List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace areas.

* * * * *

ASW TX D Dallas NAS Dallas, TX [Revised]

Dallas NAS Hensley Field, TX
(lat. 32°44′04″N., long. 96°58′03″W.)
Dallas, Redbird Airport, TX
(lat. 32°40′51″N., long. 96°52′06″W.)
Grand Prairie Municipal Airport, TX
(lat. 32°41′54″N., long. 97°02′48″W.)

That airspace extending upward from the surface to and including 2,000 feet MSL within a 4.2-mile radius of Dallas NAS Hensley Field and within a 4.2–mile radius of the Redbird Airport excluding that airspace east of a line from lat. 32°37′40″N., long. 96°55′21″W.; to lat. 32°39′35″N., long. 96°54′16″W.; to lat. 32°44′20″N., long. 96°53′59″W.; and that airspace upward from the surface to but not including 3,000 feet MSL within a 4.2-mile radius of the Grand Prairie Municipal Airport; excluding that airspace west of a line from lat. 32°45′52″N., long. 97°04′30″W.; to lat. 32°38′12″N., long. 97°05′10″W.; excluding that airspace within the Dallas-Fort Worth, TX, Class B airspace area. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on May 26, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–15310 Filed 6–8–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 113 and 151

RIN 1515–AB60

Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations relating to the commercial testing and gauging of imported merchandise, pursuant to Customs modernization provisions of the North American Free Trade Agreement Implementation Act. The proposed regulations revise the general procedures for the accreditation/reaccreditation of commercial laboratories, the approval/reapproval of commercial gaugers, and the suspension and revocation of such accreditations/approvals. Further, the proposed regulations establish a reimbursable fee schedule that Customs will charge such laboratories/gaugers to accredit/approve and periodically reaccredit/reapprove their commercial services, and make provision for the imposition of monetary penalties for failure to adhere to any of the provisions applicable to the examination, sampling, and testing of imported merchandise.

DATES: Comments must be received on or before August 10, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Suite 3000, 1300 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ira Reese, Laboratories & Scientific Services, (202) 927–1060.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the United States enacted the North American Free Trade Agreement Implementation Act (the Act), Pub. L. 103–182, 107 Stat. 2057. Title VI of the Act contains provisions pertaining to Customs Modernization (107 Stat. 2170); section 613 of Subtitle A to Title VI amends section 499 of the Tariff Act of 1930 (19 U.S.C. 1499), which provides Customs with the authority to conduct examinations and detain imported merchandise.

The Commercial Laboratory/Gauger Testing Provisions of Section 613

The provisions of section 613, among other things, codify Customs regulations and administrative guidelines concerning the use of commercial laboratories and gaugers by adding a new paragraph (b) to section 499 (19 U.S.C. 1499(b)). Regarding the accreditation/approval aspects of commercial laboratories/gaugers, the provisions of new paragraph (b) authorize Customs to:

(1) Set procedures for the accreditation of commercial laboratories in the United States, which may be used to perform tests relating to the admissibility, quantity, composition, or characteristics of imported merchandise, and the approval of commercial gaugers in the United States, which may be used to perform tests to establish the quantities of imported merchandise;

(2) Impose reasonable charges for such accreditations/approvals and periodic reaccreditations/reapprovals; and

(3) Establish the conditions regarding the suspension and revocation of such accreditations and approvals, which may include the imposition of monetary penalties not to exceed $100,000, in addition to penalties for any loss of revenue, in appropriate cases.

Regarding the testing/gauging aspects of commercial laboratories/gaugers, new paragraph (b) further provides that:

(1) In the absence of Customs testing, Customs shall accept analysis and quantity results from Customs-accredited laboratories and Customs-approved gaugers; however, this circumstance does not limit or otherwise preclude Customs or any other Federal agency from independently testing, analyzing, or quantifying any sample or merchandise;

(2) Testing procedures and methodologies will be made available upon request to any person, except when they are proprietary to the holder of a copyright or patent or developed by Customs for enforcement purposes; information resulting from any Customs testing will be made available to the importer of record and any agents thereof, except when the information meets the above specified exclusions from disclosure; and

(3) Laboratories/gaugers may seek judicial review of any final Customs decision that adversely affects their accreditation/approval, *i.e.*, denial, suspension, or revocation, or that

imposes a monetary penalty, by commencing an action within 60 days of such decision in the Court of International Trade.

New paragraph (b) also provides that commercial laboratories/gaugers already accredited/approved under current Customs regulations (*see*, 19 CFR 151.13) will not be required to reapply, but will be subject to reaccreditation/reapproval procedures and requirements. Until the time for reaccreditation/reapproval, those commercial laboratories/gaugers already accredited/approved may conduct only those tests they were originally accredited/approved to perform.

A. Proposed Amendments Concerning Accrediting Commercial Laboratories

Heretofore, Customs accredited commercial laboratories to perform selected tests on certain imported merchandise entered under chapters 27 (pertaining to mineral fuels, mineral oils and products of their distillation; bituminous substances; and mineral waxes) and 29 (pertaining to organic chemicals) of the Harmonized Tariff Schedule of the United States (HTSUS). The proposed amendments will expand the scope of accreditation to allow laboratories to perform the majority of tests vested in, or delegated to, the Customs Service; accreditation will extend to the performance of functions for determining the admissibility, quantity, composition, or characteristics of imported merchandise. Accordingly, more importers may now choose, at their expense, to have merchandise tested by Customs-accredited laboratories whose test results will be accepted by Customs, if the importer certifies that the sample tested was taken from the merchandise in the entry. This could result in the earlier availability of test results and should assist in the proper classification and entry of imported merchandise.

The proposed regulations do not preclude Customs from testing merchandise from a shipment which has already been tested by an accredited laboratory at the importer's expense. Occasionally, Customs may request sample splits (discussed below) retained by accredited laboratories to test. In cases where merchandise has been analyzed by both Customs and an accredited laboratory, Customs actions will be based upon the analysis provided by Customs, unless other action is indicated by the Director, Laboratories & Scientific Services (Director).

Merchandise samples tested by accredited laboratories will be from an importer's actual importations. Customs will release to the importer a representative sample of the merchandise, which will be taken and split into two essentially equal parts under Customs supervision at the port of entry. Each part will be of sufficient size so that complete testing for Customs purposes can be performed. The accredited laboratory will test one part and retain the second sample and any remnants from the testing, under proper storage conditions, for a period of one year from the date of the laboratory's final analysis report, unless other instructions are issued in writing by Customs. At the end of the one-year retention time period the accredited laboratory may dispose of the retained samples and sample remnants in a manner consistent with federal, state, and local statutes; perishable samples and sample remnants may be disposed of more expeditiously, if done in accordance with acceptable laboratory procedures.

Commercial laboratories will be accredited to perform accepted industry and Customs-specified tests on merchandise by commodity groups that parallel the chapters and subheadings contained in the HTSUS. These commodity groups are set forth in the proposed rule. Laboratories may be accredited to perform testing in more than one of these commodity groups. Further, because certain tests require expensive, highly-specialized equipment or narrow technical expertise, and because any given commodity group may involve many different chemical, physical, or mechanical tests, Customs will consider, upon application, granting accreditation for subgroups of tests within a commodity group. Customs may expand the list of commodity groups for accreditation.

While Customs recognizes that many laboratory-accreditation systems perform accreditation by fields of testing, such as chemical, biological, mechanical, etc., Customs is not proposing to adopt this method of accreditation. Instead, Customs proposes to perform accreditation by commodity groups and subgroups because of Customs technical requirements and because many commodities require testing in more than one traditional field. Accordingly, laboratories seeking Customs accreditation should become aware of Customs testing requirements and seek accreditation in the multiple fields required to test a particular commodity for Customs purposes. For example, a metals-testing laboratory, in order to obtain Customs accreditation, will need to have the ability to perform both chemical and mechanical testing.

Specific testing methods for accreditation will be designated in Commodity Group Brochures available from Customs to ensure that the importer-client is aware of the appropriate test procedures for Customs purposes. Some of these testing methods may reference general industry standards, published by such organizations as the American Society for Testing and Materials (ASTM) and the American Petroleum Institute (API). It is recognized that different test methods may produce different results, and it is imperative for this program that Customs laboratories and Customs-accredited laboratories utilize the same test methods.

To become a Customs-accredited laboratory, individuals or commercial organizations must submit a letter of application to Customs requesting accreditation to perform testing for specific commodity groups, *e.g.*, textiles or metals. The technical and operational requirements for accreditation include having an appropriate facility properly equipped to perform the designated tests and staff capable of performing these tests. In addition to reviewing an applicant's overall physical plant and management system, specific review and testing will be conducted for each commodity group in which accreditation is sought. Customs evaluation of an applicant's professional abilities will be in accordance with the general criteria contained in ASTM E548: *Standard Guide for General Criteria Used for Evaluating Laboratory Competence*. Customs determination of an applicant's overall competence, independence, and character will be based on the information contained in the application submitted by the Laboratory and by conducting on-site inspections and background investigations.

Applicants will be required to retain certain records so that Customs can evaluate and verify all Customs-related work performed. The normal record-retention period under the Customs Regulations is five years (see, present § 151.13(i)). However, should litigation arise within the five-year record-retention-period of time that involves certain laboratory records, those records may be required by Customs to be maintained for a longer period of time. Should laboratory operations cease, the laboratory shall inform Customs where the records will be located. Failure to properly safeguard or account for analysis records and laboratory testing/gauger measurement results will make the accredited laboratory/approved

gauger subject to liquidated damages in the amount of the bond (discussed below) or, in the event of bankruptcy, render the surety liable for such damages.

Further, applicants will be required to obtain a bond executed in accordance with part 113 of the Customs Regulations (19 CFR part 113). The limits of liability on the bond will be established by the Customs port nearest to the applicant's main office in consultation with the Director.

Following Customs evaluation of a laboratory's overall competence to become an accredited laboratory, Customs will notify the laboratory in writing of its approval/nonselection; in the case of nonselection, specific reasons will be given. Laboratories receiving an adverse accreditation determination, and wishing to appeal the decision must file an appeal within 30 days to the Director. Within 30 days of receipt of the appeal, the Director will make a determination and notify the laboratory in writing. If the Director reaffirms the nonselection, again citing specific reasons, the applicant may then choose to either submit a new application to the Director after waiting 90 days from the date of the Director's last decision; or commence an action in the Court of International Trade within 60 days after issuance of Customs decision or order.

Once accredited, laboratories may apply to expand their accreditation at any time. Extensions of accreditation may be requested to add a new site and/or to increase the number of accredited commodity groups or subgroups at a previously accredited site. The procedure for extensions of accreditation is essentially the same as that for accreditation; certain initial processing steps, *e.g.*, background investigations and review of educational credentials, however, may not need to be repeated. The reaccreditation fee will be adjusted accordingly. Customs-accredited laboratories must undergo reaccreditation every three years. Regarding adverse reaccreditation determinations and any suspension/revocation/penalty decisions (discussed below), the appeal procedures discussed above will apply.

Once accredited, a laboratory must maintain its accreditation credentials by maintaining its overall physical plant and management system, as well as by remaining proficient at performing approved methods of analysis. In particular, accredited laboratories will be required to perform periodic analyses of check samples and to submit the results to Customs. Check samples are samples which have been distributed by Customs to test proficiency in a certain area of accreditation. The results must demonstrate that the laboratory has the continuing ability to produce a work product that assists in the proper classification and entry of imported merchandise.

In addition to establishing the requirements and procedures for laboratories to receive and maintain accreditation, the proposed regulations make provision for the suspension or revocation of such accreditation, and the imposition of monetary penalties not to exceed $ 100,000 in addition to the recovery of any loss of revenue that may have occurred. Customs will seek to recover lost revenue from accredited laboratories in cases where the laboratory intentionally falsified the analysis in collusion with the importer. Customs may assess monetary penalties on an accredited laboratory for failure to adhere to any of the regulatory requirements imposed on accredited commercial laboratories. Otherwise, Customs will not assess penalties nor seek to recover lost revenue merely because of a good-faith difference of professional opinion. Via a separate **Federal Register** document, Customs will publish guidelines governing penalties and any mitigating factors it will consider in imposing such penalties.

B. Proposed Amendments Concerning Approving Commercial Gaugers

The regulatory amendments proposed separately provide for the approval of commercial gaugers and the acceptance of reports from Customs-approved commercial gaugers. The commercial gauger-approval amendments generally parallel those concerning laboratory accreditation. Approval may extend to the performance of the functions of gauging and measuring merchandise. Customs approval extends only to the performance of such functions as are vested in, or delegated to, Customs. The imported products for which gauging approval may be obtained remains the same as those currently listed in the regulations. But Customs may expand the list of commodity groups for approval.

C. Proposed Amendments Concerning Reimbursable Fees for Accreditation/Approval and Periodic Reaccreditation/Reapproval

At the time of promulgating the Customs Modernization provisions of the Act, Congress agreed that in order for Customs to expand the Customs laboratory/gauger program the cost of the program should be recaptured through the imposition of reasonable fees. A Customs task force was formed to study the kind of fee structure that would be necessary for Customs to recoup the costs associated with the application process, travel costs, conducting ongoing background investigations, and maintaining the program. The fee structure adopted would have to cover the costs associated with implementing the expanded program.

The regulatory amendments proposed provide for the imposition of reasonable, *i.e.*, reimbursable, charges associated with the work required by Customs to accredit/approve and periodically reaccredit/reapprove commercial laboratories/gaugers. These charges necessarily will be variable, dependent on specific travel costs and the scope of particular accreditation/approval applications, and are designed merely to reimburse Customs for the actual costs of establishing and regulating the laboratory/gauger program. Accordingly, the fee structure is based on recovering those expenses which are variable, directly associated with specific travel and the conduct of background investigations, and those expenses which are fixed, based on administrative estimates generally applicable to recovering the technical and clerical support costs associated with the program.

Variable Costs

The variable portion of the accreditation-reaccreditation/approval-reapproval fee schedules will be based on the actual costs incurred for travel and associated with the scope of the background investigation. These charges are estimated to be approximately $ 1,000 per visit and $ 1,700 per background investigation. Whenever possible, Customs will endeavor to bundle these variable costs so that where travel or investigations costs apply to more than one laboratory or gauger, the costs will be fairly apportioned between applicants.

In the event of a dispute concerning the amount of assessment for travel costs and per diem charges relating to a scheduled inspection visit, the laboratory/gauger concerned may file an appeal within 30 days of the assessment with the Director. The appeal letter must specify which charges are disputed and give reasons for the dispute, accompanied by supporting documentation where appropriate.

Fixed Costs

The fixed portion of the accreditation-reaccreditation/ approval-reapproval fee schedules is based on administrative guidelines which estimate program

administrative support costs that do not consider salary or related costs. The primary accreditation/approval fee is meant to defray the following costs:

(1) Preparation and distribution of methods manuals (for laboratories only) and policies;

(2) Development and distribution of application packages;

(3) Set up and storage of company and/or branch files;

(4a) For laboratories, check samples and blind sample programs (costs of collection, documentation, and mailing of samples; costs of obtaining and storing samples; and costs of excess sample disposal);

(4b) For gaugers, development and application of proficiency testing; and

(5) Office supplies used to administer the program, *i.e.*, copier costs, envelopes, etc.

Customs is authorized to charge 15% of program costs for administrative overhead. *See*, 19 CFR 24.21. Based on the above referenced administrative estimates of program-support costs, Customs has determined that the following initial fee schedules for accrediting/reaccrediting laboratories and approving/reapproving gaugers are reasonable:

For Laboratories:	
General Accreditation Fee	$ 750
Additional Commodities Fee	200
Laboratory Reaccreditation Fee	375
Commodity Reaccreditation Fee	150
For Gaugers:	
General Approval Fee	400
Reapproval Fee	200

Laboratories/gaugers will be required to submit to the Director, fifty percent of the applicable accreditation/ general approval fee amount with their initial application for accreditation/approval, to cover preliminary processing costs. This pre-payment is nonrefundable. Before a laboratory/gauger will be designated by Customs as an accredited/ approved facility or can have its existing accreditation/approval extended to cover additional commodity testing it must have paid the applicable variable charges assessed and the balance of the fixed fee associated with the action within 30 days of notification to Customs, and have its laboratory/gauger bond on file. Then the applicant will receive accreditation/approval documentation and a notice of accreditation/approval or extension of existing accreditation/approval will be published in the **Federal Register** and Customs Bulletin.

Three years from the date of the initial accreditation/ approval, Customs, Account Services Division, will bill the licensee for reaccreditation/reapproval. There will be a 30-day billing period. If payment is not received by Customs within the 30 day billing period, revocation procedures will be initiated against all accreditations/ approvals granted the licensee.

Following the first year of operation, these initial fee schedules may be revised to capture expenses not reimbursed to Customs. If the fee schedules are revised, they will be published in the **Federal Register** and the Customs Bulletin.

Already Accredited/Approved Laboratories/Gaugers

Laboratories accredited and gaugers approved under Customs regulations prior to December 8, 1993, will not be required to apply for initial accreditation/approval. Until the time for reaccreditation/reapproval, however, those commercial laboratories/gaugers already accredited/approved must, however, conduct their business in a manner consistent with the administrative portions of the amended regulations, and will be required to pay applicable reaccreditation/ reapproval fees in the third year following the date these proposed regulations become final.

Customs-accredited laboratories may make their accreditation known to potential customers, but must accurately represent the tests for the commodity group(s) for which accreditation has been obtained. Such laboratories will be limited to the use of terms that appear in the Notice of Accreditation they receive at the time they are accredited. Parallel provisions will apply to Customs-approved gaugers.

The regulations currently implementing the examination of merchandise provisions of 19 U.S.C. 1499 are found in part 151 of the Customs Regulations (19 CFR part 151); § 151.13 currently pertains to both commercial laboratories and gaugers. Other Customs regulatory provisions referencing part 151 are found in part 113 (19 CFR part 113). In this document Customs proposes to amend parts 113 and 151 of the Customs Regulations, as discussed below, to implement the Customs Modernization provisions pertaining to laboratory accreditations/ gauger approvals (19 U.S.C. 1499(b)), as discussed above.

In sum, it is proposed to revise two references in § 113.67 of the Customs Regulations (19 CFR 113.67) to carry the proper cross references for the commercial laboratory or gauger provisions that are redesignated as proposed in this document. In part 151, it is proposed to provide for commercial laboratories and gaugers in separate sections, so that each program can be more easily administered. Accordingly, § 151.12, currently reserved, will be amended to set forth the accreditation requirements and procedures applicable to commercial laboratories, and § 151.13 will be amended to set forth the approval requirements and procedures applicable to commercial gaugers. Section 151.14 will be revised to remove reference to the product characteristic table currently contained in § 151.13(a)(2), as these analysis methods will be contained in Commodity Group Brochures.

Discussion of Proposed Changes to Regulations

It is proposed to utilize § 151.12—currently reserved—to set forth the provisions concerning the accreditation of commercial laboratories. Section 151.12 will contain 11 paragraphs ((a) through (k)) in a new question and answer format designed to facilitate an understanding of how the new laboratory-accreditation program will operate.

Proposed New Section 151.12

Paragraph (a) will contain the definitions of three terms or phrases that will be used throughout the remaining paragraphs of § 151.12.

Paragraph (b) will pose the question ''What is a ''Customs-accredited laboratory''?'' and describes the eligibility requirements for commercial laboratories. The paragraph explains that those laboratories that can demonstrate the capability to perform approved methods of analysis used to determine the admissibility, quantity, composition, or characteristics for certain tariff commodity groups can be accredited by Customs to perform such tests for Customs purposes.

Paragraph (c) will pose the question ''What are the obligations of a Customs-accredited laboratory?'' and delineates the six requirements commercial laboratories must agree to before they can be accredited by Customs.

Paragraph (d) will pose the question ''What are the commodity groups for which accreditation may be sought?'' and contains the list of commodity groups for which accreditation is available without special permission from the Director. The list of commodity groups, although similar to the provisions currently at § 151.13(a)(2), is expanded from two HTSUS chapters to include more than 40 HTSUS chapters to reflect the scope of imported merchandise for which Customs is responsible for testing.

Paragraph (e) will pose the question ''What are the approved methods of

analysis?'' and provides that the approved methods of testing will be published in Customs Commodity Group Brochures. The brochures will specify the particular testing procedures required, unless written permission from the Director is given to use an alternate method. Procedures required by the Director may reference applicable general industry standards, published by such organizations as the American Society for Testing and Materials (ASTM) and the American Petroleum Institute (API).

Paragraph (f) will pose the question ''How would a commercial laboratory become a Customs-accredited laboratory?'' and explains the essential requirements that prospective commercial laboratories must respond to when applying for accreditation: (1) What the application should contain, (2) where an application should be sent, and (3) how the application will be reviewed. Further, this paragraph will describe the criteria by which Customs will appraise each applicant's overall physical plant and management system to ascertain the laboratory's ability to manage and control the acquisition of technical data associated with the accreditation sought and describe Customs determination of an applicant's competence.

Paragraph (g) will pose the question ''How will an applicant be notified concerning accreditation?'' and describes the procedures Customs will follow when notifying applicants concerning the disposition of their applicationor request for extension of accreditation. The paragraph also describes the grounds for nonselection, based on application, background investigation, or capability matters, and the appeal procedures applicants must follow to appeal adverse determinations concerning their application or request for extension of accreditation.

Paragraph (h) will pose the question ''What are the accreditation/reaccreditation fee requirements?'' and provides that any fixed fee changes will be published in the Customs Bulletin and the **Federal Register**; the fees for the first year are as discussed above.

Paragraph (i) will pose the question ''Can existing Customs-accredited laboratories continue to operate?'' and provides that while such laboratories, accredited prior to December 8, 1993, will retain that accreditation, they must, however, conduct their business in a manner consistent with the administrative portions of the new regulations. This paragraph also provides that these existing facilities will have their status reevaluated in the third year following the effective date of this regulation. At the time of reaccreditation, these laboratories must meet the requirements of the regulations and pay the applicable fees; a failure to meet these requirements will result in revocation or suspension of the accreditation.

Paragraph (j) will pose the question ''How will Customs-accredited laboratories operate?'' and describes (1) the testing of samples, (2) the acceptance of reports by Customs, (3) recordkeeping requirements, (4) limited representation of Customs accreditation, and (5) a prohibition against accredited laboratories subcontracting Customs-related analyses work. The testing of samples procedures provide that importers may have samples of their merchandise tested by Customs-accredited laboratories, and that the commercial laboratory designated to test the sample is required to test only one part of the sample that will be split into two parts under Customs supervision, reserving the second part for a period of one year. Further, these provisions provide that Customs and any other Federal agency reserve the right to independently challenge the results of such reports.

Lastly, paragraph (k) will pose the question ''How can a laboratory have its accreditation suspended or revoked or be required to pay a monetary penalty?'' and explains (1) how the laboratory's accreditation may be revoked or suspended or how the laboratory may be assessed a monetary penalty in lieu of, or in addition to, suspension or revocation of accreditation, (2) what are the grounds for suspension, revocation, or assessment of a monetary penalty, (3) the notice requirements Customs will follow, (4) the appeal rights of the laboratory, (5) publication requirements, and (6) penalty provisions. Regarding the appeal of a revocation, suspension, or penalty decision, these provisions parallel the appeal provisions regarding nonselection. Regarding the monetary penalty provisions, these can be in addition to or in lieu of an order regarding suspension or revocation of accreditation. No penalty may exceed $100,000.

Proposed Amended Section § 151.13

It is further proposed to amend the provisions of § 151.13, which currently contains provisions pertaining to both commercial gaugers and laboratories, to make its provisions exclusive to commercial gaugers. Section 151.13 will contain 9 paragraphs ((a) through (i)) in a similar question and answer format designed to facilitate how the new gauger-approval program will operate.

Paragraph (a) will pose the question ''What is a 'Customs-approved gauger'?'' and describes the eligibility requirements for commercial gaugers. The paragraph explains that those gaugers that can demonstrate the capability to perform the approved gauging and measurement procedures for certain tariff commodity groups listed in the section can be approved by Customs to perform such procedures for Customs purposes.

Paragraph (b) will pose the question ''What are the obligations of a Customs-approved gauger?'' and delineates the six requirements commercial gaugers must agree to before they can be approved by Customs.

Paragraph (c) will pose the question ''What are the approved gauging and measurement procedures?'' and provides that the approved gauging and measurement procedures will be published in Customs Commodity Group Brochures. The brochures will specify the particular measurements and procedures required, unless written permission from the Director is given to use an alternate method. Procedures required by the Director may reference applicable general industry standards, published by such organizations as the American Society for Testing and Materials (ASTM) and the American Petroleum Institute (API).

Paragraph (d) will pose the question ''How would a commercial gauger become a Customs-approved gauger?'' and explains the essential requirements that prospective commercial gaugers must meet when applying for approval. These provisions substantially mirror the requirements discussed above for proposed § 151.12(f).

Paragraph (e) will pose the question of ''How will an applicant be notified concerning approval?'' and describes the procedures Customs will follow when notifying applicants concerning the disposition of their application or request for extension of approval. The paragraph also describes the grounds for nonselection, based on application, background investigation, or capability matters, and the appeal procedures applicants must follow if their application or request is disapproved. These provisions substantially mirror the requirements discussed above for proposed § 151.12(g).

Paragraph (f) will pose the question ''What are the approval/reapproval fee requirements?'' and provides that any fixed fee changes will be published in the Customs Bulletin and the **Federal Register**. These provisions substantially mirror the requirements discussed above for proposed § 151.12(h).

Paragraph (g) will pose the question ''Can existing Customs-approved gaugers continue to operate?'' and provides that while such gaugers, approved prior to December 8, 1993, will retain that approval, they must, however, conduct their business in a manner consistent with the administrative portions of the new regulations. Other provisions in this paragraph applicable to gaugers substantially mirror the requirements discussed above for laboratories at proposed § 151.12(i).

Paragraph (h) will pose the question ''How will Customs-approved gaugers operate?'' and describes (1) the acceptance of reports by Customs, (2) recordkeeping requirements, (3) limited representation of Customs approval requirements, and (4) a prohibition against approved gaugers subcontracting Customs-related work. These provisions substantially mirror the requirements discussed above for proposed § 151.12(j).

Paragraph (i) will pose the question ''How can a gauger have its approval suspended or revoked or be required to pay a monetary penalty?'' and explains (1) how the gauger's approval may be revoked or suspended or how the gauger may be assessed a monetary penalty in lieu of, or in addition to, suspension or revocation of approval, (2) what are the grounds for suspension, revocation, or assessment of a monetary penalty, (3) the notice requirements Customs will follow, (4) the appeal rights of the gauger, (5) publication requirements, and (6) penalty provisions. These provisions substantially mirror the requirements discussed above for proposed § 151.12(k).

Other Regulatory Amendments Proposed

Section 151.14 will be revised to remove a reference to the table of product characteristics found at § 151.13(a)(2) because product characteristics will no longer be set forth in the regulations, but will be contained in specific Commodity Group Brochures.

In § 113.67, two references to current § 151.13 will be revised to correspond to the changes proposed to §§ 151.13 and 151.14.

Comments

Before adopting these proposed regulations as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Suite 3000, 1300 Pennsylvania Avenue, NW., Washington, DC.

The Regulatory Flexibility Act, and Executive Order 12866

Because the number of accredited laboratories and approved gaugers is expected to be small, and such accreditation and approval will confer a benefit on the importing public, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant adverse economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collection of information should be sent to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch at the address set forth previously. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the information collection burden on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operations, maintenance, and purchase of services to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in these proposed regulations are in §§ 151.12(e) and 151.13(c). The information requested is necessary so that Customs can determine whether those laboratories/gaugers seeking accreditation/approval to test/measure imported merchandise are competent to receive or maintain such credentials. The likely respondents are individuals and commercial organizations who either analyze merchandise or measure, gauge, or sample merchandise.

Estimated total annual reporting and/or recordkeeping burden: 50 hours.

Estimated average annual burden per respondent/ recordkeeper: 5 hours.

Estimated number of respondents and/or recordkeepers: 10.

Estimated annual frequency of responses: 1.

Part 178 of the Customs Regulations (19 CFR part 178), which lists the information collections contained in the regulations and control numbers assigned by OMB, would be amended accordingly if this proposal is adopted.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 113

Bonds, Customs duties and inspection, Exports, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 151

Customs duties and inspection, Examination, Fees assessment, Gaugers, Imports, Laboratories, Licensing, Penalties, Reporting and recordkeeping requirements, Sampling and testing.

Amendments to the Regulations

For the reasons stated above, it is proposed to amend parts 113 and 151 of the Customs Regulations (19 CFR parts 113 and 151) as set forth below:

PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

§ 113.67 [Amended]

2. In § 113.67, paragraph (a)(1)(ii) is amended by removing the words ''terms of the Commercial Gauger Agreement [see § 151.13(b)(9)] and by the''; and by removing the citations ''§§ 151.13 and 151.14'' and adding, in their place, the citation ''§ 151.13(b)''.

§ 113.67 [Amended]

3. In § 113.67, paragraph (b)(1)(ii) is amended by removing the words ''terms of the Commercial Laboratory Agreement [see § 151.13(b)(9)] and by the''; and by removing the citation ''§ 151.13'' and adding, in its place, the citation ''§ 151.12(c)''.

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The general authority citation for part 151 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 20 and 21, Harmonized Tariff Schedule of the United States (HTSUS)), 1624. Subpart A also issued under 19 U.S.C. 1499.

* * * * *

2. In subpart A, § 151.12 is added to read as follows:

§ 151.12 Accreditation of commercial laboratories.

This section sets forth the requirements for commercial laboratories to obtain accreditation by Customs for the testing of certain commodities, and explains the operation of such accredited laboratories. This section also provides for the imposition of accreditation and reaccreditation fees, sets forth grounds for the suspension and revocation of accreditation, and provides for the imposition of a monetary penalty for an accredited commercial laboratory that fails to adhere to the provisions of this section.

(a) *Definitions.* For purposes of this section, the following words and phrases have the meanings indicated:

Analysis record. An ''analysis record'' is a compilation of all documents which have been generated during the course of analysis of a particular sample which, under normal circumstances, culminates in the issuance of a laboratory report. An analysis record may include, both in paper and electronic-form, such documents as work sheets, notes, associated spectra (both spectra of the actual product and any standard spectra used for comparison), photographs and microphotographs, and the laboratory report.

Check samples. ''Check samples'' are samples which have been distributed by Customs to accredited laboratories to test their proficiency in a certain area of accreditation.

Commodity Group Brochure. A ''Commodity Group Brochure'' is a booklet which contains a listing of the laboratory methods and application procedures which commercial laboratories are required to have the capability to perform to qualify for Customs-accreditation in a particular commodity group. The brochures will specify the particular laboratory testing procedures required for particular commodity groups, unless written permission from the Director is given to use an alternate method. Procedures required by the Director may reference applicable general industry testing standards, published by such organizations as the American Society for Testing and Materials (ASTM) and the American Petroleum Institute (API). Commodity Group Brochures are available from the U.S. Customs Service, Attention: Director, Laboratories & Scientific Services, Washington, D.C. 20229.

Director. In §§ 151.12 and 151.13, references to the ''Director'' mean the Director, Laboratories & Scientific Services, located in Washington, DC.

(b) *What is a ''Customs-accredited laboratory''*? ''Commercial laboratories'' are individuals and commercial organizations that analyze merchandise, *i.e.*, determine its composition and/or characteristics, through laboratory analysis. A ''Customs-accredited laboratory'' is a commercial laboratory, within the United States, that has demonstrated, to the satisfaction of the Director, pursuant to this section, the capability to perform analysis of certain commodities to determine elements relating to the admissibility, quantity, composition, or characteristics of imported merchandise. Customs accreditation extends only to the performance of such functions as are vested in, or delegated to, Customs.

(c) *What are the obligations of a Customs-accredited laboratory*? A commercial laboratory accredited by Customs agrees to the following conditions and requirements:

(1) To comply with the requirements of part 151, Customs Regulations (19 CFR part 151), and to conduct professional services in conformance with approved standards and procedures, including procedures which may be required by the Commissioner of Customs or the Director;

(2) To have no interest in or other connection with any business or other activity which might affect the unbiased performance of duties as a Customs-accredited laboratory. It is understood that this does not prohibit acceptance of the usual fees for professional services;

(3) To maintain the ability, *i.e.*, the instrumentation, equipment, qualified staff, facilities, etc., to perform the services for which the laboratory is accredited, and allow the Director to evaluate that ability on a periodic basis by such means as on-site inspections, demonstrations of analysis procedures, reviews of submitted records, and proficiency testing through check samples;

(4) To retain those laboratory records beyond the five-year record-retention period specified by Customs as necessary to address matters concerned in pending litigation, and, should laboratory operations or accreditation cease, to contact Customs immediately regarding the disposition of records retained;

(5) To promptly investigate any circumstance which might affect the accuracy of work performed as an accredited laboratory, to correct the situation immediately, and to notify both the port director and the Director of such matters, their consequences, and any corrective action taken or that needs to be taken; and

(6) To immediately notify both the port director and the Director of any attempt to impede, influence, or coerce laboratory personnel in the performance of their duties, or of any decision to terminate laboratory operations or accredited status. Further, within 5 days of any changes involving legal name, address, ownership, parent-subsidiary relationships, bond, other offices or sites, managerial or professional or executive staff, approved signatories, facilities, instruments, or equipment, etc., to notify the Director by certified mail.

(d) *What are the commodity groups for which accreditation may be sought?* (1) Commercial laboratories may apply for accreditation to perform tests for any of the commodity groups listed in paragraph (d)(2) of this section. Applicable test procedures are listed in Commodity Group Brochures. Application may be made for accreditation in more than one commodity group. At the discretion of the Director accreditation may be granted for subgroups of tests within a commodity group or for commodity groups not specifically enumerated. Once accredited, a Customs-accredited laboratory may apply at any time to expand its accreditation, to add new testing sites, or increase the number of commodity groups or subgroups accredited.

(2) The commodity groups for which accreditation may be sought without

special permission from the Director are:

(i) Dairy and Chocolate Products entered under Chapters 4, 18, and 21 of the Harmonized Tariff Schedule of the United States (HTSUS);

(ii) Food and Food Products entered under Chapters 7–12, 15, 16, and 19–21, HTSUS;

(iii) Botanical Identification—materials and products entered under Chapter 14 and Section IX, HTSUS;

(iv) Sugar, Sugar Syrups, and Confectionery products entered under Chapter 17, HTSUS;

(v) Spirituous Beverages entered under Chapter 22, HTSUS;

(vi) Inorganic Materials, including Inorganic Compounds and Ores, entered under Chapters 26, 28, 31, and 36–38, HTSUS;

(vii) Petroleum and Petroleum Products entered under Chapters 27 and 29, HTSUS;

(viii) Organic Materials, including Intermediates and Pharmaceuticals, entered under Chapters 29, 30, 34, 35, and 38, HTSUS;

(ix) Building Stone, Ceramics, Glassware, and Other Mineral Substances entered under Chapter 25 and Section XIII, HTSUS;

(x) Rubber, Plastics, Polymers, Pigments and Paints entered under Chapter 32 and Section VII, HTSUS;

(xi) Essential Oils and Perfumes entered under Chapter 33, HTSUS;

(xii) Leather and Articles of Leather entered under Chapters 41 and 42, HTSUS;

(xiii) Wood and Articles of Wood entered under Chapters 44 and 46, HTSUS;

(xiv) Paper and Paper Products entered under Section X, HTSUS;

(xv) Textiles and Related Products, including footwear and hats, entered under Sections XI and XII, HTSUS; and,

(xvi) Metals and Alloys entered under Section XV, HTSUS.

(e) *What are the approved methods of analysis?* Customs-accredited laboratories shall follow the general or specific testing methods set forth in Commodity Group Brochures in the testing of designated commodities, unless the Director gives written permission to use an alternate method. Alternative methods will be considered and approved on a case-by-case basis.

(f) *How would a commercial laboratory become a Customs-accredited laboratory?*—(1) *What should an application contain?* An application for Customs-accreditation shall contain the following information:

(i) The applicant's legal name and the addresses of its principal place of business and any other facility out of which it will work;

(ii) Detailed statements of ownership and any partnerships, parent-subsidiary relationships, or affiliations with any other domestic or foreign organizations, including, but not limited to, importers, other commercial laboratories, producers, refiners, Customs brokers, and carriers;

(iii) A statement of financial condition;

(iv) If a corporation, a copy of the articles of incorporation and the names of all officers and directors;

(v) The names, titles, and qualifications of each person who will be authorized to sign or approve analysis reports on behalf of the commercial laboratory;

(vi) A complete description of the applicant's facilities, instruments, and equipment;

(vii) Express agreement that if notified by Customs of pending accreditation to execute a bond in accordance with part 113, Customs Regulations (19 CFR part 113), and submit it to the Customs port nearest to the applicant's main office. (The limits of liability on the bond will be established by the Customs port in consultation with the Director. In order to retain Customs accreditation, the laboratory must maintain an adequate bond, as determined by the port director);

(viii) A listing of each commodity group for which accreditation is being sought and, if procedures are being submitted for approval which are not specifically provided for in a Commodity Group Brochure, a listing of such procedures;

(ix) A statement for each commodity group for which accreditation is being sought, providing:

(A) That all tests on all commodities in a named group can be performed, or

(B) That all tests on the commodities in a group except those indicated can be performed; or,

(C) That the listed procedures which are not specifically provided for in the Commodity Group Brochure are being submitted for approval for use;

(x) Express agreement to be bound by the obligations contained in paragraph (c) of this section; and,

(xi) A nonrefundable pre-payment equal to 50 percent of the fixed accreditation fee, as published in the **Federal Register** and Customs Bulletin, to cover preliminary processing costs. Further, the applicant agrees to pay Customs within 30 days of notification the associated charges assessed for accreditation, *i.e.*, those charges for actual travel and background investigation costs, and the balance of the fixed accreditation fee.

(2) *Where should an application be sent?* A commercial laboratory seeking accreditation or an extension of an existing accreditation shall send a letter of application to the U.S. Customs Service, Attention: Director, Laboratories & Scientific Services, Washington, D.C. 20229.

(3) *How will an application be reviewed?*

(i) *Physical plant and management system.* The facility of the applicant will be inspected to ensure that it is properly equipped to perform the necessary tests and that staff personnel are capable of performing required tests. Customs evaluation of an applicant's professional abilities will be in accordance with the general criteria contained in the American Society for Testing and Materials (ASTM) E548: *Standard Guide for General Criteria Used for Evaluating Laboratory Competence.* This review will ascertain the laboratory's ability to manage and control the acquisition of technical data. The review will be performed at the time of initial application and upon reaccreditation at three-year intervals.

(ii) *Ability to perform tests on specified commodity groups.* For each commodity group applied for, the applicant will undergo a separate review and testing. The specific accreditation will be based on the laboratory's ability to perform the tests required for that commodity group. This will include the qualifications of the technical personnel in this field and the instrument availability required by the test methods. Maintenance of accreditation will be on-going and will require the submission of test results on periodic check samples. The criteria for acceptance will be based on the laboratory's ability to produce a work product that assists in the proper classification and entry of imported merchandise.

(iii) *Determination of competence.* The Director shall determine the applicant's overall competence, independence, and character by conducting on-site inspections, which will include demonstrations by the applicant of analysis procedures; reviewing analysis records submitted; conducting proficiency testing through check samples; and conducting background investigations.

(iv) *Evaluation of technical and operational requirements.* Customs shall determine whether the following technical and operational requirements are met:

(A) *Equipment.* The laboratory shall be equipped with all of the instruments and equipment needed to conduct the tests for which it is accredited. The

laboratory shall ensure that all instruments and equipment are properly calibrated, checked, and maintained.

(B) *Facilities.* The laboratory shall have, at a minimum, adequate space, lighting, and environmental controls to ensure compliance with the conditions prescribed for appropriate test procedures.

(C) *Personnel.* The laboratory shall be staffed with persons having the necessary education, training, knowledge, and experience for their assigned functions (*e.g.*, maintaining equipment, calibrating instruments, performing laboratory analyses, evaluating analytical results, and signing analysis reports on behalf of the laboratory). In general, each technical staff member should hold, at a minimum, a bachelor's degree in science or have two years related experience in an analytical laboratory.

(g) *How will an applicant be notified concerning accreditation?*—(1) *Notice of approval or nonselection.* When Customs evaluation of a laboratory's credentials is completed, the Director shall notify the laboratory in writing of its preliminary approval or nonselection. (Final approval determinations will not be made until the applicant has satisfied all bond requirements and made payment on all assessed charges and the balance of the applicable accreditations fee). Notices of nonselection will state the reasons for the determination. All notices of accreditation, reaccreditation, or extension of existing accreditations will be published in the **Federal Register** and Customs Bulletin.

(2) *Grounds for nonselection.* The Director may deny a laboratory's application for any of the following reasons:

(i) The application contains false or misleading information concerning a material fact;

(ii) The laboratory, a principal of the laboratory, or a person the Director determines is exercising substantial ownership or control over such laboratory or officer, has been indicted for, convicted of, or committed acts which, under United States federal or state law, would constitute any felony or misdemeanor involving misstatements, fraud, theft-related offenses or any other violation which would reflect adversely on the business integrity of the applicant;

(iii) A determination is made that the laboratory-applicant does not possess the capability or have adequate facilities and management to perform the approved methods of analysis for Customs purposes;

(iv) A determination is made that the laboratory has submitted false reports or statements concerning the sampling of merchandise, or that the applicant was subject to sanctions by state, local, or professional administrative bodies for such conduct;

(v) Nonpayment of assessed charges and the balance of the fixed accreditation fee; or

(vi) Failure to execute a bond in accordance with part 113 of this chapter.

(3) *Appeal of adverse determinations.* Laboratories receiving an adverse accreditation determination and wishing to appeal the determination must file an appeal within 30 days to the Director. Within 30 days of receipt of the appeal, the Director shall make a final determination regarding the appeal and notify the laboratory in writing. If the Director reaffirms the nonselection, again citing specific reasons, then the applicant may choose to either:

(i) Submit a new application to the Director after waiting 90 days from the date of the Director's last decision; or

(ii) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 days after the issuance of the Director's final decision.

(h) *What are the accreditation/reaccreditation fee requirements?*

(1) *In general.* A fixed fee, representing Customs administrative overhead expense, will be assessed for each application for accreditation or reaccreditation. In addition, associated assessments, representing the actual costs associated with travel and per diem of Customs employees related to verification of application criteria and background investigations will be charged. The combination of the fixed fee and associated assessments represent reimbursement to Customs for costs related to accreditation and reaccreditation. The fixed fee will be published in the Customs Bulletin and the **Federal Register**. Based on a review of the actual costs associated with the program, the fixed fee may be adjusted periodically; any changes will be published in the Customs Bulletin and the **Federal Register**.

(i) *Accreditation fees.* A nonrefundable pre-payment equal to 50 percent of the fixed accreditation fee to cover preliminary processing costs must accompany each application for accreditation. Before a laboratory will be accredited, it must remit to Customs, Account Services Division, within the 30 day billing period the associated charges assessed for the accreditation and the balance of the fixed accreditation fee.

(ii) *Reaccreditation fees.* Before a laboratory will be reaccredited, it must submit to Customs, Account Services Division, within the 30 day billing period the fixed reaccreditation fee.

(2) *Disputes.* In the event a laboratory disputes the charges assessed for travel and per diem costs associated with scheduled inspection visits, it may file an appeal within 30 days of the date of the assessment with the Director. The appeal letter must specify which charges are in dispute and provide such supporting documentation as may be available for each allegation. The Director shall make findings of fact concerning the merits of an appeal and communicate the agency decision to the laboratory in writing within 30 days of the date of the appeal.

(i) *Can existing Customs-accredited laboratories continue to operate?* Commercial laboratories accredited by the Director prior to December 8, 1993, will retain that accreditation under these regulations provided they conduct their business in a manner consistent with the administrative portions of this section. This paragraph does not pertain to any laboratory which has had its accreditation suspended or revoked. Laboratories which have had their accreditations continued under this section will have their status reevaluated in the third year following the effective date of this regulation. At the time of reaccreditation, these laboratories must meet the requirements of this section and remit to Customs, Account Services Division, within the 30 day billing period the fixed reaccreditation fee. Failure to meet these requirements will result in revocation or suspension of the accreditation.

(j) *How will Customs-accredited laboratories operate?*

(1)(i) *Samples for testing.* Upon request by the importer of record of merchandise, the port director will release a representative sample of the merchandise for testing by a Customs-accredited laboratory at the expense of the importer. Under Customs supervision, the sample shall be split into two essentially equal parts and given to the Customs-accredited laboratory. One portion of the sample may be used by the Customs-accredited laboratory for its testing. The other portion shall be retained by the laboratory, under appropriate storage conditions, for Customs use, as necessary, unless Customs requires other specific procedures. Upon request, the sample portion reserved for Customs purposes shall be surrendered to Customs. Samples reserved for Customs and sample remnants from any testing shall be retained by the accredited

laboratory for a period of one year from the date of the laboratory's final analysis report, unless other instructions are issued in writing by Customs. At the end of the one-year retention time period the accredited laboratory may dispose of the retained samples and sample remnants in a manner consistent with federal, state, and local statutes; perishable samples and sample remnants may be disposed of more expeditiously, if done in accordance with acceptable laboratory procedures.

(2) *Contents of reports.* The testing results from a Customs-accredited laboratory that are submitted by an importer of record with respect to merchandise in an entry shall, in the absence of testing conducted by Customs laboratories, be accepted by Customs provided that the importer of record certifies that the sample tested was taken from the merchandise in the entry and the report establishes elements relating to the admissibility, quantity, composition, or characteristics of the merchandise entered, as required by law. The data must be obtained using methods approved by the Director. Nothing in these regulations shall preclude Customs from sampling and testing merchandise from a shipment which has been sampled and tested by a Customs-accredited laboratory at the request of an importer. In cases where a shipment has been analyzed by both Customs and a Customs-accredited laboratory, all Customs actions will be based upon the analysis provided by the Customs laboratory, unless the Director advises otherwise. If a Customs laboratory performs a test of merchandise, it shall release the results of its test to the importer of record or its agent upon request unless it is proprietary to the holder of a copyright or patent, or developed by Customs for enforcement purposes.

(3) *Recordkeeping requirements.* Customs-accredited laboratories shall maintain records of the type normally kept in the ordinary course of business in accordance with the provisions of this chapter and any other applicable provision of law, and make them available during normal business hours for Customs inspection. In addition, these laboratories shall maintain all records necessary to permit the evaluation and verification of all Customs-related work, including, as appropriate, those described below. All records shall be maintained for five years, unless the laboratory is notified in writing by Customs that a longer retention time is necessary for particular records. Electronic data storage and transmission may be approved by Customs.

(i) *Sample records.* Records for each sample tested for Customs purposes must be readily accessible and contain the following information:

(A) A unique identifying number;

(B) The date when the sample was received or taken;

(C) The identity of the commodity (*e.g.*, crude oil);

(D) The name of the client;

(E) The source of the sample (*e.g.*, name of vessel, flight number of airline, name of individual taking the sample); and,

(F) If available, the Customs entry date, entry number, and port of entry and the names of the importer, exporter, manufacturer, and country-of-origin.

(ii) *Major equipment records.* Records for each major piece of equipment or instrument (including analytical balances) used in Customs-related work must identify the name and type of instrument, the manufacturer's name, the instrument's model and any serial numbers, and the occurrence of all servicing performed on the equipment or instrument, to include recalibration and any repair work, identifying who performed the service and when.

(iii) *Records of analytical procedures.* The Customs-accredited laboratory must maintain complete and up-to-date copies of all approved analytical procedures, calibration methods, etc., and must document the procedures each staff member is authorized to perform. These procedures must be readily available to appropriate staff.

(iv) *Laboratory analysis records.* The Customs-accredited laboratory must identify each analysis by sample record number (see paragraph (j)(3)(i) of this section) and must maintain all information or data (such as sample weights, temperatures, references to filed spectra, etc.) associated with each Customs-related laboratory analysis. Each analysis record must be dated and initialed or signed by the staff member(s) who did the work.

(v) *Laboratory analysis reports.* Each laboratory analysis report submitted to Customs must include:

(A) The name and address of the Customs-accredited laboratory;

(B) A description and identification of the sample, including its unique identifying number;

(C) The designations of each analysis procedure used;

(D) The analysis report itself (*i.e.*, the pertinent characteristics of the sample);

(E) The date of the report; and

(F) The signature of the person accepting technical responsibility for the analysis report (*i.e.*, an approved signatory).

(4) *Representation of Customs-accredited status.* Commercial laboratories accredited by Customs shall limit statements or wording regarding their accreditation to an accurate description of the tests for the commodity group(s) for which accreditation has been obtained. Use of terms other than those appearing in the notice of approval (see paragraph (f) of this section) is prohibited.

(5) *Subcontracting prohibited.* Customs-accredited laboratories shall not subcontract Customs-related analysis work.

(k) *How can a laboratory have its accreditation suspended or revoked or be required to pay a monetary penalty?*

(1) *Grounds for suspension, revocation, or monetary penalty.* (i) *General.* A laboratory's accreditation may be revoked or suspended or a laboratory may be assessed a monetary penalty at any time by the Director.

(ii) *Grounds for suspension, revocation, or assessment of a monetary penalty.* A laboratory's accreditation may be suspended or revoked, or a monetary penalty may be assessed because:

(A) The selection was obtained through fraud or the misstatement of a material fact by the laboratory;

(B) The laboratory, or other person the port director determines is exercising substantial ownership or control over the laboratory operation or corporate officer, is indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, a port director must have probable cause to believe the proscribed acts occurred;

(C) Staff laboratory personnel refuse or otherwise fail to follow any proper order of a Customs officer or any Customs order, rule, or regulation relative to continued licensing as a Customs-accredited laboratory;

(D) The laboratory fails to operate in accordance with the obligations of paragraph (c) of this section;

(E) A determination is made that the laboratory is no longer technically or operationally proficient at performing the approved methods of analysis for Customs purposes;

(F) The laboratory fails to remit to Customs, the Accounts Services Division, within the 30 day billing period the associated charges assessed for the accreditation and the balance of the fixed accreditation fee;

(G) The laboratory fails to maintain its bond; or

(H) The laboratory fails to remit to Customs, the Accounts Services Division, within the 30 day billing period the fixed reaccreditation fee.

(iii) *Assessment of monetary penalties.* The assessment of a monetary penalty under this section, may be in lieu of, or in addition to, a suspension or revocation of accreditation under this section. The monetary penalty may not exceed $100,000 per violation and shall be assessed and mitigated pursuant to published guidelines. Any monetary penalty under this section can be in addition to the recovery of any loss of revenue or liquidated damages assessed under the laboratory's Customs bond.

(2) *Notice.* When a decision to suspend, revoke, and/or to assess a monetary penalty is contemplated, Customs shall immediately notify the laboratory in writing of the proposed action. The notice of proposed action shall contain a description of the grounds for the proposed revocation, suspension, and/or assessment of a monetary penalty action, and advise the laboratory of the procedures for filing appeals.

(3) *Appeal procedures.* A Customs-accredited laboratory receiving a notice of suspension or revocation of accreditation, and/or of assessment of a monetary penalty, and wishing to appeal the decision shall follow the appeal procedures set forth in paragraph (g)(3) of this section. An appeal to the Director may contain an acceptance of responsibility and may also provide extenuating circumstances and/or rebuttal evidence. Further, the appeal may ask for a meeting with the Director or his designee to discuss proposed actions. Should the laboratory fail to file an appeal within the required time period, the Director shall take actions to implement the proposed suspension or revocation and/or to collect the monetary penalty assessed in the notice.

(4) *Publication.* All final notices of suspension or revocation of a laboratory's accreditation and/or assessment of a monetary penalty will be published in the **Federal Register** and Customs Bulletin, giving the effective date, duration, and scope of each action.

3. Section 151.13 is revised to read as follows:

§ 151.13 Approval of commercial gaugers.

This section sets forth the requirements for commercial gaugers to obtain approval by Customs for the measuring of certain merchandise, and explains the operation of such approved gaugers. This section also provides for the imposition of approval and reapproval fees, sets forth grounds for the suspension or revocation of approval, and provides for the imposition of a monetary penalty for an approved commercial gauger that fails to adhere to the provisions of this section.

(a) *What is a ''Customs-approved gauger''?* ''Commercial gaugers'' are individuals and commercial organizations that measure, gauge, or sample merchandise (usually merchandise in bulk form) and who deal mainly with petroleum, petroleum products, and bulk chemicals. A ''Customs-approved gauger'' is a commercial concern, within the United States, that has demonstrated, to the satisfaction of the Director (defined at § 151.12(a)), pursuant to this section the capability to perform certain gauging and measurement procedures for certain commodities. Customs approval extends only to the performance of such functions as are vested in, or delegated to, Customs.

(b) *What are the obligations of a Customs-approved gauger?* A commercial gauger approved by Customs agrees to the following conditions and requirements:

(1) To comply with the requirements of part 151, Customs Regulations (19 CFR part 151), and to conduct professional services in conformance with approved standards and procedures, including procedures which may be required by the Commissioner of Customs or the Director;

(2) To have no interest in or other connection with any business or other activity which might affect the unbiased performance of duties as a Customs-approved gauger. It is understood that this does not prohibit acceptance of the usual fees for professional services;

(3) To maintain the ability, *i.e.*, the instrumentation, equipment, qualified staff, facilities, etc., to perform the services for which the gauger is approved, and allow the Director to evaluate that ability on a periodic basis by such means as on-site inspections, demonstrations of gauging procedures, and reviews of submitted records;

(4) To retain those gauger records beyond the five-year record-retention period specified by Customs as necessary to address matters concerned in pending litigation, and, should laboratory operations or accreditation cease, to contact Customs immediately regarding the disposition of records retained;

(5) To promptly investigate any circumstance which might affect the accuracy of work performed as an approved gauger, to correct the situation immediately, and to notify both the port director and the Director of such matters, their consequences, and any corrective action taken or that needs to be taken; and

(6) To immediately notify both the port director and the Director of any attempt to impede, influence, or coerce gauger personnel in the performance of their duties, or of any decision to terminate laboratory operations or accredited status. Further, within 5 days of any changes involving legal name, address, ownership, parent-subsidiary relationships, bond, other offices or sites, managerial or professional or executive staff, approved signatories, facilities, instruments, or equipment, etc., to notify the Director by certified mail.

(c) *What are the approved gauging and measurement procedures?* Customs-accredited gaugers shall follow the general or specific gauging and measurement procedures set forth in Commodity Group Brochures (see definition at § 151.12(a)) in the testing of designated commodities, unless the Director gives written permission to use an alternate method. Alternative methods will be considered and approved on a case-by-case basis.

(d) *How would a commercial gauger become a Customs-approved gauger?* (1) *What should an application contain?* An application for approval shall contain the following information:

(i) The applicant's legal name and the addresses of its principal place of business and any other facility out of which it will work;

(ii) Detailed statements of ownership and any partnerships, parent-subsidiary relationships, or affiliations with any other domestic or foreign organizations, including, but not limited to, importers; producers; refiners; Customs brokers; or carriers;

(iii) A statement of financial condition;

(iv) If a corporation, a copy of the articles of incorporation and the names of all officers and directors;

(v) The names, titles, and qualifications of each person who will be authorized to sign or approve gauging reports on behalf of the commercial gauger;

(vi) A complete description of the applicant's facilities, instruments, and equipment;

(vii) Express agreement that if notified by Customs of pending accreditation to execute a bond in accordance with part 113, Customs Regulations (19 CFR part 113), and submit it to the Customs port nearest to the applicant's main office. (The limits of liability on the bond will be established by the Customs port in consultation with the Director. In order to retain Customs approval, the gauger must maintain an adequate bond, as determined by the port director);

(viii) Express agreement to be bound by the obligations contained in paragraph (b) of this section; and,

(ix) A nonrefundable pre-payment equal to 50 percent of the fixed approval fee, as published in the **Federal Register** and Customs Bulletin, to cover preliminary processing costs. Further, the applicant agrees to pay to Customs within 30 days of notification the associated charges assessed for approval, *i.e.*, those charges for actual travel and background investigation costs, and the balance of the fixed approval fee.

(2) *Where should an application be sent?* A commercial gauger seeking approval or an extension of an existing approval shall send a letter of application to the U.S. Customs Service, Attention: Director, Laboratories & Scientific Services, Washington, DC 20229.

(3) *How will an application be reviewed?*

(i) *Determination of competence.* The Director shall determine the applicant's overall competence, independence, and character by conducting on-site inspections, which will include demonstrations by the applicant of gauging procedures; reviewing records submitted; and conducting background investigations.

(ii) *Evaluation of technical and operational requirements.* Customs shall determine whether the following technical and operational requirements are met:

(A) *Equipment.* The facility shall be equipped with all of the instruments and equipment needed to conduct approved services. The gauger shall ensure that all instruments and equipment are properly calibrated, checked, and maintained.

(B) *Facilities.* The facility shall have, at a minimum, adequate space, lighting, and environmental controls to ensure compliance with the conditions prescribed for appropriate measurements.

(C) *Personnel.* The facility shall be staffed with persons having the necessary education, training, knowledge, and experience for their assigned functions (*e.g.*, maintaining equipment, calibrating instruments, performing gauging services, evaluating gauging results, and signing gauging reports on behalf of the commercial gauger). In general, each technical staff member should have, at a minimum, six (6) months training and experience in gauging.

(e) *How will an applicant be notified concerning approval?*

(1) *Notice of approval or nonselection.* When Customs evaluation of a gauger's credentials is completed, the Director shall notify the gauger in writing of its approval or nonselection. (Final approval decisions will not be made until the applicant has satisfied all bond requirements and made payment on all assessed charges and the balance of the application fee.) Notices of nonselection will state the reasons for the decision. All notices of approval, reapproval, or extension of a gauger's existing Customs-approval will be published in the **Federal Register** and Customs Bulletin.

(2) *Grounds for nonselection.* The Director may deny a gauger's application for any of the following reasons:

(i) The application contains false or misleading information concerning a material fact;

(ii) The gauger has been indicted for, convicted of, or committed acts which under United States federal or state law would constitute any felony or misdemeanor involving misstatements, fraud, theft-related offenses or any other violation which would reflect adversely on the business integrity of the applicant;

(iii) A determination is made that the gauger-applicant does not possess the capability or have adequate facilities and management to perform the approved methods of measurement for Customs purposes;

(iv) A determination is made that the gauger has submitted false reports or statements concerning the measurement of merchandise, or that the applicant was subject to sanctions by state, local, or professional administrative bodies for such conduct;

(v) Nonpayment of assessed charges and the balance of the fixed approval fee; or

(vi) Failure to execute a bond in accordance with part 113 of this chapter.

(3) *Appeal of adverse determinations.* Gaugers receiving an adverse approval determination and wishing to appeal the determination must file an appeal within 30 days to the Director. Within 30 days of receipt of the appeal, the Director shall make a final determination regarding the appeal and notify the gauger in writing. If the Director reaffirms the nonselection, again citing specific reasons, then the applicant may choose to either:

(i) Submit a new application to the Director after waiting 90 days from the date of the Director's last decision; or

(ii) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 days after the issuance of the Director's final decision.

(f) *What are the approval/reapproval fee requirements?*

(1) *In general.* A fixed fee, representing Customs administrative overhead expense, will be assessed for each application for approval or reapproval. In addition, associated assessments, representing the actual costs associated with travel and per diem of Customs employees related to verification of application criteria and background investigations will be charged. The combination of the fixed fee and associated assessments represent reimbursement to Customs for costs related to approval and reapproval. The fixed fee will be published in the Customs Bulletin and the **Federal Register**. Based on a review of the actual costs associated with the program, the fixed fee may be adjusted periodically; any changes will be published in the Customs Bulletin and the **Federal Register**.

(i) *Approval fees.* A nonrefundable pre-payment equal to 50 percent of the fixed approval fee to cover preliminary processing costs must accompany each application for approval. Before a gauger will be approved, it must submit to Customs, Account Services Division, within the 30 day billing period the associated charges assessed for the approval and the balance of the fixed approval fee.

(ii) *Reapproval fees.* Before a gauger will be reapproved, it must submit to Customs, Account Services Division, within the 30 day billing period the fixed reapproval fee.

(2) *Disputes.* In the event a gauger disputes the charges assessed for travel and per diem costs associated with scheduled inspection visits, it may file an appeal within 30 days of the date of the assessment with the Director. The appeal letter must specify which charges are in dispute and provide such supporting documentation as may be available for each allegation. The Director shall make findings of fact concerning the merits of an appeal and communicate the agency decision to the gauger in writing within 30 days of the date of the appeal.

(g) *Can existing Customs-approved gaugers continue to operate?* Commercial gaugers approved by the Director prior to December 8, 1993, will retain approval under these regulations provided that they conduct their business in a manner consistent with the administrative portions of this section. This paragraph does not pertain to any gauger which has had its approval suspended or revoked. Gaugers which have had their approvals continued under this section will have their status reevaluated in the third year

following the effective date of this regulation. At the time of reapproval, these gaugers must meet the requirements of this section and remit to Customs, Account Services Division, within the 30 day billing period the fixed reapproval fee. Failure to meet these requirements will result in revocation or suspension of the approval.

(h) *How will Customs-approved gaugers operate?*

(1)(i) *Contents of reports.* The measurement results from a Customs-approved gauger that are submitted by an importer of record with respect to merchandise in an entry shall, in the absence of measurement conducted by Customs laboratories, be accepted by Customs, provided that the importer of record certifies that the measurement was of the merchandise in the entry. All reports shall measure net landed quantity, except in the case of crude petroleum of Heading 2709, Harmonized Tariff Schedule of the United States (HTSUS), which may be measured by gross quantity. Reports shall be given in the appropriate HTSUS units of quantity, *e.g.*, liters, barrels, or kilograms.

HTSUS	Product	Unit of quantity
Headings 1501–1515	Animal and vegetable oils	Kilogram.
Subheadings 2707.10–2707.30 and 2902.20–2902.44	Benzene, toluene and xylene	Liter.
Heading 2709	Crude Petroleum	Barrel.
Heading 2710 (various subheadings)	Fuel oils, motor oils, kerosene, naphtha, lubricating oils	Barrel
Chapter 29 (various subheadings)	Organic compounds in bulk and liquid form	Kilogram, liter, etc.

(ii) Nothing in these regulations shall preclude Customs from gauging a shipment which has been gauged by a Customs-approved gauger at the request of an importer. In cases where a shipment has been gauged by both Customs and a Customs-approved gauger, all Customs actions will be based upon the gauging reports issued by Customs, unless the Director advises other actions. If Customs measures merchandise, it shall release the reports of its measurements to the importer of record or its agent upon request unless it is proprietary to the holder of a copyright or patent, or developed by Customs for enforcement purposes.

(2) *Recordkeeping requirements.* Customs-approved gaugers shall maintain records of the type normally kept in the ordinary course of business in accordance with the provisions of this chapter and any other applicable provisions of law, and make them available during normal business hours for Customs inspection. In addition, these gaugers shall maintain all records necessary to permit the evaluation and verification of all Customs-related work, including, as appropriate, those described below. All records shall be maintained for five years, unless the gauger is notified in writing by Customs that a longer retention time is necessary for particular records. Electronic data storage and transmission may be approved by Customs.

(i) *Transaction records.* Records for each Customs-related transaction must be readily accessible and have the following:

(A) A unique identifying number;

(B) The date and location where the transaction occurred;

(C) The identity of the product (*e.g.* crude oil);

(D) The name of the client;

(E) The source of the product (*e.g.*, name of vessel, flight number of airline); and

(F) If available, the Customs entry date, entry number, and port of entry and the names of the importer, exporter, manufacturer, and country-of-origin.

(ii) *Major equipment records.* Records for each major piece of equipment used in Customs-related work must identify the name and type of instrument, the manufacturer's name, the instrument's model and any serial numbers, and the occurrence of all servicing performed on the equipment or instrument, to include recalibration and any repair work, identifying who performed the service and when.

(iii) *Records of gauging procedures.* The Customs-approved gauger must maintain complete and up-to-date copies of all approved gauging procedures, calibration methods, etc., and must document the procedures that each staff member is authorized to perform. These procedures must be readily available to appropriate staff.

(iv) *Gauging records.* The Customs-approved gauger must identify each transaction by transaction record number (see paragraph (h)(2)(i) of this section) and must maintain all information or data (such as temperatures, etc.) associated with each Customs-related gauging transaction. Each gauging record (*i.e.*, the complete file of all data for each separate transaction) must be dated and initialed or signed by the staff member(s) who did the work.

(v) *Gauging reports.* Each gauging report submitted to Customs must include:

(A) The name and address of the Customs-approved gauger;

(B) A description and identification of the transaction, including its unique identifying number;

(C) The designations of each gauging procedure used;

(D) The gauging report itself (*i.e.*, the quantity of the merchandise);

(E) The date of the report; and,

(F) The signature of the person accepting technical responsibility for the gauging report (*i.e.*, an approved signatory).

(3) *Representation of Customs-approved status.* Commercial gaugers approved by Customs shall limit statements or wording regarding their approval to an accurate description of the commodities for which approval has been obtained.

(4) *Subcontracting prohibited.* Customs-approved gaugers shall not subcontract Customs-related work.

(i) *How can a gauger have its approval suspended or revoked or be required to pay a monetary penalty?*

(1) *Grounds for suspension, revocation, or assessment of a monetary penalty.*—(i) *General.* A gauger's approval may be revoked or suspended or a gauger may be assessed a monetary penalty at any time by the Director.

(ii) *Grounds for suspension, revocation, or monetary penalty.* A gauger's accreditation may be suspended or revoked, or a monetary penalty may be assessed because:

(A) The selection was obtained through fraud or the misstatement of a material fact by the gauger;

(B) The gauger, or other person the port director determines is exercising substantial ownership or control over the gauger operation or corporate officer, is indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, a port director must have probable cause to believe the proscribed acts occurred;

(C) Staff gauger personnel refuse or otherwise fail to follow any proper order of a Customs officer or any Customs order, rule, or regulation relative to continued licensing as a Customs-accredited gauger;

(D) The gauger fails to operate in accordance with the obligations of paragraph (b) of this section;

(E) A determination is made that the gauger is no longer technically or operationally proficient at performing the approved methods of measurement for Customs purposes;

(F) The gauger fails to remit to Customs, the Accounts Services Division, within the 30 day billing period the associated charges assessed for the approval and the balance of the fixed approval fee;

(G) The gauger fails to maintain its bond; or

(H) The gauger fails to remit to Customs, the Accounts Services Division, within the 30 day billing period the fixed reapproval fee.

(iii) *Assessment of monetary penalties.* The assessment of a monetary penalty under this section, may be in lieu of, or in addition to, a suspension or revocation of accreditation under this section. The monetary penalty may not exceed $100,000 per violation and shall be assessed and mitigated pursuant to published guidelines. Any monetary penalty under this section can be in addition to the recovery of any loss of revenue or liquidated damages assessed under the gauger's Customs bond.

(2) *Notice.* When a decision to suspend, revoke, and/or to assess a monetary penalty is contemplated, Customs shall immediately notify the gauger in writing of the proposed action. The notice of proposed action shall contain a description of the grounds for the proposed revocation, suspension, and/or assessment of a monetary penalty action, and advise the gauger of the procedures for filing appeals.

(3) *Appeal procedures.* A Customs-approved gauger receiving a notice of suspension or revocation of approval, and/or of assessment of a monetary penalty, and wishing to appeal the decision, shall follow the appeal procedures set forth in paragraph (e)(3) of this section. An appeal to the Director may contain an acceptance of responsibility and may also provide extenuating circumstances and/or rebuttal evidence. Further, the appeal may ask for a meeting with the Director or his designee to discuss proposed actions. Should the gauger fail to file an appeal within the required time period, the Director shall take actions to implement the proposed suspension or revocation and/or to collect the monetary penalty assessed in the notice.

(4) *Publication.* All final notices of suspension or revocation of a commercial gauger's approval, and/or assessment of a monetary penalty will be published in the **Federal Register** and Customs Bulletin, giving the effective date, duration, and scope of each action.

4. In § 151.14, the first sentence is amended by removing the words ''sediment and water' characteristic as set out in § 151.13(a)(2)'' and adding, in its place, the words ''analysis method for crude petroleum contained in ASTM D96 or other approved analysis method''.

Approved: May 6, 1998.

Samuel H. Banks,

Acting Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–15336 Filed 6–8–98; 8:45 am]

BILLING CODE 4820–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6106–3]

RIN 2060–A100

National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes revisions to the ''National Emission Standards for Hazardous Air Pollutants: Petroleum Refineries,'' which was issued as a final rule on August 18, 1995. This rule is commonly known as the Petroleum Refineries national emission standards for hazardous air pollutants (NESHAP). This action proposes to revise the date by which the Implementation Plan for emissions averaging is to be submitted. This action also proposes an exemption for specific hydrogen plant vent streams from the miscellaneous process vent requirements. Because the revisions do not alter the intended applicability, stringency, or schedule of the NESHAP, the EPA does not anticipate receiving adverse comments. Consequently, the revisions are also being issued as a direct final rule in the final rules section of this **Federal Register**. If no relevant adverse comments are timely received, no further action will be taken with respect to this proposal and the direct final rule will become final on the date provided in that action.

DATES: Comments. Comments must be received on or before July 9, 1998. Additionally, a hearing will be convened if requests to speak are received by June 24, 1998. If a hearing is held, it will take place on July 1, 1998 beginning at 10:00 a.m. and the record on the hearing will remain open for 30 days after the hearing to provide an opportunity for submission of rebuttal and supplementary information.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–93–48 (see docket section below), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

Electronic Submittal of Comments

Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–93–48. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina or at an alternate site nearby. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. JoLynn Collins, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5671.

Docket. Docket No. A–93–48, containing the supporting information for the original NESHAP and this action, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (MC–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). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. James Durham, Waste and Chemical