number of comments addressed this section. Some challenged the proposed language because of perceived undue effects on the wilderness environment, asserting: uses that damage the environment should be banned; fuel gathering for campfires should be prohibited; collection should be limited to scientific research; commercial collection should be prohibited; and the regulations should be as restrictive as possible for uses inconsistent with the purposes of the Wilderness Act. Others said that the section imposed restrictions on activities that are too stringent or not authorized, maintaining: the rule should allow ''incidental use (surface collection with small hand tools)''; the rule should not require a plan to be in place before collecting can be allowed; the rule conflicts with State authority for wildlife management and control of hunting and fishing; and the rule should allow traditional aboriginal land uses, such as wood gathering and pottery shard collection.

To help address some of these comments, we have divided this section into two sections in the final rule: section 6302.15 on collecting or disturbing specimens, and section 6302.16 on scientific information gathering. Thus, we have separated scientific from casual collecting. In the final rule we have tried to minimize the impacts of these activities, within the limits of the law.

This division of the proposed provision into two sections recognizes that scientific research under section 6302.16 is generally a more intensive use of lands and resources than casual or recreational collecting or disturbance of resources, or even the mineral prospecting authorized by the Wilderness Act. Scientific research may involve surface disturbance, long-term use of the land, and larger numbers of people. Of course, BLM will permit scientific research that does not involve these elements as well, but not impose the reclamation and other requirements stated in section 6302.16. Examples of this kind of research would be wildlife population counts that do not involve surface disturbance or lengthy stays in the wilderness.

Under section 6302.15, you may remove small mineral samples for purposes of prospecting, or souvenir items such as pine cones or attractive stones. This provision recognizes that such activities conducted by persons without mechanized transportation or power tools are likely to create considerably smaller impacts on the wilderness environment than scientific research, which may involve base camps, organized crews of scientists and staff, more extensive equipment, and surface disturbance.

In the final rule we have also removed proposed paragraph 6302.40(b), which consisted of several lists of resources and materials that may be collected in wilderness for non-commercial purposes. The lists are not necessary and may have been misleading because most collecting would require an authorization not provided for in the wilderness management regulations. For such collecting, you would need an authorization from other Federal agencies, State agencies, or from BLM under other regulations.

The final rule provides that for scientific information gathering (section 6302.16) in a wilderness area—

- Similar research opportunities must not be reasonably available elsewhere;
- The activity must be compatible with wilderness preservation and the pertinent BLM management plan;
- You must minimize ground disturbance and use of motorized equipment and mechanical transport, including the landing of aircraft; and
- The activity must be authorized by BLM before you may begin.

For information gathering and resource collection or disturbance not related to scientific research, section 6302.15 requires the activity to be—

- Non-commercial as required by section 4(c) of the Wilderness Act;
- Characterized by methods that preserve the wilderness environment; and
- Either in conformance with the pertinent BLM management plan or specially authorized by BLM.

Also, information gathering related to minerals, including prospecting under the mining laws, is specifically allowed under the terms of section 4(d)(2) of the Wilderness Act (16 U.S.C. 1133(d)(2)).

Some measures suggested in comments were: to require campers to carry campfire fuel with them; to limit collecting to education or scientific research; and to require that information and specimen gathering be for the purpose of benefitting wilderness. These activities are not occurring at levels that are harmful to wilderness, and there is no need at present to impose such limits. Some of the activities that respondents suggested we allow in wilderness are prohibited by law. For instance, section 6 of the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470ee(a), prohibits taking pottery shards and similar artifacts from public lands without a permit: ''No person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit. * * *''

Several comments addressed the specific issue of hobby mineral collecting in the context of this section. They said that the proposed rule would severely limit the hobby, and that collecting specimens preserves them from erosion. One comment stated that closing public lands to mineral collection is unfair when mining may still occur. Another asserted that the proposed rule would impose an excessive restriction of traditional family recreation activities. In response to these comments, we have amended the final rule to allow hobby collecting in BLM wilderness if it is compatible with wilderness preservation and if either the activity conforms with the applicable BLM plan or the hobbyist has an authorization from BLM. The proposed rule would have required both plan conformance and an authorization.

*Section 6302.41 Will BLM authorize me to use a motor vehicle, motorized equipment, or mechanized transport to conduct research or gather resource information?* (Section 6302.16)

About 20 comments addressed this section. Respondents criticized the provision, stating that it implied motor vehicles could be allowed in wilderness, that it could be interpreted to preclude airborne research over wilderness, and that it did not necessarily require a bond in every case. One comment stated that the rule should clearly prohibit motorized equipment and mechanical transport with certain exceptions: access to valid mining claims, construction and maintenance of wildlife watering devices, maintenance of range improvements, or other uses that BLM cannot prohibit, and that research is not grounds for allowing motorized equipment or mechanical transport. Another comment asked for clarification of how BLM will determine reclamation needs, and another asked whether BLM will give verbal or written authorization for motorized or mechanical information gathering.

Many of these issues are addressed in either other BLM regulations governing specific activities or uses of the public lands, or the BLM Manual if they relate more to BLM internal procedure than to user activity. The type of authorization required is usually covered in the regulations dealing with the subject matter of the research or information gathering. The Wilderness Act governs access to mining claims. Such access need not be by mechanized transport in every case.

We have removed most of the section in the final rule because it is unnecessary. The final sentence has been moved to section 6302.16(b). It requires reclamation, but still provides for discretion on the part of local BLM managers as to whether we will require a bond.

Most human activity in wilderness disturbs the surface in some way. There is no need for bonding in a case where there is likely to be no appreciable impact. The regulations give local managers the power and discretion to require bonding.

*Section 6302.50 May wheelchairs be used in a wilderness area?* (Section 6302.17)

A few comments addressed this section. Some supported the notion, with which we agree, that adventure and untrammeled nature should be available to the wheelchair user. Another contended that the rule does not meet the spirit of the Americans with Disabilities Act (ADA) because it does not provide for additional facilities for wheelchair users. We disagree with this comment. Special facilities are not required for wheelchair users in wilderness under Section 507 of the ADA (42 U.S.C. 12207(c)(1)).

Another comment stated that the regulation should permit motorized wheelchairs. In the final rule, ''wheelchair'' is defined in the same way as in Section 507 of the ADA (42 U.S.C. 12207(c)(2)). If a motorized wheelchair meets this definition, so that it is suitable for use in an indoor pedestrian area, it qualifies as a wheelchair under the final rule and may be used in BLM wilderness. One comment asserted that if wheelchairs are allowed in wilderness, game carriers should also be allowed. However, wheelchair users are protected by statute from exclusion, while wheeled game carriers, being mechanical transport, are barred from wilderness by statute.

*Section 6302.60 May wilderness areas be used for traditional religious purposes?* (Section 6302.18)

A number of comments addressed this section, some of them focusing on the issue of temporary closure to protect privacy of American Indian ceremonies, and others focusing on whether the regulations should even address the issue of religious use of wilderness. We will discuss the latter issue first.

Several comments objected to the provision for temporary closure to the public of portions of wilderness areas being used by Native Americans for religious practices. They stated that persons who engage in such ceremonies on public land should accept the possibility of public discovery of their ceremony. Others said that any closure in support of religious activities is discriminatory, that it is a race-based regulation, and that it violates the Establishment Clause of the First Amendment. On the other hand, several comments supported temporary closure for this purpose, saying that temporary closure is compatible with wilderness values and is needed to protect privacy. One comment tied closure to need, saying that if an area has a history of ceremonies being consistently invaded, BLM should permit temporary closure. Partly because of these comments, and partly because it is unnecessary, BLM has removed this provision in the final rule. Such a special provision for temporary closures to accommodate Indian religious observances is unnecessary because, under 43 CFR subpart 8364 and the general land

management authority in Section 302 of FLPMA, the BLM local land manager can temporarily close an area to protect or accommodate this or any other use in appropriate circumstances.

The final rule allows American Indians to use wilderness areas for traditional religious purposes, implementing the American Indian Religious Freedom Act (42 U.S.C. 1996) (AIRFA), and other applicable law. It does not specifically allow closure. However, it recognizes the limits provided for in the Wilderness Act, so that Indians using wilderness areas for traditional wilderness purposes may not use motorized equipment or mechanical transportation, and must behave in such a way as to minimize impacts on the wilderness environment.

Comments suggested that the rule should specifically allow mechanical transport for Indian access; however, there is no authority in the Wilderness Act or AIRFA to allow this use. One comment suggested that BLM restrict the manner and degree of this religious activity to that of such activities carried on before designation of the wilderness. There is also no authority to restrict the manner and degree of such Indian religious activity so long as it otherwise comports with the Wilderness Act and these regulations.

One comment stated that the regulations should include the provisions from Executive Order No. 13007 for access, ceremonial use, protection and confidentiality of sacred sites, and notification of proposed management actions potentially affecting these sites. The Executive Order is binding on Federal agencies, and its provisions need not be repeated in these regulations. One comment urged that the regulations should ensure physical access into wilderness for Native Americans for ceremonial, medicinal, cultural, and traditional collecting. We address collecting of materials in wilderness areas in section 6302.15 of the final rule. Native Americans wishing to collect materials for these purposes must do so in a manner compatible with the preservation of the wilderness environment, and the collection must conform with the applicable management plan or be separately authorized by BLM. One comment stated that the term ''American Indian'' should be replaced by ''enrolled member of a federally recognized tribe.'' This comment is not adopted in the final rule—the terms used in the rule are those used in AIRFA.

*Section 6302.70 What activities does BLM prohibit in wilderness areas?* (Sections 6302.20 and 6302.14)

Our discussion of the comments on this section will address each paragraph separately, as did most of the comments. But first, a few comments addressed the section as a whole. One comment asked for clarification as to the applicability of the rule to individuals as opposed to State agencies. The rule does not distinguish between States and individuals. For example, State agencies may not use motor vehicles to track wildlife in BLM wilderness any more than individual hunters may, even though States have primary responsibility for wildlife management. Another comment maintained that the treatment in the proposed rule of Wilderness Act prohibitions was inadequate. We disagree with this assessment: Each prohibition in the Wilderness Act is thoroughly covered in this section, along with others that implement the general authority of BLM to regulate public lands, including wilderness. One comment stated that persons wishing to carry on activities that are exceptions to prohibitions should be encouraged in the regulations to use non-wilderness land, or their activities should be narrowly delineated. This comment appears to be directed more to the special provisions of the Act that were covered in subpart 6303 of the proposed rule. Section 4(c) of the Wilderness Act provides for strictly limited exceptions to wilderness prohibitions. BLM believes that subpart 6304 of this final rule properly implements this statutory authority.

Some comments supported the prohibited acts section as a whole, stating that the restrictions imposed are consistent with the purpose and preservation of wilderness, places that are quiet, pristine, and unspoiled. One comment urged that we remove the language in the introductory text giving BLM discretion to enforce these prohibitions in favor of absolute prohibitions. BLM made this change in the final rule.

A small number of comments addressed the issue of road closures, a matter that is not covered in the proposed or final rule. Subject to valid existing rights and special provisions in individual statutes designating wilderness areas, wilderness designation closes jeep trails and similar routes on public lands, but the wilderness management regulations themselves do not close any roads. Wilderness designation or these regulations do not affect roads that are outside wilderness, even those adjacent to wilderness boundaries. If there are routes to wildlife water developments within wilderness, they are closed to mechanical transport except for administrative use. The Wilderness Act prohibits four-wheel drive, off-highway, or other vehicle use of wilderness.

The final rule contains a provision omitted from the proposed rule—a protection of valid existing rights—that is necessary as a matter of law. Section 4(c) of the Wilderness Act (16 U.S.C. 1133(c)) specifically preserves existing private rights.

*Paragraph (a).* This paragraph prohibits operating a commercial enterprise in BLM wilderness. A small number of comments addressed this provision. A few urged that BLM not prohibit commercial activities such as outfitting and guiding for hunting, fishing, and recreational pack trip. These activities are not prohibited. The rule excepts from the prohibition those activities specifically provided for in the Wilderness Act; Section 4(d)(6) of the Act allows commercial services related to the recreational or other wilderness purposes of the particular area.

One comment asked whether the use of helicopters for wildlife management activities is a commercial activity. Whether such use of helicopters is commercial or not is irrelevant, because BLM claims no authority in this final rule to regulate activities in airspace. Section 4(c) of the Wilderness Act, however, specifically prohibits the landing of aircraft. This does not apply to emergency landing of aircraft.

*Paragraph (c).* This paragraph prohibits landing strips and helicopter landing facilities. A few comments supported this section, and none objected to it. BLM has made no change in the final rule.

*Paragraph (d).* This paragraph prohibits the use of motorized equipment. Several comments addressed this prohibition, different respondents raising different points:

- objecting to any motorized and mechanized use of wilderness,
- stating that State wildlife management activities, predator control, fire suppression, emergencies, trail work, delivery of construction materials where delivery is not feasible without mechanical transportation, all require use of mechanized vehicles, motorized equipment, and low-level flights, and
- stating that modern, efficient Native American range management requires use of mechanized vehicles, motorized equipment, and low-level flights.

In response, BLM does not assert authority to regulate overflights of public land in this rule. The other mechanized uses urged in these

comments are prohibited by Section 4(c) of the Wilderness Act, except in the event of emergencies involving the health and safety of persons within the area.

Section 6303.1 of this final rule covers administrative use and emergency situations. The Preamble discussion of that section addresses the merits of allowing or prohibiting use of mechanical transportation and motorized equipment for administrative purposes.

*Paragraph (e).* This paragraph prohibits landing aircraft, and the dropping and picking up of persons or things by aircraft. A few comments addressed this provision, some in opposition and some in support. One said that the regulations should never allow the use or landing of aircraft unless specifically authorized by Congress for particular wilderness areas. One comment said that the regulations should not restrict the use of aircraft for the administrative uses listed in the discussion of paragraph (d), above, and another urged an exception for search and rescue activities.

Again, BLM does not assert any regulatory authority over airspace. The regulations do allow the landing of aircraft for administrative purposes, and allow BLM to prescribe conditions in which aircraft, as well as other modes of transportation, may be used in emergency situations.

*Paragraph (f).* This paragraph prohibits structures and installations in BLM wilderness. A few comments addressed this provision, one saying that it did not go far enough and should also specifically prohibit permanent corrals, tent frames, caches, spring boxes, and piped water systems, new grazing structures other than fences intended for wilderness protection, and maintenance of existing dams and other water catchments, unless they are to benefit wilderness. The comment also suggested the addition of ''transmission lines'' to the list of examples of prohibited structures. Another comment asked that we make our prohibition of structures consistent with that of the U.S. Forest Service. We have added ''transmission lines'' and ''sheds'' to the prohibition, in part to be consistent with the policy of the Forest Service, and also in response to the comments. Finally, one comment asked that the regulations not prohibit milepost and trail marker signs. This was not the intent of the proposed rule in prohibiting structures, and milepost and trail signs are allowed in BLM-managed wilderness.

*Paragraph (g).* This paragraph prohibits cutting trees in BLM wilderness areas. A few comments addressed this prohibition. One questioned whether the prohibition conflicted with section 6302.40(c) of the proposed rule, which specifically allowed the gathering of firewood in reasonable quantities for campfires. (This provision is found at section 6302.15(b) of the final rule.) BLM intends a distinction between gathering firewood and cutting trees. The prohibition of tree cutting does not extend to dead fall and dead branches in reasonable quantities to be used for firewood. One comment stated that the regulations should include an exception for cutting trees to improve habitat if provided for in applicable BLM management plans or under BLM authorization. As a matter of policy, BLM does not permit this kind of habitat management in the wilderness environment.

*Paragraph (i).* This paragraph prohibits competitive events in wilderness areas. A few comments addressed this section. Some agreed with the notion that the prohibition of competitive use is in keeping with the spirit of the Wilderness Act. Some maintained that some competitive events, such as Eco-Challenge, do not permanently harm the character of wilderness land or reduce the opportunity for solitude, and argued that the prohibition of such events is not consistent with the special provisions section of the Wilderness Act and these regulations. Some questioned the authority for the prohibition.

As a matter of policy, to carry out our responsibility to preserve the wilderness character of the land under the Wilderness Act and FLPMA, BLM does not allow competitive events such as races and time trials in wilderness areas. This is not a change from the existing wilderness management regulations.

Another comment asserted that hunting is a competitive event that BLM should prohibit. In general, hunting is not a competitive sport, but the regulations do prohibit organized competitive hunting events. The regulations treat orienteering in the same way—prohibiting it only if competitive.

*Paragraph (j).* This paragraph of the proposed rule prohibited ''physical alteration or defacement of a natural rock surface for any purpose, including the use of any type of drill, permanent fixed anchor or expansion bolt; construction of permanent artificial hand and footholds; use of glues, epoxies, or other fixatives to facilitate mountain climbing, rock climbing, or cave exploration,'' unless allowed under the applicable BLM management plan or a BLM authorization. This provision of the proposed rule attracted the most voluminous public response, over 1,300 comments, most opposing what was perceived as a ban on using existing or new fixed anchors for climbing, or a ban on temporary fixed anchors such as slings on trees.

On June 1, 1998, the Forest Service issued a discretionary review decision in separate letters to the Access Fund and Wilderness Watch, finding that fixed anchors are ''installations'' prohibited by Section 4(c) of the Wilderness Act. On October 29, 1999, the Forest Service published a notice of intent to establish a negotiated rulemaking advisory committee to help develop regulations on the placement, use, and removal of fixed anchors in national forest wilderness areas. Pending the outcome of this Forest Service effort, BLM is reserving paragraph (j) in this final rule. In light of this reservation, we also withhold further discussion of the comments until such time as we publish a final rule addressing the use of fixed anchors in BLM wilderness.

As a point of clarification, climbers do not need authorization to use existing fixed anchors. BLM will not prosecute anyone for using them. However, the final rule also reaffirms the prohibition of power drills used for climbing or any other purpose.

*Section 6302.80 What penalties am I subject to if I commit one or more of the prohibited acts?* (Section 6302.30)

A few comments opposed this section, stating that penalties are not expressly provided for in the Wilderness Act, or that we should have used the penalties in FLPMA rather than the Sentencing Reform Act in the U.S. Criminal Code (18 U.S.C. 3551–3586). As one of the comments pointed out, FLPMA provides ample authority for penalizing those who violate BLM regulations. The enforcement authority in Section 303(a) of FLPMA (43 U.S.C. 1733(a)) establishes Federal criminal penalties, including fines and imprisonment. The Sentencing Reform Act of 1984, as amended, raises the upper limits on these and all Federal criminal penalties. These new maximums automatically apply to all existing criminal penalty statutes. Of course, magistrates and judges will not necessarily impose the maximum penalties for minor infractions—the penalties are neither mandates nor guidelines. They are the maximum allowed. We have changed this provision in the final rule to make it clear that the imprisonment penalty is based on FLPMA. We have removed the reference to the Sentencing Reform Act.

Subpart 6303—Special Provisions (Subpart 6304)

One comment suggested that BLM add a provision to this subpart specifically authorizing hunting, fishing, and trapping in BLM wilderness areas, so long as the person doing so does it in accordance with applicable State and Federal law. We have not added such a provision in the final rule. These activities are managed by States, not BLM or other Federal agencies, and are not specifically authorized or prohibited by the Wilderness Act.

*Section 6303.10 Are there special provisions for some uses of wilderness areas?*

The few comments addressing this section objected that the activities—mining, grazing, development of mineral leases, and so forth—allowed in these special provisions are not compatible with wilderness. They asked that the regulations state that wilderness is a place where such activities are prohibited to preserve wilderness values.

BLM is obligated to allow these activities in wilderness areas because they are specifically allowed by the ''special provisions'' of Section 4(d) of the Wilderness Act. In most cases the regulations allow the uses only if they pre-existed wilderness designation.

*Section 6303.20 Are there special provisions for aircraft and motorboat use within wilderness areas?* (Section 6303.21)

A few comments addressed this section, some questioning the need for regulations on aviation, others suggesting controls on aviation noise, and others suggesting that low level flights by government agencies for wildlife management, search and rescue, and so forth, should not be prohibited. One comment asked for clarification as to how the prohibition of motorized equipment relates to aviation. One comment questioned the right of BLM to infringe on the regulatory authority of the Department of Transportation and the Federal Aviation Administration. Another questioned the need for regulations on aviation, including lighter-than-air craft and skydiving. Still another stated that the provision on military overflights should be expanded to apply to private and commercial aviation.

BLM asserts no authority in this rule to regulate the use of airspace or any form of aviation, including military, regardless of altitude. The rule only prohibits the landing of aircraft in wilderness, subject to various exceptions.

One comment asserted that BLM's proposed rule would be too permissive and inconsistent with the Wilderness Act. It said that BLM should use its regulatory authority to restrict these uses as the Secretary of the Interior ''deems reasonable'' or desirable, not just for protection of wilderness values. It concluded that the regulations should not expand aircraft and motorboat use. The final rule retains, in paragraph (a), a somewhat revised provision allowing BLM to impose other reasonable restrictions necessary to protect wilderness values. The rule includes an amendment, in new paragraph (b), requiring that maintenance of existing wilderness airstrips be done without motorized equipment.

One comment suggested that the regulations should provide that existing but abandoned airstrips cannot be used or maintained after wilderness designation. We have adopted this idea in the final rule.

Several comments addressed the issue of military overflights, most suggesting that such flights should be regulated, reduced, or eliminated. BLM has no authority in this regard, and paragraph (b) of the proposed rule has been removed in the final rule to avoid any suggestion that BLM is trying to regulate any kind of overflight.

*Section 6303.30 What special provisions apply to operations under the mining laws?* (Section 6303.11)

A few comments addressed this section. One comment argued that subordination of mining activities to the provisions of the Wilderness Act violates section 102(b) of FLPMA (43 U.S.C. 1701(b)). Section 102(b) limits only the effectiveness of the policies of FLPMA, not any other legislation, including the Wilderness Act. This provision has no effect on the relationship between the Wilderness Act and the mining laws.

One comment stated that either casual use (a term defined in 43 CFR 3809.0–5) in a wilderness area should not be exempt from having a plan of operations under 43 CFR subpart 3809, or this rule should include a requirement that casual use be conducted in a manner that preserves the wilderness character of the land.

Amendment of the requirements of subpart 3809 is beyond the scope of this rule. This rule has no effect on subpart 3809, except that it imposes additional requirements on mining operations in wilderness. However, the proposed rule at section 6303.30(b) and (d) required all mining operations, which would include casual use, to be conducted under the standards in the wilderness designation legislation, and to comply with BLM's requirements imposed to protect wilderness values. These provisions are renumbered and consolidated into one paragraph in the final rule. We do not believe a special provision for casual use is necessary.

One comment pointed out that the wording of paragraph (d) in the proposed rule requiring compliance ''with all reasonable requirements established by BLM'' implies that some BLM requirements may be unreasonable and that miners need not comply with those. This paragraph also raises the question of who determines reasonableness, to the extent that it would provide a legal basis for appeals. BLM has removed this provision in the final rule because paragraph (b)(1) makes it redundant.

One comment asserted that paragraphs (a), (b), (c), and (f) substantially restate the law and are not needed, that paragraphs (d) and (e) may be considered a taking under Executive Order 12630, and that paragraph (h) is unnecessary. BLM promulgates regulations to implement the law. Consequently, all regulations reflect the laws on which they are based, and these paragraphs are included for completeness. Requiring that mining claimants protect wilderness values consistent with use of a mining claim or site for mineral activities, and requiring reclamation and removal of improvements within a reasonable time after termination of mining activities, do not constitute takings of private property under the cited Executive Order. The information in subparagraph (h) was removed because it was substantially covered in the sections on information gathering.

We have also amended this section in the final rule to consolidate in paragraph (b) portions of paragraphs (b), (d), and (g) of the proposed rule that duplicate each other. These three paragraphs address how you must conduct your mining operations to protect wilderness.

One comment stated that the one-year deadline for removal of equipment and improvements, and the six-month deadline for beginning reclamation, may not be long enough, especially at high altitudes or latitudes. It claimed that the reclamation and environmental protection requirements are too vague, and asked for clarification as to time for completion of activities, reclamation standards, ending operations, and the relationship of the requirement that structures be removed with historic preservation requirements.

To answer these concerns, we have amended paragraph (e) to link the

reclamation requirements in the final rule to the regulations in 43 CFR subpart 3809. The final rule requires claimants and operators to remove their equipment and structures and begin reclamation within the time frames established in their plan of operations approved by BLM, but no later than 18 months after they have ceased mining and extraction operations. The regulatory provisions are somewhat flexible to accommodate regional differences, keeping in mind the direction in the Wilderness Act to restore the surface as soon as operations are ended. We believe that the environmental protection requirements in the regulations are appropriate for mining in a wilderness setting. As for historic preservation and other legislative requirements, a mining operator who is ready to reclaim must prepare a reclamation plan that addresses such issues.

One comment said that mining should be prohibited in BLM wilderness. As of midnight, December 31, 1983, the location of new mining claims became statutorily prohibited in wilderness, but the Wilderness Act specifically recognizes valid existing rights, including the right to mine valid claims that existed at the time the wilderness was designated and have been properly and continuously maintained since that time. Another comment suggested that BLM require miners to use the minimum tools necessary, in order to protect the land and wilderness values. The Wilderness Act does not provide authority to impose this requirement.

On May 22, 1998, the Solicitor of the Department of the Interior issued an opinion entitled ''Patenting of Mining Claims and Mill Sites in Wilderness Areas,'' M–36994. Consistent with established case law interpreting comparable statutes restricting patenting, the Solicitor's Opinion concludes that section 4(d)(3) of the Wilderness Act requires a reservation of the surface estate to the United States in all patents where the claimant had not established a right to a patent as of the date the lands on which the claim is situated are designated as wilderness. The Solicitor strongly recommended that BLM amend its wilderness regulations to provide guidelines for patenting that comport with the Opinion. Accordingly, BLM will publish shortly a new proposed rule proposing to amend part 6300 as promulgated in today's final rule. This new proposed rule would set forth the patenting limitation and related requirements and clarify BLM's patenting procedures. This final rule reserves a subparagraph in the mining law administration section for this proposed subparagraph.

The final rule also reserves a subparagraph in the mining law administration section for a proposed subparagraph on timber use for mining activities. The proposed rule would have removed from the regulations paragraph (i) of section 8560.4–6, which specified that owners of patented mining claims located after the lands were included in the National Wilderness Preservation System could use timber growing on the patented claims only for mining and mineral extraction and beneficiation purposes, and only if timber otherwise reasonably available is insufficient for these needs. This provision appears in the wilderness regulations in the 1997 edition of the Code of Federal Regulations, but the proposed rule omitted it. No public comments addressed its removal. Because the existing section 8560.4–6(i) could be read to imply a conflict with the Solicitor's Opinion, BLM chose not to incorporate the language from the existing regulations into this final rule. Instead, we will propose, as part of the new rule mentioned above, a revised timber provision that would address timber use for mining operations on both patented and unpatented claims.

*Section 6303.31 How will BLM determine the validity of unpatented mining claims or sites?* (Section 6304.12)

This section attracted few comments. One comment stated that validity examinations should not be imposed on mining claimants because they would interfere with valid existing rights. The Wilderness Act allows mining under valid existing rights only, and thus by implication authorizes determination by the appropriate administrative authority whether the rights claimed are, in fact, valid.

Another comment requested that BLM make clear (1) whether existing approved mining operations are allowed to continue during the validity examination; (2) that BLM reserves the right to impose mitigation measures; and (3) that BLM must verify the validity of all lode and placer claims affected by a proposed plan of operations. In response to the first concern, we have amended the final rule to allow BLM to determine on a case-by-case basis whether operations may begin or continue pending a validity examination. As to the second part of the comment, operational standards are covered in 43 CFR subpart 3809. Finally, as to the third part, the final rule requires BLM to make a validity determination before approving a plan of operations.

One comment suggested re-wording paragraph (a) of this section to make it clear that the claim must be valid when the area becomes wilderness, not just on some date ''prior to'' the wilderness designation. BLM adopts this comment, in part, in the final rule to make it clear that the validity must be ''as of'' the date of wilderness designation.

*Section 6303.40 What special provisions apply to mineral leasing and material sales?* (Section 6304.23)

A few comments addressed this section. One asserted that the proposed rule did not clearly recognize rights under valid existing leases, licenses, and permits. It went on to say that such authorizations should continue under existing legal requirements or the government should compensate the owner. We disagree with the initial premise of the comment: the regulatory text clearly recognizes valid existing rights. There is no need to provide for compensation, since the regulations allow development of valid existing rights.

One comment suggested that BLM should amend paragraph (b) to provide that activities for which a lease, license, or permit was issued may continue but must be conducted in a manner that preserves the wilderness character of the land. There is no authority in the Wilderness Act for such a provision.

Finally, we removed paragraph (c) of the proposed rule because paragraph (a) renders it redundant.

*Section 6303.50 What special provisions apply to water and power resources?* (Section 6304.24)

A few comments addressed this section, which deals with the specific authority in the Wilderness Act for the President of the United States to authorize certain water resource prospecting and development. The comments raised issues relating to wildlife water development and State government prerogatives. One comment said that the provision should be removed from the proposed rule because its implementation would damage public lands wilderness. Since the regulation is based directly on a Wilderness Act provision, it is not changed in the final rule except to substitute a codification of the cite to the Act. The provision has no bearing on State water development authority.

*Section 6303.60 What special provisions apply to livestock grazing?* (Section 6304.25)

A number of comments addressed this section, some objecting to grazing in wilderness, an activity specifically allowed by the Wilderness Act, and others suggesting various limitations on grazing and related developments. A few of the comments questioned BLM's authority to restrict existing uses or to limit maintenance and reconstruction of grazing support facilities. Under the Wilderness Act, the Federal land managing agency with jurisdiction over a wilderness area will permit you to continue grazing livestock, subject to reasonable regulations, where your grazing authorization was already established when Congress designated the wilderness and has continued since. We consider it to be reasonable regulation to restrict livestock increases, and to prohibit construction of additional facilities, unless they can be shown necessary for purposes of protection and improved management of wilderness resources.

One comment suggested that the regulations include provisions for prevention and correction of resource damage and for allocation of forage among livestock, wildlife, and pack stock. Another asked that the regulations include authority for reduction of grazing levels if resources are being damaged. These matters are covered in BLM's regulations on range management. See 43 CFR subparts 4130 and 4180.

One comment asked for special accommodations for grazing by livestock of Indian tribes, and recommended that the regulations provide for tribal consultation as to grazing decisions on BLM lands adjacent to tribal lands. It also addressed a specific development concern in a wilderness study area.

The final rule has no bearing on wilderness study areas, and the respondent's concern will have to be addressed in the wilderness study process. As for consultation, it is often provided for in other laws and regulations. There is no authority either in the Wilderness Act or in BLM's range management regulations or other grazing authority for special treatment for Indian tribes as to grazing in wilderness areas or on any other public lands. We have not changed the final rule in response to this comment.

One comment suggested that BLM remove the final sentence of the section, allowing increases in grazing levels if they will not adversely affect wilderness values. Removal of the provision would leave no standard in the regulations for deciding whether to allow a requested increase in grazing in wilderness. We believe that no ''adverse impact on wilderness values'' is a standard sufficiently strict to apply in such cases.

*Section 6303.70 What special provisions apply to other commercial uses?*

Fewer than 10 comments addressed this section. The Wilderness Act provides that commercial services may be performed in wilderness to the extent necessary for activities proper for realizing the recreational and other wilderness purposes of the area (16 U.S.C. 1133(d)(5)). One comment said that the regulations should require wilderness management plans to include a needs assessment for such commercial activities. BLM planning regulations, which apply to wilderness as well as other public lands, already require a needs analysis. See 43 CFR 1610.4. Such a provision is unnecessary in these regulations.

One comment suggested that the regulations should prohibit permanent or seasonal structures or caches for recreation, or only allow very primitive and ephemeral base camps. Another comment asked that the regulations require NEPA analysis and public review for all decisions on temporary structures. Again, this is covered in BLM's planning regulations—see the previous paragraph. The final rule does not allow temporary structures in BLM wilderness except under the regulations in 43 CFR subpart 3715 on use and occupancy of mining claims.

One comment asked that ''wilderness education'' or ''educational'' be added as one of the permissible purposes for commercial use of wilderness. This addition is unnecessary—education is included in ''other wilderness purposes.''

One comment suggested that commercial hunting be prohibited. We assume the comment refers to commercial guiding and outfitting for hunters. Commercial outfitters often serve as guides for hunters, and this activity is considered among the recreational purposes contemplated in the Wilderness Act.

Upon reviewing these comments, and because the final rule does not permit either permanent or temporary structures in BLM wilderness, we have concluded that this section is unnecessary. We have removed it from the final rule.

*Section 6303.80 What special provisions apply to administrative and emergency functions?* (Subpart 6303 and Section 6304.22)

A few comments addressed this section, some saying the provision was too restrictive, and others saying it was too permissive. Some said that these provisions should include a minimum tool requirement, that BLM should carry out administrative functions with the minimum tools necessary to minimize damage to the wilderness. BLM has not adopted the comment in the regulations. The standard is not appropriate for emergencies, and BLM can apply it in other situations as a matter of policy.

One comment stated that the regulations should not place sole authority in the hands of BLM, States, and counties without imposing more stringent and more detailed standards. We believe that the level of detail in the regulations is appropriate for regulations with national effect. The regulations provide local managers with the discretion and flexibility they need to be effective wilderness managers. Also, regulations are for the guidance and instruction of the public, not BLM personnel. Internal guidance is found in the BLM Manual, instruction memoranda, and other documents.

One comment stated that the regulations should require that motor vehicles and aircraft be used for rescues, fire-fighting, fighting pest infestations, and trail maintenance and construction. The regulations allow such use, but it would be unnecessary and inappropriate to require it in every case. Another comment, on the other hand, stated that the regulations should include a preference for use of non-motorized equipment. The regulations include no such preference, and are silent on the matter. We do not believe it is appropriate to place anything in regulations that may hamper emergency personnel and place life and property at undue risk.

One comment asked whether the reference in proposed paragraph (c) to ''property'' is to public or private property. BLM intends no distinction between the two in the context of fire and pest emergencies. In the final rule, we moved this paragraph to new section 6304.22, while the remainder of the section becomes a separate subpart 6303, which addresses BLM administrative functions.

The same comment asked for clarification on the application of the rule to protection of wilderness users, to entry into wilderness by law enforcement officers, and whether BLM will prescribe emergency measures

before or after the emergency. A separate comment opposed allowing occupancy and use by non-BLM officials. Paragraph (d) in the proposed rule clearly stated that emergency measures are to apply in cases of danger to ''health and safety of persons.'' This clearly includes wilderness users, and the meaning is made clearer by adding, from the Wilderness Act itself, the phrase ''in the area'' to apply to ''persons.'' The rule also states that BLM may authorize occupancy and use of wilderness by law enforcement officers. We have kept the provision discretionary in order to maintain maximum flexibility in protecting health and safety; there may be occasions where it would be inappropriate to require BLM to give free rein to non-Federal agencies, or to establish emergency measures and procedures in advance of the emergency. On the other hand, the Wilderness Act does not prohibit BLM from cooperating with officials of other agencies, and BLM policy is to cooperate with State and local governments to the maximum extent feasible and appropriate.

One comment urged that the regulations include provisions authorizing BLM to use prescribed burns in appropriate situations. We believe that paragraph (b) of this section (section 6303.1(c) of the final rule) is broad enough to allow prescribed fire as a management tool in BLM wilderness. This paragraph allows BLM to authorize Federal, State, and local officials to occupy and use the wilderness areas in order to carry out the purposes of the Wilderness Act or other law.

One comment suggested that feral species and cowbirds should be included, along with fire, insects, and disease, as pests that BLM is authorized to use aircraft to control. The comment is not adopted in the final rule. The Wilderness Act specifies only fire, insects, and disease.

Another comment stated that the provisions for administration, fire, emergencies, insect and noxious weed control need to be more restrictive. We believe that we allowed a level of discretion in the proposed and final rule appropriate for a national regulation. However, we have amended the provision to remove the requirement that control of fire, insects, and disease be tied to threats to human life or property. The Wilderness Act does not limit control of fire, insects, and disease to situations where life or property is in danger. In order to carry out our responsibility for preserving the wilderness character of BLM wilderness areas, we have also added non-native invasive plants to the list of problems to which BLM may apply control measures under this section.

One comment stated that the rule should not provide for emergency rescue. We did not adopt this comment because Section 4(c) of the Act specifically provides for the use of aircraft, motor vehicles, and so forth, in emergencies involving the health and safety of persons within the area.

One comment stated that BLM's emergency actions that involve acts that are otherwise prohibited, such as cutting trees or using a motorized climbing drill, should not be considered a violation of the regulations. We agree. Section 4(c) of the Wilderness Act states that emergencies involving the health and safety of persons within the area are exceptions to the prohibitions in the Act—and the rule should be interpreted in this way.

Several comments offered specific suggestions for rewording certain provisions. BLM adopted some suggestions: adding references to temporary roads, motor vehicles, structures, and landing aircraft in paragraph (a), and, to conform with the Wilderness Act, adding the phrase ''in the area'' to paragraph (d). We rejected other suggestions as overly restricting administrative discretion. One such comment suggested that the final rule should prohibit most of the administrative measures that the proposed rule sanctioned. We did not adopt this suggestion, because to do so would be contrary to the Wilderness Act.

Subpart 6304 Access to State and Private Lands Within Wilderness Areas (Subpart 6305)

This subpart is renumbered 6305 in the final rule to accommodate new subpart 6303 on BLM administrative functions.

*Section 6304.20 How will BLM give access to State and private land within wilderness areas when the access is affected by wilderness designation?* (Sections 6305.10, 6305.20, and 6305.30)

Several comments addressed this section, which provides for access to inholdings. ''Inholdings'' in these regulations are State and private lands completely surrounded by designated wilderness. Several comments addressed matters that are covered in other regulations, primarily 43 CFR part 2920 on general leases, permits, and easements. The regulations in part 2920 authorize, among other things, ''uses that cannot be authorized under Title V of the Federal Land Policy and Management Act . . .'' (43 CFR 2920.1–1(a)). Title V of FLPMA (43 U.S.C. Chapter 35, Subchapter V, Sections 1761–1771) expressly excludes wilderness from those lands across which BLM may grant rights-of-way under Title V. For this reason, part 2920, which provides for legal mechanisms other than Title V rights-of-way, is the actual authority used to provide access to wilderness inholdings.

Where valid existing rights to access do not exist, BLM may give access to inholdings by permit under existing part 2920, using its administrative discretion under this final rule to determine what access is adequate and causes the briefest and most limited impacts on wilderness character. BLM is preparing a revised version of part 2920 that would provide specific mechanisms for authorizing access to inholdings.

In accordance with these final wilderness management regulations, BLM will only approve the kind and degree of access that you enjoyed immediately before the wilderness area across which you must travel to reach your inholding was designated as wilderness and BLM determines will serve the reasonable purposes for which the non-Federal lands are held or used and cause the least impact on wilderness character. By providing for BLM land managers to approve only access routes that were in existence at the time of wilderness designation, the final rule in many cases effectively ratifies the inholder's original choice of route and mode of travel. If no access (other than travel by foot, horseback, or packstock) existed at the date of wilderness designation, BLM will only approve that combination of routes and non-motorized modes of travel to non-Federal inholdings that BLM determines will serve the reasonable purposes for which the non-Federal lands are held or used and cause the least impact on wilderness character. If you have a valid existing access right that is greater than the access BLM provides under this rule, we will ensure your reasonable use and enjoyment of your inholding. However, we may impose reasonable restrictions on your access to protect wilderness values.

One comment maintained that rights of access exist independently and are not granted by BLM authority, and that BLM does not have authority to tell private land owners what mode of travel they must use. Section 4(c) of the Wilderness Act (16 U.S.C. 1133(c)) recognizes that valid rights of access may exist in designated wilderness. BLM may nevertheless regulate such existing rights to access in order to protect wilderness resources. Section

302(b) of FLPMA directs the Secretary of the Interior, ''by regulation or otherwise, [to] take any action necessary to prevent unnecessary or undue degradation of the lands.'' The final regulations specifically implement this authority by providing at section 6305.10 that such rights are subject to reasonable regulation.

One comment stated that, for areas surrounded on only three sides by wilderness but where access on the non-wilderness side may not be possible, the regulations should allow access via the wilderness. Section 5 of the Wilderness Act does not apply to private or State land that is near or adjacent to wilderness, or only partly surrounded by wilderness. Section 5 provides for access only to State and private land that ''is completely surrounded by'' public land ''within areas designated by this Act as wilderness...'' (16 U.S.C. 1134(a)). Private or State land that is near or adjacent to wilderness would not be an inholding as defined in these regulations, and we cannot adopt the comment in the final rule.

One comment asked whether BLM will use written or verbal authorization to grant access to inholdings. The authorization must be in writing, and we have added this clarification in the final rule. The same comment asked for clarification of ''means that are customarily being used'' for determining the type of access allowed, and for assurance that new roads will not be allowed except for mining claims with valid existing rights. The final rule does not allow construction of new roads. You may maintain existing access routes to the degree you or your predecessors maintained them at the time of wilderness designation. BLM will not allow you to upgrade your access routes beyond the condition that existed on the date Congress designated the area as wilderness, unless the improvement would protect wilderness resources from degradation. Further, the customary usage language in section 5 (b) of the Wilderness Act pertains only to mining claims and other valid occupancies, not to access to State and private inholdings provided for in Section 5(a).

One comment stated that the regulations need to acknowledge State and local government jurisdiction over R.S. 2477 rights-of-way. The regulations are silent on how such rights may be recognized. BLM is forestalled by a 1997 statute from promulgating regulations on R.S. 2477 rights-of-way without Congressional consent (Pub. L. 104–208, 110 Stat. 3009–181, 3009–200).

One comment stated that the regulations should use the term ''inholding,'' as defined in the definitions section, and provide that inholdings do not include unpatented mining claims and grazing leases, but should state that these uses have special rights to access under the Wilderness Act. In response, we divided the access section to show more clearly the rights of mining claimants and persons with other valid occupancies.

Two comments criticized the proposed rule's use of the term ''customarily used'' as a standard for permitting means of access to mining claims and other valid occupancies within wilderness, asserting this standard would not protect wilderness. In the final rule, we have substituted the term ''customarily enjoyed.'' Section 5(b) of the Wilderness Act contains that standard and we may not use a different one.

One comment stated that, according to the United States Attorney General's Opinion of June 23, 1980, BLM need not provide access under the Wilderness Act to inholdings if the owner of the inholding has refused a reasonable offer of exchange. The Attorney General's Opinion addressed the authorities of the Forest Service. It has not yet been determined if the 1980 opinion applies to BLM acquisition of inholdings by exchange. In the event the opinion is determined applicable to BLM, this final rule allows for that possibility. Even so, however, BLM's policy will be to exercise that authority only in unusual or extreme circumstances. The final rule, therefore, allows BLM to acquire land or interests in land from a landowner by exchange, by accepting donation of the inholding or, if the landowner agrees, by purchase. Further, we encourage inholders to seek a fair exchange of their inholding for other public land in the same State (as provided by Sec. 5(a) of the Wilderness Act), and we expect BLM local land managers to explore this possibility in all wilderness inholding cases. Before issuing any authorization allowing access to State-owned or privately owned land, BLM will discuss with the property owner the possibility of selling or donating the inholding to BLM, or exchanging it for other public land.

## III. Final Rule as Adopted

The following table shows how BLM redesignated sections in the proposed rule or created new sections in the final rule.

| Proposed rule | Final rule |
|---|---|
| Part 6300 | Part 6300 |
| Subpart 6301 | Subpart 6301 |
| Sec. | Sec. |
| 6301.10 | 6301.1 |
| 6301.30 | 6301.3 |
| 6301.50 | 6301.5 |
| Subpart 6302 | Subpart 6302 |
| Sec. | Sec. |
| 6302.10 | 6302.11 |
| 6302.20(a) | 6302.12(a) |
| 6302.20(b) | 6302.12(b) |
| 6302.20(c) | 6302.13 |
| 6302.30 | 6302.19 |
| 6302.40(a) | 6302.16 |
| 6302.40(b) | 6302.15(a) |
| 6302.40(c) | 6302.15(b) |
| 6302.41 | 6302.15 |
| 6302.50 | 6302.17 |
| 6302.60 | 6302.18 |
| 6302.70 | 6302.20 |
| 6302.70(j) | 6302.14, 6302.20(j) |
| 6302.80 | 6302.30 |
| Subpart 6303 | Subpart 6304 |
| Sec. | Sec. |

| Proposed rule | Final rule |
|---|---|
| 6303.10 | removed |
| 6303.20 | 6304.21 |
| 6303.30 | 6304.11 |
| 6303.31 | 6304.12 |
| 6303.40 | 6304.23 |
| 6303.50 | 6304.24 |
| 6303.60 | 6304.25 |
| 6303.70 | 6302.20(f) |
| 6303.80 | Subpart 6303 |
| 6303.80(c) | 6304.22 |
| Subpart 6304 | Subpart 6305 |
| Sec. | Sec. |
| 6304.20(a) | 6305.10, 6505.11 |
| 6304.20(b) | 6305.20 |
| 6304.20(c) | 6305.30 |

We have tried in this renumbering to make the organization more logical and the regulations flow better and be more informative. We divided a few of the longer sections in the proposed rule into two or more shorter sections with informative headings.

Also, we have arranged subject matter so that major subject matter headings (with section numbers ending in zero (0) and often with no regulatory content themselves), lead into two or more subordinate sections, with numbers ending in other than 0, providing detailed information and guidance. For example, sections 6304.11 and 6304.12 are subordinate to section 6304.10, and section 6304.20 immediately thereafter leads into a separate series of sections. We have also simplified some of the section headings, and minimized the use of ''yes or no'' questions.

Subpart 6301 contains general information, a statement of purpose in section 6301.1, a reference to the statutory definition of wilderness in section 6301.3, and definitions in section 6301.5.

Subpart 6302 discusses use of wilderness areas, when you need and how you get a permit, what you can do in wilderness without a permit (including rock climbing), and what acts the regulations totally prohibit. It concludes with a section on criminal and civil penalties for violating the prohibited acts.

Subpart 6303 describes the administrative and emergency functions, except for fire, insect, and disease control, that BLM performs in wilderness.

Subpart 6304 deals with the ''special provisions'' in Section 4(d) of the Wilderness Act. It contains the regulations for mining, prospecting and information gathering, mineral leasing, control of fire, insects, and disease, water development, livestock grazing, and commercial services related to recreation and other wilderness uses.

Subpart 6305 covers access to wilderness inholdings, both those held as private property in fee simple by individuals, or as State land, and those legally occupied, such as mining claims.

## IV. Procedural Matters

The principal author of this final rule is Jeff Jarvis, Senior Wilderness Specialist, Wilderness, Rivers and National Trails Group, Office of the National Landscape Conservation System, assisted by Rob Hellie of the National Monuments and National Conservation Areas Group, and Ted Hudson of the Regulatory Affairs Group, all in the Washington, D.C., office. David Porter of the Colorado State Office, Ken Mahoney of the Arizona State Office, and Paul Brink of the California State Office, BLM, also assisted.

### *National Environmental Policy Act*

BLM has performed and documented an environmental assessment (EA), and has found that the rule is not a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C)(NEPA). Therefore, BLM is not required to write a detailed statement on the environmental impacts of the rule under NEPA. BLM has placed the EA and the Finding of No Significant Impact (FONSI), dated June 19, 2000, on file in the BLM Administrative Record. You may review these documents by contacting us at the address listed above (see **ADDRESSES**).

### *Executive Order 12866*

Following the criteria listed in section 3(f) of Executive Order 12866, BLM has found that the rule is not a significant regulatory action. Therefore, this rule is not subject to review by the Office of Management and Budget under section 6(a)(3) of the Executive Order.

### *Executive Order 12630*

This rule does not represent a governmental action capable of interference with constitutionally protected property rights or result in a taking of private property under Executive Order 12630. It does not provide for the taking of any property rights or interests.

One public comment suggested that the access provisions in subpart 6305 may require a takings assessment under this Executive Order. Section 1(b) of the Executive Order states, in part, ''Executive departments * * * should account in decision-making for those takings that are necessitated by statutory mandate.'' The only non-Federal property directly affected by the rule is non-Federal land surrounded by designated wilderness, and the rule establishes procedures regulating access to such inholdings.

There are fewer than 1,000 State and private inholdings in BLM wilderness areas in California and Arizona. These two States contain the great bulk of BLM designated wilderness. This is the approximate number of inholdings that may be affected by this provision of the rule. The rule establishes acquisition by BLM as the remedy of preference for resolving inholding problems. Inholders for whom an exchange or other acquisition arrangement will not work will likely need to apply for access under 43 CFR part 2920. Under BLM policy, we will grant access to such inholders appropriate for their level of use of the affected property and equivalent to that which they enjoyed before wilderness designation.

### *Regulatory Flexibility Act*

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory

flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM has determined under the RFA that this rule will not have a significant economic impact on a substantial number of small entities.

Several public comments maintained that section 6302.70(j) of the proposed rule would have a serious impact on small businesses. This argument was based on two premises: (1) that paragraph (j) would prohibit the use of fixed anchors and thereby virtually prohibit climbing, and (2) that the rule would affect many climbing areas.

In Part II of this preamble, we explained that the Forest Service has begun a negotiated rulemaking. This process must be concluded before BLM can promulgate regulations on this matter. Therefore, we reserve a discussion of the supposed impacts of the rule on small business until such time as we publish a final rule containing a provision affecting climbing.

None of the other provisions of the proposed rule attracted comments alleging negative effects on small business.

The Small Business Administration established the Small Business and Agricultural Regulatory Enforcement Ombudsman and ten Regional Fairness Boards to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman annually evaluates these enforcement activities and rates each agency's responsiveness to small business. If you wish to comment on enforcement aspects of this rule, you may call 1–888–734–4247.

*Paperwork Reduction Act*

This final rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

*Unfunded Mandates Reform Act*

This rule will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. The rule will not establish a Federal mandate that may result in expenditures of $100 million or more in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Therefore, BLM need not prepare a written statement of the anticipated costs and benefits of the rule in accordance with the Unfunded Mandates Reform Act (25 U.S.C. 1501–1571).

The rule requires that State agencies comply with the Wilderness Act in carrying out their activities in BLM wilderness areas. For example, States will not be allowed to use motorized equipment or mechanical transport, or to land aircraft, in managing wildlife. This degree of limitation does not cross the financial threshold contemplated in the Unfunded Mandates Reform Act, and is required by Federal law.

*Executive Order 12988*

The Department has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

*Executive Order 13132*

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule does not preempt State law. Several comments on the proposed rule questioned whether the rule would affect State management of fish and wildlife. This was the only arena where the public perceived potential conflict between BLM and the States. As stated several times earlier in this preamble, and as directed by both FLPMA and the Wilderness Act, this rule has no effect on the respective roles of Federal and State government in this area.

*Government-to-Government Relationship with Tribes*

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no adverse effects on the tribes. The regulations specifically allow Indian use of BLM wilderness for religious ceremonies. Limitations imposed on Indians for the use of BLM wilderness in this rule are no different from limitations imposed on other groups, and are required by the Wilderness Act and FLPMA. The regulations have no effect on Indian governmental affairs, Indian reservations, or other Indian lands.

**List of Subjects in 43 CFR Parts 6300 and 8560**

Penalties, Public lands, Reporting and recordkeeping requirements, Wilderness areas.

For the reasons explained in the preamble, and under the authority of 43 U.S.C. 1740, chapter II, subtitle B of title 43 of the Code of Federal Regulations is amended as follows:

Dated: November 28, 2000.

**Sylvia V. Baca,**

*Assistant Secretary of the Interior.*

1. Subchapter F, consisting of Part 6300, is added to read as follows:

**Subchapter F—Preservation and Conservation (6000)**

**Part 6300—Management of Designated Wilderness Areas**

**Subpart 6301—Introduction**

Sec.
6301.1 Purpose.
6301.3 What is a BLM wilderness area?
6301.5 Definitions.

**Subpart 6302—Use of Wilderness Areas, Prohibited Acts, and Penalties**

**Use of Wilderness Areas**

6302.10 Use of wilderness areas.
6302.11 How may I use wilderness areas?
6302.12 When do I need an authorization and to pay a fee to use a wilderness area?
6302.13 Where do I obtain an authorization to use a wilderness area?
6302.14 What authorization do I need to climb in BLM wilderness?
6302.15 When and how may I collect or disturb natural resources such as rocks and plants in wilderness areas?
6302.16 When and how may I gather scientific information about resources in BLM wilderness?
6302.17 When may I use a wheelchair in BLM wilderness?
6302.18 How may American Indians use wilderness areas for traditional religious purposes?
6302.19 When may BLM close or restrict use of wilderness areas?

**Prohibited Acts**

6302.20 What is prohibited in wilderness?

**Penalties**

6302.30 What penalties apply if I commit one or more of the prohibited acts?

**Subpart 6303—Administrative and Emergency Functions**

6303.1 How does BLM carry out administrative and emergency functions?

**Subpart 6304—Uses Addressed in Special Provisions of the Wilderness Act**

**Mining Under the General Mining Laws**

6304.10 Mining law administration.
6304.11 What special provisions apply to operations under the mining laws?
6304.12 How will BLM determine the validity of unpatented mining claims or sites?

**Other Uses Specifically Addressed by the Wilderness Act**

6304.20 Other uses addressed in special provisions of the Wilderness Act.
6304.21 What special provisions cover aircraft and motorboat use?
6304.22 What special provisions apply to control of fire, insects, and diseases?
6304.23 What special provisions apply to mineral leasing and material sales?
6304.24 What special provisions apply to water and power resources?
6304.25 What special provisions apply to livestock grazing?

**Subpart 6305—Access to State and Private Lands Or Valid Occupancies Within Wilderness Areas**

**Access to Non-Federal Inholdings**

6305.10 How will BLM allow access to State and private land within wilderness areas?
6305.11 What alternatives to granting access will BLM consider in cases of State and private inholdings?

**Access to Other Valid Occupancies**

6305.20 How will BLM allow access to valid mining claims or other valid occupancies within wilderness areas?

**Access Procedures for Valid Occupancies**

6305.30 What are the steps BLM must take in issuing an access authorization to valid occupancies?

**Authority:** 16 U.S.C. 1131 *et seq.*; 43 U.S.C. 1733, 1740, 1782.

## Subpart 6301—Introduction

### § 6301.1 Purpose.

This part governs the management of BLM wilderness areas outside of Alaska. It tells you what wilderness areas are, how BLM manages them, and how you can use them. These regulations also tell you what activities BLM does not allow in wilderness areas, the penalties for performing prohibited acts, and the special provisions for some uses and access that the Wilderness Act explicitly allows.

### § 6301.3 What is a BLM wilderness area?

A BLM wilderness area is an area of public lands that Congress has designated for BLM to manage as a component of the National Wilderness Preservation System in accordance with the Wilderness Act of 1964. The Wilderness Act provides a detailed definition of wilderness that applies to BLM wilderness areas. See 16 U.S.C. 1131(c) and 43 U.S.C. 1702(i).

### § 6301.5 Definitions.

Terms used in this part have the following meanings:

*Access* means the physical ability of property owners and their successors in interest to have ingress to and egress from State or private inholdings, valid mining claims, or other valid occupancies. It does not include rights-of-way or permits under section 501 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761) (FLPMA) or parts 2800 and 2880 of this chapter.

*Inholding* means State-owned or privately owned land that is completely surrounded by Congressionally designated wilderness.

*Mechanical transport* means any vehicle, device, or contrivance for moving people or material in or over land, water, snow, or air that has moving parts. This includes, but is not limited to, sailboats, sailboards, hang gliders, parachutes, bicycles, game carriers, carts, and wagons. The term does not include wheelchairs, nor does it include horses or other pack stock, skis, snowshoes, non-motorized river craft including, but not limited to, drift boats, rafts, and canoes, or sleds, travois, or similar devices without moving parts.

*Mining operations* is defined in subpart 3715 of this chapter.

*Motor vehicle* means any vehicle that is self-propelled.

*Motorized equipment* means any machine that uses or is activated by a motor, engine, or other power source. This includes, but is not limited to, chainsaws, power drills, aircraft, generators, motorboats, motor vehicles, snowmobiles, tracked snow vehicles, snow blowers or other snow removal equipment, and all other snow machines. The term does not include shavers, wrist watches, clocks, flashlights, cameras, camping stoves, cellular telephones, radio transceivers, radio transponders, radio signal transmitters, ground position satellite receivers, or other similar small hand held or portable equipment.

*Primitive and unconfined recreation* means non-motorized types of outdoor recreation activities that do not require developed facilities or mechanical transport.

*Public lands* means any lands and interests in lands owned by the United States and administered by the Secretary of the Interior through BLM without regard to how the United States acquired ownership.

*Valid occupancy* means an occupancy under a current permit, lease, or other written authorization from BLM to occupy public lands. For a definition of occupancy related to development of locatable minerals, see subpart 3715 of this chapter.

*Wheelchair* means a device that is designed solely for use by a mobility-impaired person for locomotion, and that is suitable for use in an indoor pedestrian area.

## Subpart 6302—Use of Wilderness Areas, Prohibited Acts, and Penalties

### Use of Wilderness Areas

### § 6302.10 Use of wilderness areas.

### § 6302.11 How may I use wilderness areas?

Unless otherwise provided by BLM, the Wilderness Act, or the Act of Congress designating the area as wilderness, all wilderness areas will be open to uses consistent with the preservation of their wilderness character and their future use and enjoyment as wilderness. In subpart 6304 you will find provisions implementing the special provisions of the Wilderness Act that allow specific uses of wilderness areas. In § 6302.20 you will find a list of acts that are explicitly prohibited within wilderness areas.

### § 6302.12 When do I need an authorization and to pay a fee to use a wilderness area?

(a) In general, you do not need an authorization to use wilderness areas.

(b) BLM may require an authorization and charge fees for some uses of wilderness areas. You must obtain authorization from BLM and pay fees to use a wilderness area when required by:

(1) The regulations in this part (see § 6302.15 on collecting natural resource materials, § 6302.16 on gathering scientific information, and subpart 6305 on access to inholdings and valid occupancies);

(2) Regulations in this chapter II—Bureau of Land Management, Department of the Interior—governing the specific activities in which you are engaged;

(3) The management plan for the wilderness area; or

(4) A BLM closure or restriction under § 6302.19 of this part.

(c) To determine whether you need an authorization under paragraph (b)(2) of this section, you should refer to the applicable BLM regulations for your particular activity.

### § 6302.13 Where do I obtain an authorization to use a wilderness area?

You may request an authorization to use a wilderness area from the BLM field office with jurisdiction over the wilderness area you want to use.

### § 6302.14 What authorization do I need to climb in BLM wilderness?

(a) You do not need a permit or other authorization to climb in BLM wilderness.

(b) [Reserved]

(c) You must not use power drills for climbing. See § 6302.20(d).

**§ 6302.15 When and how may I collect or disturb natural resources such as rocks and plants in wilderness areas?**

(a) You may remove or disturb natural resources for non-commercial purposes in wilderness areas, including prospecting, provided—

(1) You do it in a manner that preserves the wilderness environment, using no more than non-motorized hand tools and causing minimal surface disturbance; and

(2) (i) Your proposed activity conforms to the applicable management plan; or

(ii) You have a BLM authorization if one is required by statute or regulation.

(b) Where BLM allows campfires in a wilderness, you may gather a reasonable amount of wood for use in your campfire.

**§ 6302.16 When and how may I gather scientific information about resources in BLM wilderness?**

(a) You may conduct research, including gathering information and collecting natural or cultural resources in wilderness areas, using methods that may cause greater impacts on the wilderness environment than allowed under § 6302.15(a), if—

(1) Similar research opportunities are not reasonably available outside wilderness;

(2) You carry out your proposed activity in a manner compatible with the preservation of the wilderness environment and conforming to the applicable management plan;

(3) Any ground disturbance or removal of material is the minimum necessary for the scientific purposes of the research; and

(4) You have an authorization from BLM.

(b) You must reclaim disturbed areas, and BLM may require you to post a bond.

**§ 6302.17 When may I use a wheelchair in BLM wilderness?**

If you have a disability that requires the use of a wheelchair, you may use a wheelchair in a wilderness. Consistent with the Wilderness Act and the Americans with Disabilities Act of 1990 (42 U.S.C. 12207), BLM is not required to facilitate such use by building any facilities or modifying any conditions of lands within a wilderness area.

**§ 6302.18 How may American Indians use wilderness areas for traditional religious purposes?**

In accordance with the American Indian Religious Freedom Act (42 U.S.C. 1996), American Indians may use wilderness areas for traditional religious purposes, subject to the provisions of the Wilderness Act, the prohibitions in § 6302.20, and other applicable law.

**§ 6302.19 When may BLM close or restrict use of wilderness areas?**

When necessary to carry out the provisions of the Wilderness Act and other Federal laws, BLM may close or restrict the use of lands or waters within the boundaries of a BLM wilderness area, using the procedures in § 8364.1 of this chapter. BLM will limit any such closure to affect the smallest area necessary for the shortest time necessary.

### Prohibited Acts

**§ 6302.20 What is prohibited in wilderness?**

Except as specifically provided in the Wilderness Act, the individual statutes designating the particular BLM wilderness area, or the regulations of this part, and subject to valid existing rights, in BLM wilderness areas you must not:

(a) Operate a commercial enterprise;

(b) Build temporary or permanent roads;

(c) Build aircraft landing strips, heliports, or helispots;

(d) Use motorized equipment; or motor vehicles, motorboats, or other forms of mechanical transport;

(e) Land aircraft, or drop or pick up any material, supplies or person by means of aircraft, including a helicopter, hang-glider, hot air balloon, parasail, or parachute;

(f) Build, install, or erect structures or installations, including transmission lines, motels, vacation homes, sheds, stores, resorts, organization camps, hunting and fishing lodges, electronic installations, and similar structures, other than tents, tarpaulins, temporary corrals, and similar devices for overnight camping;

(g) Cut trees;

(h) Enter or use wilderness areas without authorization, where BLM requires authorization under § 6302.12;

(i) Engage or participate in competitive use as defined in section 8372.0–5(c) of this chapter, including those activities involving physical endurance of a person or animal, foot races, water craft races, survival exercises, war games, or other similar exercises;

(j) [Reserved]; or

(k) Violate any BLM regulation, authorization, or order.

### Penalties

**§ 6302.30 What penalties apply if I commit one or more of the prohibited acts?**

(a) If you commit a prohibited act listed in § 6302.20 in a BLM wilderness area, you are subject to criminal prosecution on each offense. If convicted, you may be fined not more than $100,000 under 18 U.S.C. 3571. In addition, you may be imprisoned for not more than 12 months, as provided for by 43 U.S.C. 1733(a).

(b) At the request of the Secretary of the Interior, the United States Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent you from using public lands in violation of the regulations of this part.

## Subpart 6303—Administrative and Emergency Functions.

**§ 6303.1 How does BLM carry out administrative and emergency functions?**

As necessary to meet minimum requirements for the administration of the wilderness area, BLM may:

(a) Use, build, or install temporary roads, motor vehicles, motorized equipment, mechanical transport, structures or installations, and land aircraft, in designated wilderness;

(b) Prescribe conditions under which other Federal, State, or local agencies or their agents may use, build, or install such items to meet the minimum requirements for protection and administration of the wilderness area, its resources and users;

(c) Authorize officers, employees, agencies, or agents of the Federal, State, and local governments to occupy and use wilderness areas to carry out the purposes of the Wilderness Act or other Federal statutes; and

(d) Prescribe measures that may be used in emergencies involving the health and safety of persons in the area, including, but not limited to, the conditions for use of motorized equipment, mechanical transport, aircraft, installations, structures, rock drills, and fixed anchors. BLM will require any restoration activities that we find necessary to be undertaken concurrently with the emergency activities or as soon as practicable when the emergency ends.

## Subpart 6304—Uses Addressed in Special Provisions of the Wilderness Act

### Mining Under the General Mining Laws

**§ 6304.10 Mining law administration.**

**§ 6304.11 What special provisions apply to operations under the mining laws?**

The general mining laws apply to valid existing mining claims and mill sites within BLM wilderness, except as provided in this section.

(a) After the date on which the general mining laws cease to apply to a specific wilderness area—

(1) You cannot locate a mining claim or establish any right to or interest in any mineral deposits discovered in that wilderness area; and

(2) You cannot locate a mill site in that wilderness area.

(b) If you hold a valid existing mining claim or mill site within a wilderness area—

(1) You must conduct any mining operations following the applicable standards provided in—

(i) The Wilderness Act;

(ii) The legislation designating the wilderness;

(iii) Your approved plan of operations;

(iv) Subpart 3809 of this chapter; and

(v) Subpart 3715 of this chapter;

(2) You must minimize impairment of wilderness characteristics to the extent BLM determines practicable, consistent with the use of a valid claim or site for mineral activities; and

(3) Your temporary structures used in mining operations are subject to the use and occupancy regulations in subpart 3715 of this chapter.

(4) You must post a financial guarantee under subpart 3809 of this chapter in order to ensure completion of reclamation.

(c) If you hold a valid mining claim, mill site, or tunnel site located in any BLM wilderness area before the general mining laws ceased to apply to that area, you may maintain your mining claim or site, so long as you comply with the general mining laws, the regulations in part 3830 of this chapter, and the Act of Congress designating the wilderness.

(d) As required in your approved plan of operations, when you complete mining operations in a wilderness area—

(1) You must remove all structures, equipment, and other facilities and begin reclamation as soon as feasible after mining operations end. However, you must start reclamation no later than 18 months after mining operations end.

(2) You must restore the surface as near as practicable to the appearance and contour of the surface before mining operations began, following the regulations in subpart 3809 of this chapter.

(e) [Reserved]

(f) [Reserved]

### § 6304.12 How will BLM determine the validity of unpatented mining claims or sites?

(a) BLM will conduct a mineral examination to determine whether your claim or site was valid as of the date that lands within the wilderness area were withdrawn from appropriation under the mining laws. We also will determine whether your claim or site remains valid at the time of the examination.

(1) If you do not have an approved plan of operations, BLM must complete this validity determination before approving your plan of operations.

(2) If you have a plan of operations that was approved before the wilderness designation, BLM will determine whether operations may begin or continue while we conduct the validity determination.

(b) If BLM concludes that your mining claim lacks a discovery of a valuable mineral deposit or your claim or site is invalid for any other reason, we will disapprove your application for a plan of operations. For an existing approved operation, BLM may issue a notice ordering suspension or cessation of operations. We will begin contest proceedings to determine the validity of your mining claim or site under subpart E of part 4 of this title. However, you may take samples and gather other evidence to confirm or corroborate mineral exposures that were physically disclosed on the claim before the date the wilderness area was withdrawn.

(c) If the Department of the Interior issues a final administrative decision declaring your claim or site null and void, you must cease all operations and complete all reclamation required under subpart 3809 of this chapter and § 6304.11(d) of this part.

## Other Uses Specifically Addressed by the Wilderness Act

### § 6304.20 Other uses addressed in special provisions of the Wilderness Act.

### § 6304.21 What special provisions cover aircraft and motorboat use?

(a) Subject to such restrictions as BLM determines necessary to protect wilderness values, we may authorize you to land aircraft and use motorboats at places within any wilderness area if these uses were established and active at the time Congress designated the area as wilderness.

(b) BLM may also authorize you to maintain, utilizing non-motorized means, aircraft landing strips, heliports or helispots that existed and were in active use when Congress designated the area as wilderness.

### § 6304.22 What special provisions apply to control of fire, insects, and diseases?

BLM may prescribe measures to control fire, noxious weeds, non-native invasive plants, insects, and diseases. BLM may require restoration concurrent with or as soon as practicable upon completion of such measures.

### § 6304.23 What special provisions apply to mineral leasing and material sales?

(a) After Congress designates any area of public lands as wilderness, BLM will not issue mineral or geothermal leases, licenses, or permits under the mineral or geothermal leasing laws, or sales contracts or free use permits under the Materials Act (30 U.S.C. 601 *et seq.*)

(b) You may continue to hold and operate mineral or geothermal leases, licenses, contracts, or permits under their original terms and conditions after Congress designates the affected BLM lands as wilderness.

### § 6304.24 What special provisions apply to water and power resources?

If the President specifically authorizes you under 16 U.S.C. 1133(d)(4)(1), BLM will permit you to prospect for water resources and establish new reservoirs, water-conservation works, power projects, transmission lines, and other facilities needed in the public interest, and to maintain such facilities.

### § 6304.25 What special provisions apply to livestock grazing?

(a) If you hold a BLM grazing permit or grazing lease for land within a wilderness area, you may continue to graze your livestock provided that you or your predecessors began such use under a permit or lease before Congress established the wilderness area.

(b) Your grazing activities within wilderness areas, including the construction, use, and maintenance of livestock management improvements, must comply with the livestock grazing regulations in part 4100 of this chapter.

(c) If the management plan for the area allows, you may maintain or reconstruct grazing support facilities that existed before designation of the wilderness area. BLM will not authorize new support facilities for the purpose of increasing your number of livestock. The construction of new livestock management facilities must be for the purposes of protection and improved management of wilderness resources.

(d) BLM may authorize an increase in livestock numbers only if you demonstrate that the additional use will not have an adverse impact on wilderness values.

## Subpart 6305—Access to State and Private Lands Or Valid Occupancies Within Wilderness Areas

### Access to Non-Federal Inholdings

#### § 6305.10 How will BLM allow access to State and private land within wilderness areas?

(a) If you own land completely surrounded by wilderness, BLM will only approve that combination of routes and modes of travel to your land that—

(1) BLM finds existed on the date Congress designated the area surrounding the inholding as wilderness, and

(2) BLM determines will serve the reasonable purposes for which the non-Federal lands are held or used and cause the least impact on wilderness character.

(b) If you own land completely surrounded by wilderness, and no routes or modes of travel to your land existed on the date Congress designated the area surrounding the inholding as wilderness, BLM will only approve that combination of routes and non-motorized modes of travel to non-Federal inholdings that BLM determines will serve the reasonable purposes for which the non-Federal lands are held or used and cause the least impact on wilderness character.

(c) If BLM approves your access route under paragraph (a) or (b) of this section, we will authorize it under part 2920 of this chapter.

(d) BLM will not allow construction of new access routes to State and private inholdings in wilderness.

(e) BLM will not allow improvement of access routes to a condition more highly developed than that which existed on the date Congress designated the area as wilderness, except such improvements BLM determines are necessary to protect wilderness resources from degradation.

(f) If you own land completely surrounded by wilderness and you have a valid existing right of access which is greater than the access described in paragraph (a) or (b) of this section, BLM may manage such access to protect wilderness resources while ensuring your reasonable use and enjoyment of the inholding.

#### § 6305.11 What alternatives to granting access will BLM consider in cases of State and private inholdings?

To reduce or eliminate the need to use wilderness areas for access to State and private land, BLM may—

(a) Accept donation of the inholding, or

(b) Acquire the inholding from the owner by an exchange for federally owned land in the same State of approximately equal value or, if the owner concurs, by purchase.

### Access to Other Valid Occupancies

#### § 6305.20 How will BLM allow access to valid mining claims or other valid occupancies within wilderness areas?

If you hold a valid mining claim or other valid occupancy wholly within a wilderness area, BLM will allow you access by means that are consistent with the preservation of the area as wilderness and that have been or are being customarily enjoyed with respect to other mining claims or similar occupancies surrounded by wilderness.

(a) BLM approves plans of operation under subpart 3809 of this chapter. The plan of operation will prescribe the routes of travel that you may use for access to claims or sites surrounded by wilderness. These plans will also identify the mode of travel, and other conditions reasonably necessary to preserve the wilderness area.

(b) BLM issues written authorizations under part 2920 of this chapter. Your authorization will prescribe the routes of travel that you may use for access to occupancies surrounded by wilderness. The authorizations will also identify the mode of travel and other conditions reasonably necessary to minimize adverse impacts on the natural resource values of the wilderness area.

### Access Procedures for Valid Occupancies

#### § 6305.30 What are the steps BLM must take in issuing an access authorization to valid occupancies?

(a) Before issuing an access authorization to mining claims or other valid occupancies wholly surrounded by wilderness, BLM will make certain that:

(1) You have demonstrated a lack of any existing access rights or alternate routes of access available by deed or under applicable State or common law and that access by non-federally owned routes is not reasonably obtainable;

(2) Your combination of routes and modes of travel, including non-motorized modes, will cause the least impact on the wilderness but, at the same time, will permit the reasonable use of the non-Federal land, valid mining claim, or other valid occupancy; and

(3) The location, construction, maintenance, and use of the access route that BLM approves will be as consistent as possible with the management of the wilderness area.

(b) After issuing an access authorization, BLM will make certain that you situate and build the route that BLM approves to minimize adverse impacts on the natural resource values of the wilderness area.

## Subchapter H—Recreation Programs

## PART 8560 [Removed]

2. Group 8500, part 8560, and subpart 8560 are removed.

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Part IV

# Department of Education

## Bilingual Education: Program Development and Implementation Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.288S]**

## Bilingual Education: Program Development and Implementation Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2001

**Note to applicants:** This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

*Purpose of Program:* The purpose of this program is to provide grants to develop and implement new comprehensive, coherent, and successful bilingual education or special alternative instructional programs for limited English proficient (LEP) students, including programs of early childhood education, kindergarten through twelfth grade education, gifted and talented education, and vocational and applied technology education.

*Eligible Applicants:* (1) One or more local educational agencies (LEAs); (2) one or more LEAs in collaboration with an institution of higher education (IHE), community-based organization (CBO), or a State educational agency (SEA); or (3) a CBO or an IHE that has an application approved by the LEA to develop and implement early childhood education or family education programs or to conduct an instructional program that supplements the educational services provided by an LEA.

*Deadline for Transmittal of Applications:* January 26, 2001.

*Deadline for Intergovernmental Review:* March 26, 2001.

*Available Funds:* $7.3 million.

*Estimated Range of Awards:* $100,000–$175,000.

*Estimated Average Size of Awards:* $150,000.

*Estimated Number of Awards:* 50.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* 36 months.

*Applicable Regulations:* (a) The Education Department General Administrative yRegulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98,99; and (b) 34 CFR Part 299.

### Description of Program

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7112 and 7116 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7422 and 7426)).

The grants awarded under this section are to be used to improve the education of limited English proficient students and their families. Specifically, grantees are required to serve limited English proficient students by: (a) Developing and implementing comprehensive preschool, elementary, or secondary bilingual education or special alternative instructional programs that are coordinated with other relevant programs and services; and (b) providing in-service training to classroom teachers, administrators, and other school or community-based organizational personnel. Grantees may also implement family education programs, improve the instructional program, compensate personnel, and provide tutorials and academic or career counseling to limited English proficient students.

### Priorities

*Competitive Priority:* The Secretary under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b) gives preference to applications that meet the following competitive priority. The Secretary awards 5 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zones or Community's comprehensive community revitalization strategies.

A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

*Invitational Priorities:* The Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

*Invitational Priority 1—Reading*

Projects that focus on assisting limited English proficient students to read independently and well by the end of third grade.

*Invitational Priority 2—Mathematics*

Projects that focus on assisting limited English proficient students to master challenging mathematics, including the foundations of algebra and geometry, by the end of eighth grade.

*Invitational Priority 3—Preparation for Postsecondary Education*

Projects that focus on motivating and academically preparing limited English proficient students for successful participation in college and other postsecondary education.

*Invitational Priority 4—Safe and Drug-Free Schools*

Projects that contribute to the creation and maintenance of a safe and drug-free learning environment for limited English proficient students by being made an integral part of a comprehensive school safety plan.

Information on developing and implementing a comprehensive school safety plan is found in the 1998 Annual Report on School Safety prepared by the U.S. Departments of Education and Justice.

### Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.210 and sections 7116 and 7123 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b)(1) *Need for the project.* (15 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the following factors:

(i) The number of children and youth of limited English proficiency in the school or school district to be served, and

(ii) The characteristics of those children and youth, such as—

(A) Language spoken;

(B) Dropout rates;

(C) Proficiency in English and the native language;

(D) Academic standing in relation to the English proficient peers of those children and youth; and

(E) If applicable, the recency of immigration.

(Authority: 20 U.S.C. 7426(g)(1)(A))

(2) *Quality of the project design.* (25 points) The Secretary considers the quality of the design of the proposed project.

(i) In determining the quality of the design of the proposed project, the

Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(B) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(C) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(D) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(E) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(F) The extent to which the proposed project encourages parental involvement.

(Authority: 34 CFR 75.210(c)(2) (i), (ii), (xii), (xvi), (xviii), and (xix)).

(3) *Quality of project services.* (15 points) The Secretary considers the quality of the services to be provided by the proposed project.

(i) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(ii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(C) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(Authority: 34 CFR 75.210 (d), (1), (2), (3), (i), (v) and (vii)).

(4) *Proficiency in English and another language.* (3 points) The Secretary reviews each application to determine the extent to which the proposed project will provide for the development of bilingual proficiency both in English and another language for all participating students.

(Authority: 20 U.S.C. 7426(i)(1)).

(5) *Quality of project personnel.* (7 points) The Secretary considers the quality of the personnel who will carry out the proposed project.

(i) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(ii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(Authority: 34 CFR 75.210(e)(1)–(3)(i) and (ii)).

(6) *Adequacy of resources.* (7 points) The Secretary considers the adequacy of resources for the proposed project.

(i) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The extent to which the budget is adequate to support the proposed project.

(B) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(C) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(D) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(Authority: 34 CFR 75.210(f)(1),(2),(iv),(v) and (vi)).

(7) *Quality of the management plan.* (13 points) The Secretary considers the quality of the management plan for the proposed project.

(i) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(A) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(B) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(C) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(Authority: 34 CFR 75.210(g)(1),(2)(i),(iv) and (v)).

(8) *Quality of project evaluation plan.* (15 points) The Secretary reviews each application to determine how well the proposed project's evaluation will meet the following requirements:

(i) Student evaluation and assessment procedures must be valid, reliable, and fair for limited English proficient students.

(ii) The evaluation must include—

(A) How students are achieving the State student performance standards, if any, including data comparing children and youth of limited English proficiency with non-limited English proficient children and youth with regard to school retention, academic achievement, and gains in English (and, if applicable, native language) proficiency;

(B) Program implementation indicators that provide information for informing and improving program management and effectiveness, including data on appropriateness of curriculum in relationship to grade and course requirements, appropriateness of program management, appropriateness of the program's staff professional development, and appropriateness of the language of instruction; and

(C) Program context indicators that describe the relationship of the activities funded under the grant to the overall school program and other Federal, State, or local programs serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(h)(3) and 7433(c)(1)-(3))

**Intergovernmental Review of Federal Programs**

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each state under the Executive order. If you want to know the name and address of any SPOC, see the list published in the **Federal Register** on April 29, 1999 (64 FR 22963); or you may view the latest SPOC list on the OMB Web site at the following address: *http://www.whitehouse.gov/omb/grants.*

In States that have not established a process or chosen a program for review, State, area-wide, regional and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, areawide, regional, and local entitles must be mailed or hand-delivered by the date indicated in this application notice to the following address: The Secretary, E.O. 12372—CFDA#84.288S, U.S. Department of Education, room 6213, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

## Instructions for Transmittal of Applications

**Note:** Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

*Pilot Project for Electronic Submission of Applications*

The U.S. Department of Education is expanding its pilot project of electronic submission of applications to include certain formula grant programs, as well as additional discretionary grant competitions. The Program Development and Implementation Grants Program—CFDA #84.288S is one of the programs included in the pilot project. If you are an applicant under the Program Development and Implementation Grants Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Fax a signed copy of the Application for Federal Assistance (ED 424) after following these steps:

1. Print ED 424 from the e-APPLICATION system.
2. Make sure that the institution's Authorizing Representative signs this form.
3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
4. Place the PR/Award number in the upper right hand corner of ED 424.
5. Fax ED 424 to the Application Control Center within three working days of submitting your electronic application. We will indicate a fax number in e-APPLICATION at the time of your submission.

- We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Program Development and Implementation Grants Programs at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (see Parity Guidelines between Paper and Electronic Applications) elsewhere in this notice.

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(A) If You Send Your Application by Mail

You must mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.288S, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

(B) If You Deliver Your Application by Hand

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.288S, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

(C) If You Submit Your Application Electronically

You must submit your grant application through the Internet using the software provided on the e-Grants Web site (http://e-grants.ed.gov) by 4:30 p.m. (Washington, DC time) on the deadline date.

The regular hours of operation of the e-Grants Web site are 6:00 a.m. until 12:00 midnight (Washington, DC time) Monday–Friday and 6:00 a.m. until 7:00 p.m. Saturdays. The system is unavailable on the second Saturday of every month, Sundays, and Federal holidays. Please note that on Wednesdays the Web site is closed for maintenance at 7:00 p.m. (Washington, DC time).

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) You must indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Education Assistance (ED Form 424; revised November 12, 1999) CFDA #84.288S as the competition under which you are submitting your application.

(4) If you submit your application through the Internet via the e-Grants Web site, you will receive an automatic acknowledgment when we receive your application.

## Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a checklist for applicants, various assurances, certifications, and required documentation:

a. Instructions for Application Narrative.
b. Additional Guidance.
c. Estimated Public Reporting Burden.
d. Notice to All Applicants (OMB No. 1801–0004).
e. Checklist for Applicants.
f. Application for Federal Education Assistance (ED 424) and instructions.
g. Budget Information—Non-Construction Programs (ED 524) and instructions.
h. Group Application Certification.
i. Student Data.
j. Project Documentation.
k. Assurances—Non-Construction Programs (SF 424B) and instructions.
l. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.
m. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014) and instructions.

**Note:** ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

n. Disclosure of Lobbying Activities (SF LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996. Notice may be accessed through the following Internet address: http://ofco.ed.gov/fedreg.htm.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as ''original'' or ''copy.'' No grant may be awarded unless a completed application has been received.

**FOR FURTHER INFORMATION CONTACT:** James (Jim) Lockhart, Telephone (202) 205–5426; Ki Lee, Telephone: 202–205–8730; or Ursula Lord, Telephone: 202–205–5709. Written inquiries may be addressed to the above at U.S. Department of Education, Office of Bilingual Education and Minority Languages Affairs, 400 Maryland Avenue, SW., Washington, DC 20202. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternate format (*e.g.*, Braille, large print, audio tape, or computer diskette) on request to one of the contact persons listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

*Electronic Access to This Document*

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: *http://ocfo.ed.gov/fedreg.htm; http://www.ed.gov/news.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–800–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on the GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

**Program Authority:** 20 U.S.C. 7422.

Dated: December 8, 2000.

**Art Love,**

*Acting Director, Office of Bilingual Education and Minority Languages Affairs.*

## Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0538 (Expiration Date: 12/31/2001). The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5622, Switzer Building, Washington, DC 20202–6510.

## Application Instructions

*Parity Guidelines Between Paper and Electronic Applications*

The Department of Education is expanding the pilot project, which began in FY 2000, that allows applicants to use an Internet-based electronic system for submitting applications. This competition is among those that have an electronic submission option available to all applicants. The system, called e-APPLICATION, formerly e-GAPS (Electronic Grant Application Package System), allows an applicant to submit a grant application to us electronically, using a current version of the applicant's Internet browser. To see e-

APPLICATION visit the following address: *http://e-grants.ed.gov.*

In an effort to ensure parity and a similar look between applications transmitted electronically and applications submitted in conventional paper form, e-APPLICATION has an impact on all applicants under this competition.

Users of e-APPLICATION, a data driven system, will be entering data on-line while completing their applications. This will be more interactive than just e-mailing a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will go into a database and ultimately will be accessible in electronic form to our reviewers.

This pilot project is another step in the Department's transition to an electronic grant award process. In addition to e-APPLICATION, the Department is conducting a limited pilot of electronic peer review (e-READER) and electronic annual performance reporting (e-REPORTS).

To help ensure parity and a similar look between electronic and paper copies of grant applications, we are asking each applicant that submits a paper application to adhere to the following guidelines:

- Submit your application on 8½″ by 11″ paper.
- Leave a 1-inch margin on all sides.
- Use consistent font throughout your document. You may also use boldface type, underlining, and italics. However, please do not use colored text.
- Please use black and white, also, for illustrations, including charts, tables, graphs and pictures.
- For the narrative component, your application should consist of the number and text of each selection criterion followed by the narrative. The text of the selection criterion, if included, does not count against any page limitation.
- Place a page number at the bottom right of each page beginning with 1; and number your pages consecutively throughout your document.

*Mandatory Page Limit for the Application Narrative*

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating your application. You must limit the narrative to the equivalent of no more than 35 pages, using the following standards:

(1) A page is 8.5″ × 11″, on one side only with 1″ margins at the top, bottom, and both sides.

(2) Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

Use a font that is either 12-point or larger or no smaller than 10 pitch (character per inch).

The page limit does not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; the text of the selection criteria; or the one-page abstract and table of contents described below. The page limit applies only to item 14 in the Checklist for Applicants provided below.

We will reject your application if—

You apply these standards and exceed the page limit; or

You apply other standards and exceed the equivalent of the page limit.

*Abstract*

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

*Selection Criteria*

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

*Empowerment Zone/Enterprise Community Priority*

Applicants that wish to be considered under the competitive priority for Empowerment Zones and Enterprise Communities, as specified in a previous section of this notice, should identify in Section D of the Project Documentation Form the applicable Empowerment Zone or Enterprise Community. The application narrative should describe the extent to which the proposed project will contribute to systemic educational reform in the particular Empowerment Zone or Enterprise Community and be an integral part of the Zones or Communities comprehensive revitalization strategies. A list of areas that have been designated as Empowerment Zones and Enterprise Communities is provided at the end of this notice.

**Additional Guidance**

*Table of Contents*

The application should include a table of contents listing the various parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

*Budget*

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

*Final Application Preparation*

Use the Checklist for Applicants to verify that your application is complete. Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

*Submission of Application to State Educational Agency*

Section 7116(a)(2) of the authorizing statute (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7426(a)(2)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package. Applicants that do not submit a copy of their application to their state educational agency in accordance with these statutory and regulatory requirements will not be considered for funding.

**Checklist for Applicants**

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Education Assistance Form (ED 424).
2. Group Application Certification Form (if applicable).
3. Budget Information Form (ED 524).
4. Itemization of costs for each budget year.
5. Student Data Form.
6. Project Documentation Form, including:

Section A—Copy of transmittal letter to SEA requesting SEA to comment on the application;

Section B—Documentation of consultation with nonprofit private school officials;

Section C—Appropriate box checked;

Section D—Empowerment Zone or Enterprise Community identified (if applicable).

7. Assurances—Non-Construction Programs Form (SF 424B).
8. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).
9. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).
10. Disclosure of Lobbying Activities Form (SF LLL).
11. Information that addresses section 427 of the General Education Provisions Act. (See the form below entitled *Notice to All Applicants*.)
12. One-page abstract.
13. Table of Contents.
14. Application narrative, not to exceed 35 pages.
15. One original and two copies of the application for transmittal to the Education Department's Application Control Center.

BILLING CODE 4000–01–U

## STUDENT DATA

Name of Local Educational Agency

NOTE: This section must be completed by local educational agencies applying under the following program:

- Program Development and Implementation Program

| | |
|---|---|
| 1. Total number of students in the school district | |
| 2. Total number of students in the district enrolled in a foreign language program | |

3. Foreign languages taught in the school district

| Elementary | Secondary |
|---|---|
| | |
| | |
| | |
| | |
| | |

| 4. Name of project school | Language(s) to be taught | Grade(s) to be served | Number of students to be served |
|---|---|---|---|
| | | | |
| | | | |
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| | | | |
| | | | |

## GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant.

(34 CFR 75.128(b)–(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

| Authorized Representative | | | | | Name of Institution/ Organization |
|---|---|---|---|---|---|
| Typed Name | Title | Signature | Date Signed | Telephone Number (including Area Code) | |
| | | | | | |
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# Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

## Applicant Information

1. Name and Address
Legal Name:
Address:
City State County ZIP Code + 4

Organizational Unit

2. Applicant's D-U-N-S Number
3. Applicant's T-I-N -
4. Catalog of Federal Domestic Assistance #: 8 4 ➡ Title:
5. Project Director:
Address:
City State ZIP Code + 4
Tel. #: ( ) - Fax #: ( ) -
E-Mail Address:

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
*(If "Yes," attach an explanation.)*

7. Type of Applicant *(Enter appropriate letter in the box.)* ☐

| | |
|---|---|
| A State | H Independent School District |
| B County | I Public College or University |
| C Municipal | J Private, Non-Profit College or University |
| D Township | K Indian Tribe |
| E Interstate | L Individual |
| F Intermunicipal | M Private, Profit-Making Organization |
| G Special District | N Other *(Specify)*: |

8. Novice Applicant ☐ Yes ☐ No

## Application Information

9. Type of Submission:

| *—PreApplication* | *—Application* |
|---|---|
| ☐ Construction | ☐ Construction |
| ☐ Non-Construction | ☐ Non-Construction |

10. Is application subject to review by Executive Order 12372 process?
☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/___
☐ No *(If "No," check appropriate box below.)*
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

11. Proposed Project Dates: Start Date: ___/___/___ End Date: ___/___/___

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
a. If "Yes," Exemption(s) #: OR b. Assurance of Compliance #:
c. IRB approval date: ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

## Estimated Funding

| | | |
|---|---|---|
| 14a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

## Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative
b. Title
c. Tel. #: ( ) - Fax #: ( ) -
d. E-Mail Address:
e. Signature of Authorized Representative Date: ___/___/___

REV. 11/12/99 ED 424

## Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructionsin **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    **If the applicant organization has an approved Multiple Project Assurance of Compliance** on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

### Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

# PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

## I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

## II. Information on Research Activities Involving Human Subjects

### A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

**—Is it a research activity?**

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

**—Is it a human subject?**

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

**B. Exemptions.**

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

***Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.***

# U.S. DEPARTMENT OF EDUCATION

## BUDGET INFORMATION

## NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

### SECTION A - BUDGET SUMMARY
### U.S. DEPARTMENT OF EDUCATION FUNDS

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

ED Form No. 524

| Name of Institution/Organization | Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form. |
|---|---|

**SECTION B - BUDGET SUMMARY**
**NON-FEDERAL FUNDS**

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

**SECTION C - OTHER BUDGET INFORMATION** (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

# INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

## ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

Standard Form 424B (Rev. 7-97) Back

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

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As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND / OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

## DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

| 1. Type of Federal Action: | 2. Status of Federal Action: | 3. Report Type: |
|---|---|---|
| ☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | ☐ a. bid/offer/application<br>b. initial award<br>c. post-award | ☐ a. initial filing<br>b. material change<br>**For Material Change Only:**<br>year _____ quarter _____<br>date of last report _____ |

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: |
|---|---|
| ☐ Prime ☐ Subawardee<br>Tier _____, *if known*:<br><br>**Congressional District**, *if known*: | <br><br><br>**Congressional District**, *if known*: |
| **6. Federal Department/Agency:** | **7. Federal Program Name/Description:**<br><br>CFDA Number, *if applicable*: _____ |
| **8. Federal Action Number**, *if known*: | **9. Award Amount**, *if known*:<br>$ |
| **10. a. Name and Address of Lobbying Registrant** (*if individual, last name, first name, MI*): | **b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*): |
| **11.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure. | Signature: _____<br>Print Name: _____<br>Title: _____<br>Telephone No.: _____ Date: _____ |
| **Federal Use Only:** | Authorized for Local Reproduction<br>Standard Form LLL (Rev. 7-97) |

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

OMB Control No. 1801-0004 (Exp. 8/31/2001)

## NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

### To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

### What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

### What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

### Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

## EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES
(as of January 13, 1999)

EMPOWERMENT ZONES

**California:** Los Angeles, Oakland, Santa Ana, Riverside County*
**Connecticut:** New Haven+
**Florida:** Miami+
**Georgia:** Atlanta, Cordele*+
**Illinois:** Chicago, East St. Louis+, Ullin*
**Indiana:** Gary, East Chicago
**Kentucky:** Kentucky Highlands* (Clinton, Jackson, and Wayne Counties)
**Maryland:** Baltimore
**Massachusetts:** Boston+
**Michigan:** Detroit
**Minnesota:** Minneapolis+
**Mississippi:** Mid-Delta* (Bolivar, Holmes, Humphreys, LeFlore, Sunflower, Washington Counties)
**Missouri/Kansas:** Kansas City, Kansas City
**Missouri:** St. Louis+
**New Jersey:** Cumberland County
**New York:** Harlem, Bronx
**North Dakota:** Lake Agassiz*
**Ohio:** Cleveland, Cincinnati, Columbus+
**Ohio/West Virginia:** Ironton/Huntington+
**Pennsylvania/New Jersey:** Philadephia/ Camden
**South Carolina:** Columbia/Sumter
**South Dakota:** Oglala Sioux Reservation in Pine Ridge*
**Tennessee:** Knoxville
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**Indiana:** Indianapolis, Austin*
**Iowa:** Des Moines
**Kansas:** Leoti*
**Kentucky:** Louisville, Bowling Green*
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**Maine:** Lewiston*
**Massachusetts:** Lowell, Springfield
**Michigan:** Five Cap*, Flint, Muskegon, Harrison*
**Minnesota:** Minneapolis, St. Paul
**Mississippi:** Jackson, North Delta Area* (Panola, Quitman, and Tallahatchie Counties)
**Missouri:** East Prairie*, St. Louis
**Montana:** Poplar*
**Nebraska:** Omaha
**Nevada:** Clarke County, Las Vegas
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**New Jersey:** Newark
**New Mexico:** Albuquerque, La Jicarita* (Mora, Rio Arriba, Taos Counties), Deming*
**New York:** Albany, Schenectady, Troy
**New York:** Buffalo, Rochester
**New York:** Newburgh, Kingston
**North Carolina:** Charlotte
**North Carolina:** Edgecombe, Halifax, Robeson, Wilson Counties*
**Ohio:** Akron, Columbus, Greater Portsmouth* (Scioto County)
**Oklahoma:** Choctaw, McCurtain Counties*, Oklahoma City, Ada*
**Oregon:** Josephine County*, Portland
**Pennsylvania:** Harrisburg, Lock Haven*, Pittsburgh, Uniontown*
**Rhode Island:** Providence
**South Carolina:** Charleston, Williamsburg, Florence County*, Hallandale*
**South Dakota:** Beadle, Spink Counties*
**Tennessee:** Fayette, Haywood Counties*, Memphis, Nashville, Rutledge*
**Tennessee/Kentucky:** Scott, McCreary Counties*
**Texas:** Dallas, El Paso, San Antonio, Waco, Uvalde*
**Utah:** Ogden
**Vermont:** Burlington
**Virginia:** Accomack (Northampton County)*, Norfolk
**Washington:** Lower Yakima County*, Seattle, Tacoma, Collie*
**West Virginia:** Charleston*, Huntington, McDowell County*, West Central Appalachia* (Braxton, Clay, Fayette, Nicholas, and Roane)
**Wisconsin:** Milwaukee, Keshena*

For further information consult the following Internet site: http://www.ezec.gov

* Denotes rural designee
+Also an Enterprise Community, Round One

[FR Doc. 00–31810 Filed 12–13–00; 8:45 am]
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Northeastern United States fisheries—

Atlantic herring; published 12-11-00

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Synthetic organic chemical manufacturing industry; published 12-14-00

Pesticide, food, and feed additive petitions:

Uniqema; published 12-14-00

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Federal Career Intern Program; staffing provisions; published 12-14-00

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Nonmailable written, printed, and graphic matter; published 12-5-00

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Consular services; fee schedule; published 12-14-00

Visas; immigrant documentation:

Immigrant visa fees; change in payment procedures; published 12-14-00

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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**H.J. Res. 128/P.L. 106–540**

Making further continuing appropriations for the fiscal year 2001, and for other purposes. (Dec. 8, 2000; 114 Stat. 2571)

**S. 2796/P.L. 106–541**

Water Resources Development Act of 2000 (Dec. 11, 2000; 114 Stat. 2572)

**Last List December 11, 2000**

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